

IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH MUMBAI

BEFORE SHRI C.N.PRASAD, JUDICIAL MEMBER

&

SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.1451/Mum/2012

(Assessment Year: 2007-08)

Addl.CIT, Range-10(2) Room No.432, 4 th Floor Aaykar Bhawan M.K.Road Mumbai-400 020	Vs.	WNS Global Services Pvt.Ltd. Plant-10, Gate No.4 Godrej & Boyce Complex Pirojshanagar, Vikhroli(W) Mumbai-400 079
		PAN/GIR No.AAACW2598L
Appellant)	..	Respondent)

&

CO.No.44/Mum/2013

(Assessment Year: 2007-08)

WNS Global Services Pvt.Ltd. Plant-10, Gate No.4 Godrej & Boyce Complex Pirojshanagar, Vikhroli(W) Mumbai-400 079	Vs.	Addl.CIT, Range-10(2) Room No.432, 4 th Floor Aaykar Bhawan M.K.Road Mumbai-400 020
PAN/GIR No.AAACW2598L		
Appellant)	..	Respondent)

Assessee by	Shri Porus Kaka & Shri Manish Kanth, Ld. AR's
Revenue by	Shri Anand Mohan, CIT-DR
Date of Hearing	22/11/2019
Date of Pronouncement	19/02/2020

आदेश / ORDER

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue and cross objection filed by the assessee are directed against order of the Ld. Commissioner of

Income tax (Appeals)-15, Mumbai, Dated 30/12/2011 for the AY 2007-08. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed -off by this consolidated order.

ITA No.1451/Mum/2012:-

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

" 1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in holding that the international transaction entered into by the assessee with its Authorised Representative including management and marketing fee paid by the assessee to the Authorised Representatives, the receipt of contract revenues and the bearing of migration costs by the assessee be benchmarked separately though being interrelated and not aggregated as done by the TPO.

2. "On the facts and in the circumstances of the case and in law, the Id, CIT(A) erred in holding that the Authorised Representatives in UK and USA can be taken as tested party as they are performing Less complex functions and their comparables too are based in the same geographical area subject to the same accounting standards and holding that the TPO was not right in selecting the assesses as the tested party for benchmarking the international transactions.

3. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in holding that the contracting migration costs should not be considered for the calculation of the operating margin of the assessee though they are in the nature of operational costs.

4. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in holding that the international transaction entered into by the assesses with its Authorised Representatives were at arms length and thereby giving a relief of Rs.13,61,665,000/- to the assessee.

5. "On the facts and in the circumstances of the case and in law, the Id, CIT(A) erred in restricting the guarantee fee to 0.5% of the value of guarantee ignoring the fact that the charge of guarantee commission at a particular rate is not dependent upon the eventuality of the repayment of the loan by the borrower or its utilization, in fact it is a charge for the provision of guarantee in absence of which, the loan could not have been obtained by the Authorised Representative.

6. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in holding that the debts collections period should be computed by considering not only the debtors allowances but also the creditor's balances and directing to delete the addition of Rs.6,09,08,000/- being the arms length interest charged for the extended credit period allowed to the assessee ignoring the fact that.

a) The debt collection period is to be calculated on the debtors (Authorized Representatives)

b) Accordingly L assessee has allowed an excess credit period to its Authorised Representatives

c) An independent enterprise would have charged an interest for the excess credit period allowed to an unrelated entity which the assessee has not charged.

7. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing to allow deduction u/s,10A to the assessee by holding that the omission of sub-section 9 of section 10A with effect from the assessment year 2004-05 would have retrospective application since the omission is curative in nature and it should be considered as if such provision never existed on the statute.

8. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) failed to appreciate that the shareholding of the assessee underwent a change in the previous year 2002-03 and hence as per the provisions of sub-section 9 of section 10A which existed in the statute during the said previous year, no deduction u/s.10A(1) was to be allowed to the assessee on change of beneficial ownership for the assessment year relevant to such previous year i.e. assessment year 2003-04 and the subsequent assessment years.

9. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing that the assessee be allowed depreciation of Rs. 1,93,23,292/- on the 'intangible asset' representing consideration paid for acquisition of business contracts.

10. "On the facts and in the circumstances of the case and in law, the Id, CIT(A) failed to appreciate that a running business has been acquired on a lump sum payment and the acquisition of the capital asset is of the business as a whole, and the capital asset does not have the characteristics of intangible assets as listed in clause (b) of Explanation 3 to section 32(1) of the IT Act.

11. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing the Assessing Officer to allow deduction u/s.10A on the various additions / disallowances made to the profits of the business in terms of the provisions of section 30 to 43D of the Income tax Act, 1961 without appreciating that the assessee is not entitled to

deduction u/s.10A in view of the change in shareholding of the assessee company in the previous year 2002-03.

12. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing the Assessing Officer to allow deduction u/s10A to the assessee in respect of the profits of its eligible units viz.Mumbai unit 1, Pune Unit 1, Pune Unit 2 and Nashik Unit 1 without set off of losses incurred by its STP units viz. Mumbai unit 2, Pune Unit 3, Nashik Unit 2 and Gurgaon Unit 1.

The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.

3. The brief facts of the case are that the assessee company is engaged in the business of exporting information technology enabled business process outsourcing, including data processing and transmission of data etc. The assessee performs ITes Services for clients located in USA and Europe like WNS Global Services UK Limited and WNS North America Inc. During the year under consideration, WNS India has provided IT enabled services to the customers referred to it by its Associated Enterprises (AE's) and had received 100% payment for providing the IT enabled services. During the course of assessment proceedings, a reference was made to the Transfer Pricing Officer (TPO) to determine the Arm Length Price (ALP) of international transactions entered into by the assessee with its AE's. The TPO, vide its order dated 29/10/2010 passed u/s 92CA(3) of the I.T.Act, 1961 has suggested TP Adjustment of Rs. 142,25,73,000/- towards adjustment related to receipt of contract revenue , payment of marketing and management fees and payment of cost of services amounting to Rs. 1,36,16,65,000/- and a further sum of Rs. 6,09,08,000/- towards interest on export receivables. The Ld. AO thereafter, has passed draft assessment order u/s 144C(1) of the I.T.Act, 1961 and determined total income at Rs. 175,58,10,390/- by making various

additions, including additions towards Transfer Pricing Adjustment (TPA) u/s 92CA(3) of Rs. 142,25,73,000/-, disallowances of depreciation on intangibles amounting to Rs. 1,93,23,929/- and adhoc disallowances of expenses amounting to Rs. 5,35,000/-. In response to draft assessment order, the assessee vide letter dated 27/01/2011 has filed objections towards TPA as suggested by the TPO u/s 92CA(3) of the Act. The Ld. AO after considering relevant submissions of the assessee had passed final assessment order u/s 143(3) of the I.T.Act, 1961, dated 21/02/2011 and determined total income at Rs. 175,58,10,390/- by making additions towards TPA u/s 92CA(3) of the Act, disallowances of depreciation on intangibles and adhoc disallowances of administrative expenses.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has challenged additions made by the Ld. AO towards TPA, in respect of receipt of contract revenue and other services. The assessee has also challenged additions made by the Ld. AO towards notional interest charged on export receivables for belated realization of proceeds from AE's and also, additions made by the Ld. AO towards disallowances of depreciation on intangibles and adhoc disallowances of administrative expenses. The Ld.CIT(A) for the reasons stated in his appellate order, dated 30/12/2011 has deleted additions made by the Ld. AO towards TPA, in respect of payment of marketing and management fees and receipt on account of contract revenue ect. The Ld.CIT(A) has also, deleted additions made by the Ld. AO towards interest on export receivables, on the ground that, as per the working of debt collection period submitted by the assessee after netting of creditors, the same works out to 4

days, which is well within the terms of transactions and accordingly, no adjustment is required towards interest on export receivables. The Ld. CIT(A) has also deleted additions made by the Ld. AO towards deductions claimed u/s 10A of the I.T.Act, 1961, in respect of profits earned by the eligible units, on the ground that omission of sub-section (9) of section 10A w.e.f. AY 2004-05 would have retrospective application, since the omission is curative in nature and it should be considered, as if such provision never existed on the statute. Likewise, the Ld.CIT(A) has also deleted additions made by the Ld. AO towards disallowances of depreciation on intangible, on the ground that consideration paid for acquisition of business contracts over and above the value of assets represents intangibles assets, which is eligible for depreciation @25% as on intangible asset. As regards, adhoc disallowances of administrative expenses, the Ld.CIT(A) after considering the relevant facts has directed the Ld. AO to restrict disallowances to the extent of 50% of total expenditure disallowed by the Ld. AO. Aggrieved by the Ld.CIT(A) order, the revenue is in appeal before us and the assessee has filed cross objection.

5. The first issue that came up for our consideration from ground No.1 to 5 of Revenue appeal is aggregation of international transactions and consideration of AE's of WNS India in UK & US as the tested party. The Ld. AR for the assessee, at the time of hearing submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT, Mumbai 'K' bench in assessee own case for AY 2005-06 and 2008-09, where under identical set of facts, the Tribunal decide the issue in favour of the assessee. The Ld. AR, further submitted that for the AY 2011-12 to 2014-15

onwards, the TPO himself accepted the TP study conducted by the assessee bench marking the transactions with AE's separately without aggregation of all transactions.

6. The Ld. DR, on the other hand, fairly accepted that this issue is squarely covered in favour of the assessee by the decision of ITAT for AY 2005-06 and 2008-09.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the co-ordinate bench of ITAT, Mumbai in assessee own case for AY 2005-06 and 2008-09, where under identical set of facts, the Tribunal has deleted TPA made by the Ld. AO/TPO towards international transactions of the assessee with its AE's, on the ground that once, the department itself has accepted the AE's as tested party, but also accepted the foreign comparables proposed by the assessee. The TPO cannot aggregate the international transactions for benchmarking. The Tribunal, further held that the transactions of the assessee with its AE do not form a single composite transactions and the terms of each transactions have been agreed separately by the assessee with its AE's. Thus, the Ld. TPO approach of aggregating the international transactions is not appropriate. The relevant findings of the Tribunal are as under:-

"8. We have considered rival submissions and perused materials on record. As could be seen from the order of the Transfer Pricing Officer, primarily relying upon his decision in assessment year 2004-05, he has held that the assessee has to be treated as tested party and all international transactions have to be aggregated for bench marking purpose. However, it is observed, while deciding identical issue in assessee's own case for the assessment year 2004-05, the Tribunal has

upheld learned Commissioner (Appeals)'s decision in treating the AEs as the tested party on the following observations: -

"15. While deleting the addition made by TPO disregarding the benchmarking approach, CIT(A) observed as under:-

i. The Appellant has changed the business model to increase its turnover which require the risk free environment to its marketing companies i.e., its A.Es as risks and rewards from customers are passed on to the Assessee under the new business model.

ii. The two business models of the Appellant are entirely different in functional analysis:

a. In Business Model 1, the risks and rewards is with the Appellant. The A.Es which are remunerated on a cost plus fees are insulated from the risks which is borne by the Appellant as entrepreneur. The AEs render only marketing and management services and are least complex party in the transaction.

b. In Business Model 2, the major risks are borne by WNS UK. It functions as the entrepreneur, it bears the risk and the appellant is only a captive service provider bearing limited risks.

iii. In Business Model 1, the AEs were least complex parties and they were rightly used as tested party for the marketing and management fees paid to the AEs on cost plus basis, unlike in Business Model 2.

iv. Each international transaction has to be benchmarked separately and the assessee has different functional profiles for the two business models, one as an entrepreneur and the other as a captive service provider.

v. Such different transactions cannot be clubbed together as laid down in :

a. Aztec Software and Technical Services Ltd v/s ACIT, (107 ITD 141) b. Development Consultants Pvt. Ltd. v/s DCIT, {115 TTJ 577) c. Star India Pvt. Ltd. v/s ACIT, ITA no.3585/Mum./2006)

16. In view of the above findings of CIT(A), we accept assessee's contention that the foreign AE should be considered as the tested party, accordingly all other grounds of appeal in the Department's appeal with respect to transfer pricing related issues become academic in nature."

9. As regards the issue relating to separate benchmarking of international transactions with the AEs, the Tribunal has held as under:-

"21 We have considered rival contentions and find from the nature of the transactions mentioned above that they are not interlinked as the various transactions form part of different business models adopted by the assessee. Thus, the learned TPO's approach of aggregating these international transactions and benchmarking the assessee at an entity level is not appropriate since the FAR profile of WNS India is different in both the transactions and hence, aggregating these international transactions and considering WNS India as the tested party is wholly misplaced and contrary to the TP regulations. In view of these factual

position, the Hon'ble CIT(A) has correctly upheld the benchmarking approach adopted by the assessee.

22. For this purpose reliance may be placed on decision of the Hon'ble High Court of Punjab & Haryana in the case of Knorr- Bremse India Pvt. Ltd., ITA No.172 & 182 of 2013) wherein the Hon'ble Court has upheld the principle that only closely linked transactions which are components of single composite transaction can constitute a transaction.

23. In view of the above, we observe that the aforesaid transactions do not form a single composite transaction and the terms of each transactions have been agreed separately by the assessee with its AEs. Thus, the learned TPO's approach of aggregating the international transactions is not appropriate and the learned DR's claim of following the learned TPO's claim is not acceptable. Furthermore, detailed findings given by CIT(A) are as per material on record, which has not been controverted by Department by bringing any positive material on record. Accordingly, we do not see any justifiable reason to interfere in the findings of CIT(A) which resulted into deletion of addition made on account of international transaction."

10. The learned Departmental Representative having not brought any material difference in fact in the impugned assessment year, respectfully following the decision of the Tribunal as referred to above, we uphold the decision of the learned Commissioner (Appeals) with regard to the issues raised in this ground. Furthermore, as brought to our notice by the learned Sr. Counsel for the assessee, the Transfer Pricing Officer himself in the orders passed in assessee's own case for assessment years 2011-12 to 2014-15, has not only accepted the AEs as the tested party but also accepted the foreign comparables proposed by the assessee. Even, in the advance pricing agreement dated 3rd August 2015, the Department has accepted the AEs as the tested parties insofar as it relates to fees paid towards management and marketing services rendered by them."

8. In this view of the matter and consistent with view taken by the co-ordinate bench, we are of the considered view that the Ld.CIT(A) has rightly deleted additions made by the Ld. AO towards TPA, as suggest by the TPO u/s 92CA(3) of the Act, in respect of international transactions of the assessee with its AE's. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject ground taken by the revenue.

9. The next issue is that came up for our consideration from ground No.6 of revenue appeal is notional interest charged on export receivables from AE's for extended credit period. The Ld. AR for the assessee submitted that this issue is also covered in favour of the assessee by the decision of ITAT, Mumbai 'K' bench in assessee own case for AY 2005-06 & 2008-09, where under identical set of facts, the Tribunal held that if, the credit period allowed to AE's for receivables and credit period taken by the assessee for making payments to AE's, in respect of payables is netted off then. The credit period allowed to AE's is less than the credit period allowed to non AE's and hence, no TPA could be made, in respect of receivables from AE's. The Ld. AR, further submitted that in order to re-characterize receivables as international transactions, the Ld. TPO should bring on record, the benefit derived by the assessee by extended credit period to the AE's. Simply, because there is extended credit period for the AE's, no adjustment could be made, in respect of notional interest, when the assessee has explained the reasons for delay in realization of receivables from AE's.

10. The Ld. DR, on the other hand, strongly supporting order of the Ld.AO/TPO submitted that the issue, whether export receivables is a international transaction or not has been settled by the Hon'ble Delhi High Court, in the case of M/s Mckinsey Knowledge Center India Pvt.Ltd. vs. PCIT (2018) taxmann.com 237, where it was held that if, there is any delay in the realization of a trading debt arising from the sales of goods or services rendered in the course of carrying on the business, it is liable to be visited with TPA on account of interest income short charged/uncharged. The Ld. DR, further submitted that while delivering the judgment, the Hon'ble Court has taken note

of sub clause (c) of clause (i) of Explanation to section 92B of the Act, inserted by the Finance Act, 2012 w.e.f. 01/04/2012. Further, the SLP filed against the judgment before Hon'ble Supreme Court has been rejected, vide order dated 04/02/2019. The Ld. DR, further submitted that a similar view has been expressed by the jurisdictional High Court, in the case of Patni Computers Systems Limited (2013) 33 taxmann.com 03. He, further submitted that the receivables or any other debt arising during the course of the business is included in the definition of capital financing as on international transaction, as per Explanation to section 92B of the Act w.e.f 01/04/2002 by the Finance Act, 2012 and hence, any receivables or any other debt constitute international transactions, which needs to be benchmarked for the purpose of ascertaining ALP of transactions with AE's. The Ld. DR, further submitted that although, the Tribunal, while deciding the revenue appeal for AY 2005-06 has held the issue in favour of the assessee, but said decision was solely on the premise of the assessee does not charged any interest either from the AE's or non AE's towards extended credit period and secondly, the TPO has ignored the delay in payment made by the assessee to the AE's. But, fact remains that charging of interest towards extended credit period is a separate international transaction as held by Hon'ble Delhi High Court and approved by the Hon'ble Supreme Court, it cannot be affected set off by delayed payment made by the assessee to the AE's, if any. Therefore, he submitted that although, the issue has been decided in favour of the assessee for earlier years, but said decision was on different footing and hence, in view of the decision of Hon'ble Delhi High Court, delay in realization of export receivables needs to be benchmarked as international transaction.

11. Per Contra, the Ld. AR for the assessee submitted that there is no merit in arguments of the assessee that the Hon'ble Delhi High Court has overruled the decision of *Kusum Health Care Pvt.Ltd. vs PCIT (supra)*, because, the Hon'ble Court very categorically held that inclusion in the explanation to Section 92B of the Act, of the expression receivables does not mean that de-hors the context every item of receivables appearing in the accounts of entity, which may have dealing with foreign AE's would automatically be characterized, as an international transactions. There may be delay in collection of money's for supplies made, even beyond the agreed limit due to a variety of factors, which will have to be investigated on case to case basis. The Hon'ble Court, further held that when, the assessee is already factored the receivables in the working capital and thereby on its pricing/profitability vis-à-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterized the transactions, this was clearly impermissible in law. Therefore, he submitted even after making say, the law is very clear, in respect of receivables from AE's, as per which each transactions has to be examined, in light of facts brought out by the assessee to bring it within the ambit of international transactions. He, further submitted that the ITAT has considered all these aspects for earlier years and held that while characterizing the export receivables from AE's for benchmarking, the Ld. AO ought to have considered payables to AE's to ascertain is there any benefit has been provided to the AE's on account of extended credit facility. Therefore, there is no merit in the arguments of the Ld. DR that the

Ld. AO was right in benchmarking interest on export receivables for delayed realization from AE's.

12. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the Tribunal had considered an identical issue for AY 2005-06 & AY 2008-09, where under identical set of facts, it has been held that when, the assessee is not charging interest, either from the AE or from the third parties towards extended credit period, the Ld. AO/TPO was incorrect in charging notional interest on receivables from the AE's for extended credit period without considering the impact of payables to AE's, in respect of various services. The relevant findings of the Tribunal are as under:-

28. We have considered rival submissions and perused materials on record. It is evident from the facts on record, not only the assessee receives payment from AEs towards services rendered but the AEs also receive payment from the assessee on account of provision of marketing support services. It is a fact on record that in some instances there is a delay in receiving payments from the AEs. The assessee has explained such delay to be on account of late receipt of payment by the AEs from the overseas customers. It is also evident, the assessee has also made delayed payment to AEs towards marketing support services rendered by them. Therefore, there is WNS Global Services Pvt. Ltd.

13. We, further noted that in this year, the Ld.CIT(A) has recorded categorically finding that if, credit period extended to AE's for receivables and credit period taken by the assessee for making payments to AE's for payables is netted of then, the credit period allowed to AE is less than four days and which is less than the credit period allowed to non AE's. Therefore, no adjustment is required, in respect of interest on receivables from AE's. We, further noted that as a matter of fact, the assessee does not charged any interest, either

from the AE, or from the non AE's towards extended credit period. Therefore, we are of the considered view that the Ld.CIT(A) was right in deleting additions made by the Ld. AO towards TPA on account of notional interest on receivables from AE's and hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject ground taken by the revenue.

14. The Next issue that came up for our consideration from ground No.7,8 & 11 of revenue appeal is disallowances of deduction u/s 10A of the I.T.Act, 1961, in respect of profits earned by the eligible units in view of erstwhile provisions of section 10A(9) of the Act. The Ld. AR for the assessee submitted that this issue is also covered in favour of the assessee by the decision of ITAT, Mumbai 'K' bench in assessee own case for AY 2005-06 & 2008-09, where it has been held that omission of sub-section (9) of section 10A of the Act, by Finance Act, 2003 would effectively mean that the provision never existed in the statute.

15. The Id. DR, on the other hand, fairly accepted that the issue is covered in favour of the assessee by the decision of Tribunal for earlier years.

16. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the Tribunal has considered an identical issue for AY 2005-06 & 2008-09 and after considering the amendment made by the Finance Act, 2003, provisions of section 10A of the Act, held that omission of sub-section (9) of section 10A by the Finance Act, 2003 would effectively meant that the provision never existed in the statute and

consequently, the assessee is entitled for deduction towards profit derived from eligible units u/s 10A of the I.T.Act, 1961. The relevant findings of the Tribunal are as under:-

“34. We have considered rival submissions and perused materials on record. It is evident, the Assessing Officer referring to the provisions of [section 10A\(9\)](#) of the Act has disallowed assessee's claim of deduction under [section 10A](#) of the Act. Whereas, learned Commissioner (Appeals) relying upon certain judicial precedents as referred to above, has allowed assessee's claim of deduction by holding that the omission of [section 10A\(9\)](#) of the Act will operate retrospectively as if the said sub-section never existed in the statute. It is relevant to observe, when identical issue came up for consideration before the Tribunal in assessee's own case in assessment year 2003-04, the Tribunal in the order passed in ITA no.4520/Mum./2013, dated 17th February 2016, has held that the omission of sub-section (9) of [section 10A](#) of the Act, would effectively mean that the said provision never existed in the statute and accordingly allowed assessee's claim under [section 10A](#) of the Act. Further, while deciding assessee's appeal against order passed under [section 263](#) of the Act for assessment year 2004-05, the Tribunal in its order passed in ITA no.2566/Mum./2009 dated 10 th August 2012, upheld the decision of the Assessing Officer in allowing assessee's claim of deduction under [section 10A](#) of the Act by holding that omission of sub-section (9) of [section 10A](#) of the Act by [Finance Act](#), 2003, would effectively mean that the provision never existed in the statute. Facts being identical, respectfully following the decisions of the Co-ordinate Bench in assessee's own case, we uphold the decision of the learned Commissioner (Appeals) on the issue. Grounds raised are dismissed.”

17. In this view of the matter and consistent with view taken by the co-ordinate bench, we are of the considered view that the Ld.CIT(A) was right in deleting additions made by the Ld. AO towards disallowances of deductions claimed u/s 10A of the I.T.Act, 1961, in respect of profits earned by the eligible units and hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject ground taken by the revenue.

18. The next issue that came up for our consideration from ground No.9 & 10 of assessee appeal is disallowances of depreciation on

intangibles representing acquisition of business contracts. The Ld. AR for the assessee submitted that this issue is also covered in favour of the assessee by the decision of ITAT, Mumbai, 'K' bench in assessee own case for AY 2005-06 & 2008-09.

19. We have heard both the parties, perused the material available on record. We find that the Tribunal has considered an identical issue for AY 2008-09, where under identical set of facts, it has bench held that the assessee has acquired contractual rights, which no doubt is a valuable commercial right and hence, it comes within the meaning of intangible assets, as per section 32(1)(ii) r.w. Explanation 3(b) of the Act and hence, the assessee is entitled for depreciation on said intangibles at the rate applicable to intangible assets. The relevant findings of the Tribunal are as under:-

"40. We have considered rival submissions and perused materials on record. Insofar as factual aspect of the issue is concerned, there is no dispute that by virtue of acquisition of M/s. Town and Country Assistance Ltd., various contracts executed by the said concern with third party clients were assigned to the assessee. It is also a fact that such acquisition took place by virtue of an agreement executed on 13 th January 2004. It is also a fact on record that in assessment year 2004-05, the assessee for the first time claimed depreciation by treating the capitalized value of the amount paid towards acquiring M/s. Town and Country Assistance Ltd., as an intangible asset and claimed depreciation @ 25%. Notably, the Assessing Officer while completing assessment under [section 143\(3\)](#) of the Act also allowed assessee's claim of depreciation. However, learned Commissioner of Income Tax revised the assessment order under [section 263](#) of the Act. Subsequently, while deciding assessee's appeal against the said order the Tribunal quashed the order passed under [section 263](#) of the Act and restored the assessment order. Thus, in effect, assessee's claim of depreciation in respect of intangible asset became final. In any case of the matter, there is no dispute that by acquiring M/s. Town and Country Assistance Ltd. the assessee has also acquired contractual rights which, no doubt, is a valuable commercial right. Therefore, it comes within the meaning of intangible asset as per [section 32\(1\)\(ii\)](#) r/w Explanation 3(b) of the Act. Hence, depreciation claimed by the assessee is allowable. The decisions relied upon by the learned Sr. Counsel for the assessee also supports

our aforesaid view. Accordingly, we uphold the decision of the learned Commissioner (Appeals) by dismissing the grounds raised.”

20. In this view of the matter and consistent with view taken by the Tribunal in assessee own case, we are of the considered view that the Ld.CIT(A) was right in deleting additions made by the Ld. AO towards disallowances of depreciation on intangibles and hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject ground taken by the revenue

21. In the result, appeal filed by the revenue is dismissed.

CO.No.44/Mum/2013:-

22. The only issue that came up for our consideration from ground No.1 of cross objection filed by the assessee is adhoc disallowances of 50% of the administrative expenses. The Ld. AO has disallowed administrative expenses of Rs. 5,35,000/-, on the ground that the onus is on the assessee to prove the fact of expenses, as well as to establish that these expenses were incurred for the purpose of the business, as provided u/s 37(1) of the I.T.Act, 1961. Since, the assessee has failed to provide necessary evidences, he has disallowed total expenditure of Rs. 5,35,000/- u/s 37(1) of the I.T.Act, 1961. The Ld.CIT(A) has restricted disallowances made by the Ld. AO towards administrative and other expenses to 50% of such expenses.

23. The Ld. AR for the assessee submitted that this issue is also covered in favour of the assessee by the decision of ITAT, Mumbai

'K' bench for AY 2005-06 & 2008-09, where the Tribunal has directed the AO to restrict the disallowances to 10% of the total expenditure claimed by the assessee under the head other expenses. The Id. DR, on the other hand, fairly accepted that this issue is squarely covered in favour of the assessee by the decision of Tribunal for earlier years.

24. We have heard both the parties and perused the material available on record. We find that the issue is covered in favour of the assessee by the decision of ITAT, Mumbai for earlier years, where under identical set of facts, the Tribunal has directed the AO to restrict the disallowances to 10% of total expenditure claimed under the head others. The relevant findings of the Tribunal are as under:-

58. Having considered rival submissions and perused material on record, we find that while deciding identical issue in assessment year 2004-05, the Tribunal has restricted the disallowance to 10% of the total expenditure claimed by the assessee. Facts being identical, following the aforesaid decision of the Tribunal in ITA no.2318/Mum./ 2009, dated 4th May 2018, we restrict the disallowance to 10% of the total expenditure claimed by the assessee under the head "Others".

25. In this view of the matter and consistent with view taken by the co-ordinate bench in assessee own case for earlier years, we direct the Ld. AO to restrict disallowances to 10% of total expenditure claimed under the head other expenses.

26. In the result, cross objection filed by the assessee is partly allowed.

27. As a result, appeal filed by the revenue is dismissed and cross objection filed by the assessee is partly allowed.

Order pronounced in the open court on this 19/02/2020

Sd/-
(C.N .PRASAD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated: 19/02/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai