

IN THE INCOME-TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 4376/Mum/2010 (Assessment Year 2005-06)

Tata International Limited, Block A, Shivsagar Estates, Dr. Annie Besant Road, Worli, Mumbai-400018 PAN: AA ACT3198F	Vs.	ACIT-7(3), Room No. 675, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020
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Appellant

Respondent

ITA No. 4451/Mum/2010 (Assessment Year 2005-06)

ACIT-7(3), Room No. 675, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	Vs.	Tata International Limited, Block A, Shivsagar Estates, Dr. Annie Besant Road, Worli, Mumbai-400018 PAN: AA ACT3198F
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Appellant

Respondent

Cross Objection No. 223/Mum/2013 in ITA No. 4451/Mum/2010

Tata International Limited, Block A, Shivsagar Estates, Dr. Annie Besant Road, Worli, Mumbai-400018 PAN: AA ACT3198F	Vs.	ACIT-7(3), Room No. 675, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020
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Appellant

Respondent

Appellant by : Shri P.J. Pardiwala, Shri Nitesh Joshi,
Shri Milin Thakore & Ms. Astha Shah (AR)

Respondent by : Shri A. Mohan (CIT- DR)

Date of Hearing : 27.01.2020

Date of Pronouncement : 29.01.2020

Order under section 254(1) of Income-tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These two cross appeal and one cross objection by assessee are directed against the order of Id. CIT(A)-15 dated 15.03.2010 for Assessment Year 2005-06. The assessee has raised the following grounds of appeal:

The Appellant filed its appeal under section 253 of the Income-tax Act (the Act) before the Tribunal, against Order dated 15.03.2010 passed by the Commissioner of Income-tax (Appeals)-15, Mumbai (the CIT(A)), on 28.05.2010. Subsequent thereto, additional grounds have been filed it on 27.01.2016, 10.05.2016 and 19.03.2018. Since, the said grounds could be regarded as argumentative and with a view to place the original as well as the additional grounds together, the appellant files these grounds in a concise form. The Appellant submits that each of these grounds are in the alternative and without prejudice to any of the others:

ORIGINAL GROUNDS

1. The CIT(A) erred in upholding the disallowance of a sum of Rs.60,45,662 being claims settled by the Appellant during the year and ought to have held that the said amount may be allowed as a deduction either as bad debts or as business loss.
2. The CIT(A) erred in upholding disallowance out of payments made to extent of Rs.34,500.
 - 3.1 The CIT(A) erred in not holding that in any event the Ld. AO had not recorded satisfaction with the correctness of the claim of the appellant in respect of the disallowance under Section 14A and therefore he did not satisfy the condition precedent for application of sub-section (ii) & (iii) of Section 14A and Rule 8D.
 - 3.2 The CIT(A) erred in applying rule 8D of the Income-tax Rules, 1962 (the Rules) for the purposes of computing the amount of disallowance under section 14A of the Act and ought to have appreciated that the said rule had no application to the year under consideration.
 - 3.3 The CIT(A) ought to have held that the Appellant had utilized interest free owned funds for making investments in securities yielding tax free income, and hence, the AO erred in disallowing any part of the interest expenditure under section 14A of the Act.
 - 3.4 The CIT (A) ought to have held that in any case, the foreign investments made by the appellant have to be excluded in computing the disallowance under Section 14A of the Act as the dividend in respect of the same is liable to tax under the Act.

3.5 The CIT(A) erred in not appreciating that the appellant's old investments pertaining to period prior to 31st March, 1999 were not required to be considered for the purpose of computing disallowance under Section 14A of the Income Tax Act, 1961 (the Act).

3.6 The CIT(A) ought to have held that all investments which did not yield any tax free income in the form of dividend were required to be excluded from the average value of the investments for computing disallowance under Section 14A of the Act.

3.7 Without prejudice to the each of the earlier grounds, the CIT(A) erred in not holding that in any case, even if one were to accept the method followed by the Revenue in computing the disallowance the weighted average cost of investments aggregating to Rs. 2,981.90 lacs was required to be excluded being the investments received by the appellant upon amalgamation of Cameo Investment and Finance Limited, it's erstwhile subsidiary.

3.8 Without prejudice to the alternative grounds earlier, the CIT(A) erred in not appreciating that the disallowable interest was required to be computed by considering interest apportionable to the exempt income in the same proportion that the gross investment income by way of dividend received bore to the gross revenue of the appellant as held by Hon. Supreme Court in Consolidated Coffee Ltd. v. State of Kamataka [2001] 248 ITR 432 (SC).

4. The CIT(A) erred in upholding the disallowance as made by the AO under the following heads:

- a. Service charge - Rs.3,16,388
- b. Legal and professional charges - Rs. 43,06,375
- c. Repairs & maintenance owned residential premises – Rs. 4,524
- d. Repairs and maintenance others - Rs. 13,23,679
- e. Commission paid on exports-foreign – Rs. 4,32,730
- f. Repairs and maintenance plant and machinery - Rs. 5,000
- g. Repairs and maintenance leased residential premises - Rs. 12,989

ADDITIONAL GROUNDS DT. 27.01.2016

5. That, in the present case, the reference made by the AO to the TPO under section 92CA(I) of the Act for determination of arm's length price was without fulfilling the jurisdictional pre-conditions under the Act especially Chapter X thereof, rendering the transfer pricing order dated 29.01.2008 and the

adjustment determined therein in respect of issue of letters of comfort to be illegal and bad in law.

6. That no transfer pricing adjustment with respect to issue of "Letters of Comfort" could be made in the present case, as there was no evasion of tax or shifting of profits from India in respect of the same.

7. Assuming without admitting that the issue of "Letter of Comfort" by the Appellant to the Banks is regarded as an international transaction and it is held that a transfer pricing adjustment is required to be made in respect thereof, computation of such adjustment should be restricted to the amount of credit facility actually utilised by the respective associated enterprise/so

8. Assuming without admitting that a transfer pricing adjustment in respect of issue of "Letter of Comfort" is required to be made in the present case, commission charged by Banks for issuing guarantee cannot be regarded as a comparable while applying the CUP method.

ADDITIONAL GROUNDS DT. 10.05.2016

9. That the issue of "Letters of Comfort" by the Appellant to the Banks cannot be regarded as an 'international transaction' under section 92B of the Act

10. That the assessment order dated 24.03.2008 passed by the Additional Commissioner of Income-tax under section 143(3) of the Act is without jurisdiction, and hence, is illegal and bad in law.

11. Assuming without admitting that the AD was justified in making a disallowance under section 14A of the Act in respect of the interest expenditure, he ought to have excluded strategic investments that is investments in subsidiaries/associates/joint venture companies for the purposes of making any disallowance.

ADDITIONAL GROUNDS DT. 20.03.2018

12. Assuming without admitting that the Additional Commissioner of Income tax was justified in exercising jurisdiction over the Appellant to pass the assessment order for the current year, then, the assessment proceedings would be illegal and bad in law as the jurisdictional notice under section 143(2) of the Act has been issued by the Deputy Commissioner of Income tax who could not simultaneously have the same jurisdiction.

13. Assuming without admitting that a disallowance of interest expenditure could be made under section 14A of the Act, interest paid on credit facilities by

way of packing credit and post shipment credit could not be considered for the purposes of making any such disallowance as no part of the said borrowings had been utilised for the purposes of making any investments.

2. The revenue in its cross appeal has raised the following grounds of appeal:

1. "Whether on the facts and in the circumstances of the case the CIT(A) was correct in law in holding that LoC does not constitute an agreement or contract only because it is not accepted by the bank"
2. "Whether on the facts and in the circumstances of the case the CIT(A) was correct in law in holding that such LoC is not an agreement or contract when actually it constitutes an agreement"
3. "Whether on the facts and in the circumstances of the case the CIT(A) was correct in law in holding that LoC has no binding force when it morally binds the assessee and the AE and failure to honour this will have widespread repercussions on their business"
4. "Whether on the facts and in the circumstances of the case the CIT(A) was correct in law in holding that LoC can't be treated as equivalent to guarantees merely because they are not enforceable notwithstanding various consequences attached with it in case of failure to honour it"
5. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the AO restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary."

3. On service of notice of appeal by revenue, the assessee has filed cross objection raising the following grounds of appeal/in its C.O.

The grounds set out hereafter are without prejudice to one another.

1. **Transfer pricing adjustment**

1.1 The Transfer Pricing Adjustment made by the Assessing Officer is bad in law, illegal and unsustainable on the basis of the following grounds, taken singly or cumulatively, and, therefore, its deletion by the Ld CIT(A) ought to be upheld.

1.1.1 a) The conditions stipulated in section 92CA(1) of the Income Tax Act, 1961 ("Act") are mandatory and the Assessing Officer is expected to record his

satisfaction in that respect before making the reference to the Transfer Pricing Officer ("TPO").

b) Further, the TPO has failed to prove that any of the conditions laid down in section 92CA(1) of the Act had been satisfied, which made out a case for tax evasion.

1.1.2 On the facts and in the circumstances of the case, a Transfer Pricing Adjustment cannot be made without arriving at the finding that the intention of the assessee was to evade tax and shift profits outside of India. Further, such finding of tax evasion and of shifting of profits constitutes a condition precedent for making the Transfer Pricing Adjustment.

1.1.3 The Transfer Pricing Adjustment made by the Assessing Officer is bad in law, illegal, without jurisdiction and contrary to and / or beyond and in excess of the express statutory provisions of the Act including sections 4,5,9,92, 92C, 92CA, etc. The approval of the CIT under section 92CA(1) is also not in accordance with law and hence the adjustment must be quashed.

4. The assessee vide application 27.01.2016 has raised additional ground no. 5 to 8, vide application dated 10.05.2016 the assessee has raised the additional ground of appeal vide Ground No. 9, 10 & 11 and further, vide application dated 20.03.2018, the additional Ground No. 12 & 13 was raised. The Id. AR of the assessee submits that for adjudication of additional ground of appeal, no new facts are necessary to be brought on record. All the fact related to additional ground of appeal are emanating from the record of lower authorities.
5. On the other hand, the Id. DR for the revenue has not seriously objected for admission of additional ground of appeal raised by assessee vide its application dated 27.01.2016, 10.05.2016 & 20.03.2016.

6. We have considered the contention of representative of the parties and perused the additional ground of appeal. Perusal of additional ground of appeal reveals that no new facts or claim is raised by assessee. The facts relating to additional ground of appeal are emanating from the order of lower authorities. Even otherwise, the additional grounds of appeal are related with the original ground of appeal raised either by assessee or by revenue.
7. Considering the position under the law, since no new facts is necessary to be brought on record, therefore, the additional ground of appeal raised by assessee are admitted for adjudication.
8. At the outset of hearing, the Id. AR of the assessee submits that he is not pressing Ground No. 4, 5, 10 & 11. Considering the contention/submission of Id. AR of the assessee, Ground No. 4, 5, 10 & 11 are dismissed as not pressed.
9. Ground No.1 relates to disallowance of expenditure by way of claims settled. The Id. AR of the assessee submits that this ground of appeal is covered by the decision of Tribunal in assessee's own case for Assessment Year 2004-05 in ITA No. 1009 of 2009 dated 13.08.2015. The Id. AR of the assessee further submits that the Id. CIT(A) followed the order of his predecessor for Assessment Year 2003-04 & 2005-05. The appeal for Assessment Year 2003-04 & 2004-05 has been decided by Tribunal as

stated above vide order dated 13.08.2015. Thus, this ground of appeal may be allowed in favour of assessee.

10. On the other hand, the ld. DR for the revenue after going through the order of ld. CIT(A) and order of Tribunal for Assessment Year 2003-04 relied upon the order of lower authorities.

11. We have considered the submission of both the parties and perused the record and find that on similar ground of appeal, the co-ordinate bench of Tribunal by following the order of Assessment Years 2000-01, 2001-02 & 2003-04 passed the following order:

“6.1 This issue has been discussed by the AO at pages 4 & 5 of the assessment order. The Ld. CIT(A) has considered this issue at page 3 of his order. An identical issue was considered by the Tribunal in A.Y. 2003-04 in ITA No. 3016/Mum/07 and at para-8 and 8.1 the Tribunal has followed the earlier order of the Tribunal for A.Yrs 2000-01, 2001-02 and 2002-03. Respectfully following the orders of the Co-ordinate Bench in assessee’s own case, the disallowance made by the AO is deleted. These grounds are accordingly allowed.”

12. Considering the order of Tribunal on similar ground on similar set of fact and respectfully following the order of co-ordinate bench in assessee’s own case, the disallowance made by Assessing Officer is deleted. Hence, this ground of appeal is allowed.

13. Ground no.2 relates to disallowance out of payment made to club. The ld. AR of the assessee submits that this ground of appeal is also covered by Hon’ble Bombay High Court and decision of various benches of Tribunal in Otis Elevator (195 ITR 682). The ld. AR of the assessee submits that the assessee claimed total expenses of Rs. 3,52,200/- out of which, the

Assessing Officer allowed Rs. 52,000/- paid to Devas Office and rest of the amount of Rs. 2,99,500/- for subscription fees, annual contribution and membership of various club and other expenses paid on club were disallowed. The ld. CIT(A) granted part relief restricting the disallowance to Rs. 2,65,000/-. The ld. AR of the assessee submits that the issue is stand covered by the decision of jurisdictional High Court in Otis Elevator (supra).

14. On the other hand, the ld. DR for the revenue supported the order of lower authorities.

15. We have considered the submission of both the parties and perused the record and find that the Hon'ble Bombay High Court in Otis Elevator (supra) held that the payment made to clubs are revenue in nature and are allowable as such. We have further noted that in assessee's own case for Assessment Year 1996-97, 1997-98 & 1998-99, the co-ordinate bench of Tribunal in ITA No. 4976, 4977 & 4978/Mum/2005 vide order dated 26.03.2009 allowed similar claim in favour of assessee. Therefore, considering the decision of Tribunal in assessee's own case for Assessment Year 1996-97, 1997-98 & 1998-99 and decision of jurisdictional High Court, this ground of appeal is allowed in favour of assessee.

16. Ground No.3 relates to disallowance under section 14A. The ld. AR of the assessee submits that the Assessing Officer made addition/disallowance of Rs. 4.5 crore on pro-rata basis. The Assessing Officer also followed the

decision of CIT(A)-XXXIII, Mumbai dated 02.01.2006. The ld. CIT(A) affirmed the action of Assessing Officer by following the decision of ITO vs. Daga Capital [(2009) 117 ITD 169 (Mum SB)]. The ld. AR of the assessee submits that it is an admitted position under law that Rule 8D is prospective in nature and cannot be made applicable for Assessment Years prior to A.Y. 2008-09. The ld. AR further submits that in assessee's own case for similar disallowance, the co-ordinate bench in appeal for A.Y. 2000-01, 2001-02 & 2002-03 in ITA No. 3957, 3958 & 3959/Mum/2006 dated 08.06.2012, restricted the disallowance under section 14A to 5% of the exempt income. Further in A.Y. 2004-05 on similar disallowance, the Tribunal followed the decision in A.Y. 2000-01 to 2002-03 in ITA No. 3957 to 3959/Mum/2006 in ITA No. 1009/Mum/2009 dated 13.08.2015. The ld. AR invited our attention on the summarized comparative balance-sheet filed at page no. 29 of Paper Book (PB) and would submit that no borrowed cost is incurred by assessee. The ld. AR submits that the order of Tribunal in earlier years may be followed for making disallowance under section 14A.

17. On the other hand, the ld. DR for the revenue relied upon the order of lower authorities.

18. We have considered the submission of both the parties, perused the record. We have noted that in assessee's own case on identical issues have been considered by Tribunal from A.Y. 2000-01 to 2002-03 and 2004-05 wherein the Assessing Officer is directed to compute the disallowance under section

14A at 5% of the exempt income. No material change in the fact is brought to our notice for the year under consideration. Therefore, following the order of Tribunal for A.Y. 2000-01 to 2002-03, which was followed in A.Y. 2004-05, hence, we direct the Assessing Officer to compute the disallowance under section 14A at 5% of exempt income. In the result, this ground of appeal is partly allowed.

19. Ground No.6 to 9 relates to Transfer Pricing Adjustment with respect to issuance of "Letter of Comfort". This issue is interconnected with the grounds of appeal raised by revenue in its cross appeal. The ld. AR of the assessee submits that ld. CIT(A) deleted the adjustment against which the revenue has filed its cross appeal. The ld. AR of the assessee submits that the assessee issued Letter of Comfort to Bankers of Associated Enterprises (AE) of assessee. The assessee not reported this transaction (issuance of Letter of Comfort) in its Transfer Pricing Study Report (TPSR). The Assessing Officer made reference to Transfer Pricing Officer (TPO) for computation of Arms Length Price (ALP) of transaction reported by assessee with its AE in its report furnished under Form 3CEB. The TPO noted that the assessee has not reported about issuance of Letter of Comfort to the Banker of AE. The TPO issued show cause notice for determination of ALP with regard to issuance of Letter of Comfort. The assessee filed its reply vide reply dated 07.01.2008 & 18.01.2008. In reply to the show-cause, the assessee submitted that no adjustment is ought to be made as Letter of

Comfort would not represent international transaction within the meaning of section 92B(1). It was further stated that merely an unequivocal statement of intention expressed by assessee not being bilateral, is not a transaction and letter is a private affair between the assessee and the lender/banker (non associate and is not a transaction between two associate). The contention of assessee was not accepted by TPO by taking view that transaction relating to provision for Letter of Comfort and payment of commission for the services by AE to the assessee would fall within the definition in term of international transaction 92B of the Act. The TPO made adjustment of Rs. 8.70 crore on account of issuance of Letter of Comfort. The ld. CIT(A) after appreciating the contention of assessee concluded that issuance of Letter of Comfort does not constitute an international transaction. The ld. CIT(A) appreciated the difference between corporate guarantee and Letter of Comfort. The ld. AR further submits that there is a basic difference between corporate guarantee and Letter of Comfort. In a Letter of Comfort, the party issues only a letter that a subsidiary or group company would comply term of financial transaction and have no obligation to indemnify, however, in case of corporate guarantee, the party issuing guarantee is under obligation to the lender. The ld. AR further submits that infact this ground of appeal is also covered by the decision of Tribunal in case of The India Hotel Company Ltd. vs. DCIT in ITA No. 9087/Mum/2010 dated 06.09.2019, wherein similar ground of appeal was considered and by following the

decision of earlier years in that assessee and decision of Hon'ble Karnataka High Court in United Braveries Holding Ltd. Karnataka State Industrial Investment and Development Corporation Ltd. (M.F.A. No. 4234 of 2007 (SFC), wherein it was held that Letter of Comfort merely indicates the parties assurance that respondent would comply with the term of financial transaction without guaranteeing performance in the event of default.

20. On the other hand, the ld. DR for the revenue supported the order of Assessing Officer/TPO. The ld. DR submits that the assessee rendered services to its AE by issuing Letter of Comfort to the lender of its AE and therefore, the issuance of Letter of Comfort is an international transaction as held by Hon'ble Bombay High Court in CIT vs. in Everest Kento Cylinders Ltd. [378 ITR 57]. The ld. DR further submits that after amendment in Explanation in Section 92B, any capital financing, lending on guarantee have become international transaction.

21. In the rejoinder submission, the ld. AR of the assessee submits that in Everest Kento Cylinders Ltd. there was no question before the Hon'ble High Court, if giving a corporate guarantee is an international transaction or not. In without prejudice submission, the ld. AR further submits that the coordinate bench of Mumbai Tribunal in SIRO Clinpharm (P.) Ltd. vs. DCIT [(2017) 88 taxmann.com 338 (Mum. Trib.)] that amendment in Explanation to section 92B by Finance Act is to be treated as effective at the best from

A.Y. 2013-14 and so issuance of corporate guarantee prior to 01.04.2012 does not come within the definition of international transaction.

22. We have considered the submission of Id. representative of the parties and perused the order of lower authorities. During the reference pending before TPO, it was noted by TPO that assessee has issued a letter of Comfort to the banker of AE of assessee. The TPO has noted the relevant clause of Letter of Comfort in para-3.5.8 of its order, consisting the following undertaking/assurance:

- a) it would be its endeavor not to permit the AE to enter into liquidation (whether Voluntary or compulsory);
- b) to enter into an arrangement with its creditors without its liability to the bank and its subsidiary and / or Associated companies being completely discharged;
- c) the assessee will not dispose off any shares in the AE which would result in its shareholding in the AE being reduced to a minority and non-controlling shareholding without first having received the Bank's written consent or having ensured that the AE's liability to the bank is discharged in full;
- d) it would be its endeavor that AE at all times has' .adequate financial resources to meet its obligations promptly and it shall be its endeavor that AE will be in a financial position to pay the moneys from time to time due to the bank;
- e) it would agree not to press for repayment of amounts due to it, in preference to the amounts due by the AE to the bank, from time to time;
- f) The assessee would furnish its annual audited financial statement of accounts and will procure that the AE will also furnish with annual audited information as may be reasonably required.

23. The TPO concluded that this Letter of Comfort provide benevolent advantage to the AEs in obtaining credit facility from the Banks on better term. The TPO treated the Letter of Comfort as a guarantee. The TPO by taking view that transaction relating to provision for Letter of Comfort and

payment of commission for the services by AE to the assessee would fall within the definition in term of international transaction 92B of the Act. The TPO made adjustment of Rs. 8.70 crore on account of issuance of Letter of Comfort. The TPO proceeded to determine Arms Length Price (ALP) of such guarantee commission and selected Comparable Uncontrolled Price Method (CUP) as most appropriate method. The TPO noted that HSBC Bank charged fees ranging from .15% to 3% of the value of guarantee given to its customer depending upon risk involved. The TPO determined Arms Length Commission @ 50% of 3% and arrived at the figure of 1.5% and proposed adjustment of Rs. 8,70,62,438/-. The TPO made the adjustment in the following manner:

Summary of letter of comfort/awareness issued with corresponding utilization by AE as of 31/03/2005					
S. No.	LOC issued by TIL to –name of bank	AE	Value of LOC issued for US \$ Mill	Exchange rate 1US\$= Rs. 43,805	Commission rate @ 1.5%
1	Standard Chartered Bank	Tata South East Asia Ltd. , Hongkong	5.00	21,90,25,000	32,85,373
2	Standard Chartered Bank	Tata Zambia Ltd., Zambia	6.50	28,47,32,500	42,70,387.5
3	Standard Chartered Bank	Tata International (PTY) Ltd., Australia	9.00	39,42,45,000	59,13,675
4	Bank of India	Tata South East Asia Ltd. , Hongkong	22.50	98,56,12,500	1,47,84,187.5
5	State Bank of India	Tata Africa Holdings Ltd. , South Africa	30.00	131,41,50,000	1,97,12,250
6	HSBC	Tata South Asia Ltd., Hongkong	48.00	210,26,40,000	3,15,39,600
7	HSBC	Tata West Asia FZE, UAE	6.50	28,47,32,500	42,70,987.5
8	Bank of Baroda	Tata South East Asia Ltd., Hongkong	5.00	21,90,25,000	32,85,375
		Total	132.50	580,41,62,500	8,70,62,437.5 R/o 8,70,62,438

24. Before Id. CIT(A), the assessee made elaborate submission and explained the difference between Letter of Comfort within Intra Group as well as the corporate guarantee. The Id. CIT(A) after considering the submission of assessee concluded that by issuing Letter of Comfort to the Bankers of AE, the assessee did not incurred any cost. The issuance of Letter of Comfort by assessee have no bearing on the profit, income or loss as the assessee did not incur any cost or expenditure for issuing such Letter of Comfort and it does not constitute international transaction under section 92B of the Act. The Id. CIT(A) concluded that there is a fundamental between guarantee and Letter of Comfort. Guarantee is a legal enforceable; however, Letter of Comfort is not. We have noted that Hon'ble Karnataka High Court in United Braveries (Holding) Ltd. vs. Karnataka State Industrial Investment and Development Corporation (supra) held that Letter of Comfort merely indicates the appellant's assurance that respondent would comply the term of financial transaction without guaranteeing performance in the event of default. The co-ordinate bench of Tribunal in India Hotels Co. Ltd. (supra) on similar ground of appeal by following the decision of Hon'ble Karnataka High Court held that Letter of Comfort does not constitute international transaction. So far as contention of Id. DR for the revenue that after amendment in Explanation to section 92B is concerned, we have noted that co-ordinate bench in SIRO Clinpharm P. Ltd. (supra) held that amendment in Explanation to section 92B by Finance Act, effective from 01.04.2002 is

to be treated as effective at the best from A.Y. 2013-14. Thus, in view of the aforesaid discussion, we do not find any illegality or infirmity in the order passed by Id. CIT(A). In the result, Ground No. 6 to 9 (additional ground) of assessee's appeal are allowed and consequently the grounds of appeal raised by revenue are dismissed.

25. Ground No.12 relates to jurisdiction of Addl. Commissioner. We have noted that no submission on ground no. 12 was made by Id.AR of the assessee. Therefore, this ground of appeal is treated as not pressed and resultantly dismissed. Ground No. 13 relates to disallowance of interest expenditure under section 14A. Considering the fact that we have restricted the disallowance under section 14A to 5% of exempt income, therefore, further adjudication on this ground of appeal have become academic.

26. In the result, appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

C.O. No. 223/Mum/2013

27. The Id. AR of the assessee submits that he is not pressing the grounds of appeal raised in the Cross Objection as the assessee has raised additional ground of appeal. Considering the submission of Id. AR of the assessee, the Cross Objection filed by assessee is dismissed as not pressed.

Order pronounced in the open court on 29/01/2020.

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER
Mumbai, Date: 29.01.2020

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

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Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "J" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**