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

BEFORE
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI O.P.KANT, ACCOUNTANT MEMBER

ITA No.1608/Del/2016
(ASSESSMENT YEAR-2011-12)

Dy. CIT, Circle-16(2), New Delhi	Vs.	M/s. Mitsui & Company India Pvt. Ltd. Plot No.D-1, 4th Floor, Salcon Ras Vilas, District Centre, Saket, New Delhi-110017. PAN-AADCM 4488J
(Appellant)		**(Respondent)**

ITA No.1672/Del/2016
(ASSESSMENT YEAR-2011-12)

M/s. Mitsui & Company India Pvt. Ltd. Plot No.D-1, 4th Floor, Salcon Ras Vilas, District Centre Saket, New Delhi-110017. PAN-AADCM 4488J	Vs.	DCIT, Circle-16(2), New Delhi
(Appellant)		**(Respondent)**

Appellant By	**Sh. Surender Pal, CIT-DR**
Respondent by	**Sh. Ved Jain, Adv.**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

These are cross-appeals filed by the assessee and the Revenue arising from the Final Assessment Order passed by the Assessing Officer (AO) vide order dated 28.01.2016 consequent to the directions of the Ld. Disputes Resolution Panel (DRP) vide its directions dated 14.12.2015 and pertains to Assessment Year 2011-12.

2.0 In the appeal filed by the Revenue, it has raised the following grounds of appeal:

1. *Whether in the facts and circumstances of the case and in law the Dispute Resolution Panel (DRP) was justified in not appreciating the fact that the activity carried out by the assessee was akin to trading?*
2. *Whether in the facts and circumstances of the case and in law the DRP was justified in rejecting the primacy of functions performed by the assessee and basing its decision on the ground that the risks were minimal in the case of the assessee?*
3. *Whether in the facts and circumstances of the case and in law the DRP was justified in stating that no intangibles were created of the supply chain and human intangibles when these intangibles have been specifically acknowledged by their incorporation in the explanation (ii) to section 92B of the Income Tax Act, 1961?*
4. *Whether in the facts and circumstances of the case and in law the DRP was justified in rejecting the TPO's analysis without going into the agreements the assessee has entered into with AE?*
5. *Whether in the facts and circumstances of the case and in law the case and in law the DRP was justified in rejecting the use of FOB in the cost base when it is the relevant cost base for determining the ALP of the international transaction of the assessee with its AEs?*

6. *Whether in the facts and circumstances of the case and in law the DRP was justified in directing acceptance of a PLI that does not include cost of goods among expense, when all the functions performed assets utilized and risk undertaken were in that context only?*
7. *Whether in the facts and circumstances of the case and in law the DRP was justified in considering the provisions of proviso to section 92C(2) of the Act to the present case?*
8. *Whether on the facts and circumstances of the case and in law, the DRP is justified in deleting the disallowance of an amount of Rs.16,54,868/- made by the AO by invoking the provision of section 14A of the Act?*
9. *Whether, on facts and circumstances of the case and in law, the DRP is justified in not upholding disallowance of Rs.16,54,868/- u/s 14A of Income Tax Act 1961 without considering legislative intend of introducing section 14A by the Finance Act 2001 as clarified by the CBDT Circular No.5/ 2014 dated 10.02.2014?*
10. *Whether on facts and circumstances of the case and in law, the DRP is justified is not upholding the disallowance of Rs. 16,54,868/- u/s 14A of the Act without consider a legal principle that allowability of expenditure under the Act is not conditional upon the earning of the income as upheld by the Hon'ble Supreme Court in the case of CIT Vs. Rajendra Prasad Moody [1978] 115 ITR 519?*
11. *Whether on facts and circumstances of the case and in law, the DRP is justified in not upholding the disallowance of an amount of Rs.13,63,487/- on account of expenditure on club membership?*
12. *Whether on facts and circumstances of the case and in law, the DRP is justified in not upholding disallowance of an amount of Rs.1,28,79.450/- on account of service fees paid to M/s West Japan Logistics, Division of Mitsui & Company Ltd., Japan and M/s Mitsui & Company (Asia) Pte., Singapore?*
13. *Whether on facts and circumstances of the case and in law, the DRP is justified in restricting the disallowance to the extent of Rs.26,93,754/- only out of the total disallowance of Rs.1,39,68,770/- made by the AO on account of staff welfare expenses?*
14. *Whether on facts and circumstances of the case and in law, the DRP is justified in not upholding the disallowance of an amount of Rs.23,57,926/- made by the AO on account of non deduction of TDS on payments made to Mitsui & Co., Japan.*

15. That the order of the Ld. DRP is erroneous and is not tenable on facts and in law.
16. That the appellant craves leave to add, alter, amend or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

2.1 In the appeal filed by the assessee, it has raised the following grounds of appeal:

1. *That on the facts and circumstances of the case, the learned AO/DRP has erred, both on facts and in law in making/upholding a disallowance of an amount of Rs.26,93,754/- on account of expenditure on staff welfare expenses.*
2. *That on the facts and circumstances of the case and in law, the AO/DRP erred in charging interest u/s 234B & 234C of the Act.*
3. *That on facts and in law the orders passed by the AO/DRP are bad in law and void ab-initio.*

That the appellant prays for leave to add, alter, amend and/or vary the ground(s) of appeal at or before the time of hearing.

3.0 Ground Nos.1 to 7 in the appeal filed by the Revenue are regarding the transfer pricing adjustment deleted by the Ld. DRP vide its order dated 14.12.2015. During the course of the hearing, it was informed that the assessee has entered into Advance Pricing Agreement (APA) dated 19.12.2014 in terms of provisions of section 92CC of the Income Tax Act, 1961 (hereinafter called 'the Act') for the Financial Year 2013-14 to Financial Year 2017-18. The assessee, after notification of Rollback Rules, sought approval for rollback of the above agreement for

Financial Year 2010-11 to Financial Year 2012-13 and accordingly, an agreement was entered into under the Advance Pricing Mechanism for these Financial Years which included the present Assessment Year 2011-12. Consequent thereto, a modified return for the Assessment Year 2011-12, after including the income in accordance with the agreement, was filed on 20.02.2017 to give effect to the Advance Pricing Agreement in accordance with section 92CD of the Act. It was informed that in view of the Advance Pricing Agreement having been entered into, the grounds in the appeal on this issue of Transfer Pricing are to withdrawn as per Rule 10RA (5).

3.1 The Learned DR agreed that Ground No. 1 to 7 be treated as withdrawn.

3.2 In view of the Advance Pricing Agreement having been entered into by the assessee for the Assessment Year under consideration, Ground Nos. 1 to 7 of Revenue's Appeal are dismissed as withdrawn.

3.3 Ground Nos. 8 to 10 in Revenue's appeal are on the issue of deletion of disallowance of Rs.16,54,868/- proposed by the AO in the Assessment Order under section 14A of the Act. The AO has made the above disallowance by holding that disallowance under section 14A is to

be made mandatorily irrespective of the fact whether assessee has received any exempt income during the year or not. The Ld. DRP has deleted the disallowance relying upon the judgment of Hon'ble Delhi High Court in the case of Cheminvest Ltd. (378 ITR 33) wherein it has been held that in the absence of any exempt income during the year, no disallowance can be made. Further, the Ld. DRP has held that the interest free funds are sufficient to meet that investment made by the assessee. The Learned DR was fair enough to accept that the issue is covered in favour of the assessee by various judgments of the Jurisdictional High Court including the above judgment of Cheminvest Ltd. (Supra) relied upon by the Ld. DRP.

3.4 In view of the above facts, we uphold the Order of the DRP deleting the above said disallowance and Ground No. 8 to 10 of Revenue's appeal are dismissed.

3.5.0 Ground No. 11 in the Revenue's appeal is regarding deletion of addition of Rs.13,63,487/- on account of expenditure incurred by the assessee on Club Membership for its employees. The AO disallowed the expenditure holding that the same has not been incurred wholly and exclusively for the purpose of the business. The Ld. DRP has directed to

delete the disallowance holding that this Club Membership expenditure incurred by the assessee for its employees has been considered as perquisite in the hands of the employees as salary income and tax has been paid thereon.

3.5.1 It was contended by the Learned DR that Club Membership expenditure is a personal expenditure and cannot be considered to be an expenditure incurred wholly and exclusively for the purpose of the business of the assessee.

3.5.2 The Learned AR submitted that the expenditure incurred by the employer on its employees is an expenditure wholly and exclusively for the purpose of business of the assessee. These employees are working for the assessee and any benefit extended to such employees whether in cash or kind is in consideration for the services rendered by such employees. Further, the assessee has considered such payment as perquisites in the hands of the employee and deducted tax from the employees. On going through the order passed by the Ld. DRP, we note that the Ld. DRP had deleted the addition holding that the Club Membership fees having been offered for taxation by the respective employees as salary receipts, as is evident from the Form 16, placed in the

Paper Book, absolved the assessee of the liability to surrender it for taxation as expenditure not wholly and exclusively for the purpose of business. We are of the considered view that the finding of the Ld. DRP is correct. We are further of the view that any expenditure incurred on employees by the employer, whether by way of salary or by way of perquisites, is business expenditure as the employees are working for the business. What the employer provides to employees is a consideration for the services rendered by such employees. Such consideration can be in cash by way of salary or allowances or in kind by way of various perquisites. The Club Membership fee is one such perquisite which is extended by the employer to its employees. So long the fee is paid for the employees who are working with the employer for the business being carried on by such employer, the fee so paid is an expenditure incurred wholly and exclusively for the purpose of business.

3.5.3 In view of the above, we uphold the order of the Ld. DRP and Ground No. 11 of the Revenue's appeal is dismissed.

3.6.0 Ground No. 12 in Revenue's appeal is on account of deletion of addition of Rs.1,28,79,450/- on account of the Service Fees. The AO has disallowed the same holding that this expenditure has not been incurred

wholly and exclusively for the purpose of business as the assessee has not furnished any details regarding the actual service being provided and the nature of services offered by M/s West Japan Logistics is quite vague. Further, M/s Mitsui & Company (Asia) Pte., Singapore is a trading company and is not a consulting company and is not competent to offer such kind of specialized service to the assessee company. It has been further stated by the AO that the assessee has incurred huge expenditure on account of legal and professional charges itself and as such the claim of receipt of any legal service from its Associated Enterprise (AE) is unjustified. As regards the contention of the assessee that the transaction with AE has been examined by the Transfer Pricing Officer (TPO), the same was rejected by the AO on the ground that the TPO has not examined the above payment from the point of allow ability under section 37(1) of the Income Tax Act, 1961 for which inquiry can only be made by the AO. The Ld. DRP has deleted the above addition. Aggrieved by the order of the DRP, the Revenue has raised this ground in its appeal.

3.6.1 The Learned DR placed reliance on the order passed by the AO in support of this ground.

3.6.2 The Learned AR placed reliance on the order passed by the Ld. DRP. It was submitted that assessee has provided all the evidences in support of the services availed by it and all the agreements along with the supporting documents were submitted. The observation of the AO that the assessee has not submitted the details regarding the actual services availed and evidences is factually incorrect. The Learned AR referred to the documents placed in the Paper Book in support thereof.

3.6.3 On going through the facts, we note that the assessee has entered into agreements for availing various management services from its Associated Enterprises (AE) i.e. Mitsui & Co. Ltd. Japan & Mitsui Asia Pacific located at Singapore. During the Assessment Year under consideration, it paid Rs 1,28,79,450/- for availing services from its AE. The nature of services being availed for the operations of Mitsui India were as under-

i. Strategic Planning
ii. Investment Planning & Administration
iii. Human Resources Management
iv. Business Process Re-engineering
v. Information Systems
vi. Logistics Management
vii. Compliance (Internal Control)
viii. Internal Audit

3.6.4 The assessee also submitted the agreement entered into with respect to Associated Enterprises (AEs).Copy of these agreements along with the supporting documents/evidences in the form of mails exchanged, presentations, etc. substantiating receipt of service from AE's are part of the Paper Book page 518-614, filed before us. Further, these payments by assessee to its AE was subject matter of examination by the TPO as is evident from page 3 of the TPO's order and, admittedly, the TPO has not drawn any adverse inference on this issue. The AO, however, on the premise that such expenditure has not been incurred wholly and exclusively for the purpose of the business and that it has been made only on account of close connection of the assessee with its AEs, disallowed the same u/s 37(1) of the Act. The Ld. DRP carried out a detailed examination of the agreements with the AEs and evidences in support thereof. After detailed examination, it has directed to delete the addition giving a reasoned and cogent finding as under:

> *"The Panel went through the submissions filed by the 'A' in relation to the expenditure claimed as above .The relevant paper book 1 consisting of 361 pages gone through minutely. The paper book contained copies of agreements along with supporting documents in respect of Intra-group services received by the A' from its AEs in the form of divisional operational including development and monitoring of the business plan for each department and allocation and appraisal of staff in each such*

department of the A', making decisions for business activities such as goods trading, project management, formulating strategies, building of relationships with partner companies in Asia Pacific regions, holding talks with corresponding business divisions in Tokyo headquarters, Human resources, business process reengineering, information systems, logistics management, legal and CFO u nit, investment, planning and administration, etc. (pages 32 to 39 of the paper book).
In the above respects we went through the email exchanged between the officials of the AEs and those of the A'. The correspondences centered on the following aspects of work:-

1) *Holding the Seminars to educate the Staff on the importance of Anti-competition laws and practices, global enforcement, case studies, anti-trust, cartel conduct, price fixing, refusal to deal, misuse of market power, predatory pricing, exclusive dealing/third line forcing, resale price maintenance relating to anti-competition.*
2) *Trainings*
3) *Seeking guidance from the officials regarding item classification for various commodities.*

Upon an analysis of the evidence filed as above by A', it was noticed by us that the agreement under sub-articles 1 to 5 of Article 2 provided the basis of remuneration in consideration of the services rendered by the AEs to the A' on page 37 & 38 of the paper book 1. Having regard to all the above details the Panel feels inclined to allow the claim of the A"

3.6.5 As regards the issue of allow ability of expenditure under section 37(1), from the facts, it is evident that assessee has submitted all the details and evidences in support thereof. Thus, the contention of the AO that the assessee has not furnished any details and evidences is factually incorrect. In fact, the Ld. DRP has examined these details and

after examination it has held that the payments are in consideration of the services rendered by the AEs by giving reference to page 37 & 38 of the Paper Book. Thus, the issue that these expenditures have been actually incurred for availing the services cannot be doubted. As regards the value for such services, the issue has been the subject matter before TPO and he has not drawn any adverse inference. Thus, the AO cannot draw any adverse inference on the basis that there is no justification for payment of such amount to AE. The contention of the Ld. AR on this issue that it is not permissible for the Revenue to step in the shoes of the assessee/ businessman and take the business decisions is correct. In view of the above analysis, we uphold the order of the DRP and ground no. 12 of the Revenue's appeal is dismissed.

3.7.0 Ground No. 13 in Revenue's appeal is regarding deletion of addition of Rs.1,12,75,015/- out of total expenditure of Rs.1,39,68,770/- on account of Staff Welfare expenses. This ground is common with Ground No. 1 in assessee's appeal where the assessee is contesting the addition of Rs.26,93,754/- sustained by the Ld. DRP. The AO, during the course of the assessment proceedings, noticed that the assessee, during the year, has incurred the following expenditure on Staff Welfare:-

Medical Insurance	17,07,881
Company Function	12,24,624
Membership Fees	29,34,012
Shifting Expenses	78,89,769
Social Security Expenditure	1,17,45,417
Japanese Food	24,35,836
Total	2,79,37,539

3.7.1 The AO made an *ad-hoc* disallowance of 50% out of the above expenditure on the ground that the onus is on the assessee to justify the claim of the expenditure and that the assessee has failed to discharge this onus by not producing the complete details and by not producing the supporting bills/vouchers. As per the assessee, the aforesaid expenditure was incurred mainly for the welfare of the employees as a measure of commercial expediency. The disallowed 50% of such expenditure on an *ad-hoc* basis which turned out to be Rs. 1,39,68,770/-. The Ld. DRP noted that the assessee has submitted copies of the bills in support of the expenditure incurred. These details were in the form of Hotel Bills, Dining Charges, Medicines, Packing Charges, and Shifting Charges. The Ld. DRP, considering these facts, restricted the disallowance to 20% of the total disallowance of Rs.1,39,68,770/- i.e.

Rs.26,93,754/-. Revenue is in appeal against the relief given of Rs. 1,12,75,015/- and the assessee is in appeal against the disallowance of Rs. 26,93,754/- upheld by the Ld. DRP.

3.7.2 It was submitted by the Learned AR that the AO has made an *ad-hoc* disallowance. The assessee has been maintaining regular books of accounts. The same have been audited both under the Companies Act as well as under Section 44AB of the Income Tax Act and there is no adverse observation about any personal expenditure. It was submitted that it is a case of a company and the expenditure incurred on the staff welfare of the nature as specified in the details is an expenditure allowable under section 37(1) and cannot be considered as personal expenditure. It was submitted that complete details were filed and same has been taken note by the Ld. DRP in its findings. The Learned AR invited our attention to the complete details of such expenditure and invoices/bills in respect of such expenditure incurred placed at Paper Book pages from 615-847.

3.7.3 The Learned DR submitted that the expenditure is personal in nature and cannot be allowed while computing business income.

3.7.4 We have considered the rival submissions and have perused the order passed by the authorities below. In the draft Assessment Order, the

AO made an *ad-hoc* disallowance of 50%. The Ld. DRP has reduced this *ad-hoc* disallowance to 20% of what has been proposed in the draft Assessment Order. Thus, the fact that expenditure has been incurred by the assessee company has not been doubted either by the AO or by the Ld. DRP. Both authorities have gone with the perception that the expenditure incurred has an element of personal nature and hence, something needs to be disallowed. This is a case of a company. The impugned expenditures have been incurred on its employees. The expenditure, so incurred, is in consideration of the services provided by such employees. Thus, it cannot be said the expenditure incurred is personal in nature. As regards the details and the evidences in support thereof, is evident from the Assessment Order that the assessee has submitted the details of these expenditure head-wise which has been quoted by the AO himself. In support thereof, the assessee has submitted more than 200 invoices before the Ld. DRP which have been taken note of by the Ld. DRP in its findings where it has been stated that copies of bills from pages 129-361 of the Paper Book were filed. These invoices are also placed in the Paper Book filed before us at pages 615-847. Though, the Ld. DRP upheld disallowance to the extent of 20% of the disallowance

made by AO, it is not on the reasoning that the assessee has not submitted the details or evidences in support thereof. The Ld. DRP has sustained the disallowance on the ground that most of the bills were issued in the name of Mitsui India without mentioning the names of the recipients. This reasoning of the Ld. DRP cannot be sustained. Mitsui India is the name of the assessee and invoices obviously will be in the name of the assessee. It is not the case of the Revenue that name of the assessee is not on the invoices. In fact, it has been specifically stated that the name of the assessee is appearing on the invoices. Ld DRP has failed to take note of the nature of expenditure while making this observation. In respect of group insurance for employees, the invoice will be in the name of the company. Similarly, invoices issued by the Hotels for hosting events will be in the name of the company not in the name of the employees who have participated at such year-end functions. The invoices on account of shifting expenses, social security reimbursement state the name of employees. These invoices confirm that assessee has incurred the expenditure. Merely not mentioning the name of the employees cannot be a ground to disallow the same considering the fact that it is a case of a company. In the case of a firm or a proprietorship concern, there could

have been a doubt whether such expenditures have been incurred on the employees or on the Partners/Proprietors. Further, *ad-hoc* disallowance is otherwise not sustainable. However, the AO, in the Assessment Order, has stated that the assessee has failed to discharge its onus by producing details and complete evidences in support thereof. Though, the assessee has filed the details before the Ld. DRP along with the supporting evidences, apparently the same has not been examined by the Ld. DRP. Considering this fact, we deem it fit to set aside this issue to the file of the AO with the direction to restrict the disallowance only to such expenditure which assessee is not able to support with evidence. In the result Ground No. 13 of Revenue's Appeal and Ground No. 1 of assessee's appeal are allowed for statistical purpose.

3.8.0 Ground No. 14 is regarding deletion of addition of Rs.23,57,754/- directed by the Ld. DRP on account of non-deduction of tax on purchases made from Mitsui & Co. Ltd. Japan. During the year, the assessee made purchases of Rs 31,02,53,414/- from Mitsui & Co Ltd., Japan. The AO, on the basis that Mitsui & Co. Japan has a Permanent Establishment (PE) in India, was of the view that the assessee company ought to have deducted tax-at-source while making such payment. The

AO computed an amount of Rs.23,57,926/- as the profit attributable to the PE of Mitsui & Co., Japan in respect of the purchases made by the assessee by applying a gross profit rate of 1.52% of the above purchases and attributing 50% of such gross profit to the PE in India. Accordingly, he disallowed an amount of Rs.23,57,926/- under section 40(a)(i) of the Income Tax Act. The Ld. DRP has deleted the said disallowance by holding that off-shore supplies cannot be subject to tax in India despite the existence of the PE in India unless it was shown by the Revenue that the supplies were related to activities performed by the PE of such an AE in India. Aggrieved by the order of the DRP, the Revenue is in appeal before us.

3.8.1 It was submitted by the Learned AR that the AO in his assessment order has held that Mitsui & Co. Ltd Japan has a PE in India by placing reliance upon the assessment order passed in the case of Mitsui & Co. Ltd. Japan for Assessment Year 2010-11. The AO, while passing the assessment order in the case of Mitsui & Co. Ltd. Japan for AY 2010-11, has placed reliance on the assessment order of AY 2005-06 passed in the case of Mitsui & Co. Ltd. Japan. Thus, the reference by AO in the present Assessment Order is ultimately to the order passed by the

AO in the case of Mitsui & Co. Japan for AY 2005-06. It was submitted by the Learned AR that this issue has earlier come up before the ITAT in ITA No. 2335/Del/2011 in the case of Mitsui & Co. Japan wherein the ITAT has held that Mitsui & Co. Japan does not have a PE in India. In view of this finding recorded by the ITAT and in the absence of PE of Mitsui & Co. Japan, there was no requirement to deduct tax at source. It was further contended by the Learned AR that even if there is a PE, off-shore supplies are not taxable in India. It was submitted that the AO has failed to appreciate that purchases from Japan are not at all attributable to any operations undertaken in India as has been held by the Hon'ble Supreme Court in its judgment in the case of Ishikawajima-Harima Heavy Industries Ltd. vs. DCIT (288 ITR 408) wherein it has been held by the Hon'ble Supreme Court that even where there exists a Permanent Establishment in India, the off shore supplies still cannot be subjected to tax in India if they are not related to the activities performed by the PE in India. The Learned AR further contended that even otherwise no disallowance can be made in view of non-discrimination clause in the Treaty. The Learned AR invited our attention to Article 24 of India Japan Double Taxation Avoidance Agreement (DTAA) which contains a detailed

stipulation on the non-discriminatory agreement between India & Japan Governments. It was submitted that as per Article 24(3), any payment by a resident of a contracting state (India) to a resident of another contracting state (Japan) will be deductible under the same conditions as if it has been paid to a resident of India.

3.8.2 The Learned DR placed reliance on the draft Assessment Order passed by the AO.

3.8.3 We have considered the rival submissions. On going through the facts, we note that the AO has made disallowance on the ground that assessee is required to deduct tax at source while making payment for purchases from Mitsui & Co. Ltd. Japan as this company has PE in India. From the facts explained by the Ld. AR, it is clear that a coordinate Bench of the ITAT in the case of Mitsui & Co. Ltd. Japan in ITA No. 2335/Del/2011 has held that Mitsui & Co. Ltd. Japan does not have a PE in India. In the absence of any PE, there is no obligation to deduct tax. Further, it is also a fact that these purchases are off-shore supplies which cannot be subjected to tax in India and if that be so, there is no requirement to deduct tax at source. The Ld. DRP has also examined this issue and has held that off-shore supplies were not related to the activities

by the PE of such an AE in India. The relevant findings of the Ld. DRP on this issue are as under:

> *"We applied our minds to the rival contentions. We are of the considered view that the AO failed to appreciate that offshore supplies cannot be subject to tax in India despite the existence of the PE in India until it was shown by the revenue that the supplies were related to the activities performed by the PE of such an AE in India. In the instant case it was noted by the Panel that the A' operated as a commission agents/service provider to its AEs as well as a trader in its own right. The TPO also did not allege in its order that the A' was in receipt of any stewardship services from its AEs in any manner whatsoever which could go to suggest the existence of the MCJ's PE in India. Since, it has been held that the A' subsidiary functioned in India on principal to principal basis supra and no part of its activities were on behalf of the PE of MCJ, the allegation of the A' appears to be devoid of merit. It was also net worthy that the following all the transaction of supplies in question were carried outside India, the supplies could not be said to be taxable in the garb of PE. The*

principal of a portion meant on the basis of territories has to be followed. Accordingly ground no.17 is allowed."

3.8.4 The Learned DR could not controvert the above facts. In view of the above facts and analysis, we uphold the order of the Ld. DRP and accordingly, Ground No. 14 of the Revenue's appeal is dismissed.

3.9.0 Ground Nos.15 & 16 in Revenue's appeal and Ground Nos. 2 & 3 in assessee's appeal are general in nature and need no separate adjudication.

4.0 In the final result, the appeals of the Revenue and of the assessee are partly allowed for statistical purposes.

Order pronounced on 22/06/2020.

Sd/-	Sd/-
(O.P.KANT)	**(SUDHANSHU SRIVASTAVA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated:22/06/2020
*DRAGON
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI