

**IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 1454/Mum/2015
(निर्धारणवर्ष / Assessment Year: 2010-11)

Johnson & Johnson Pvt. Ltd. 501, Arena Space, Off JVLR, Opp Majas Bus Depot, Jogeshwari (East), Mumbai-400 060	बनाम/ Vs.	DCIT-LTU-1, 29 th floor, Centre No. 1, world Trade Centre, Cuffe Parade, Mumbai-400 005
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACJ0866E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

AND

आयकरअपीलसं./ I.T.A. No. 1043/Mum/2015
(निर्धारणवर्ष / Assessment Year: 2010-11)

DCIT-LTU-1, 29 th floor, Centre No. 1, world Trade Centre, Cuffe Parade, Mumbai-400 005	बनाम/ Vs.	Johnson & Johnson Pvt. Ltd. 501, Arena Space, Off JVLR, Opp Majas Bus Depot, Jogeshwari (East), Mumbai-400 060
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACJ0866E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Rajan R. Vora & Shri Pranay Gandhi, ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Sunil Kumar Mishra, DR.

सुनवाईकीतारीख/ Date of Hearing	:	14.01.2021
घोषणाकीतारीख / Date of Pronouncement	:	19.03.2021

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present appeal /cross appeal filed by the assessee and revenue against the assessment order passed by AO u/s 143(3) r.w.s. 144C(13) of the Act dated 15.01.2015 for Assessment Year 2010-11 respectively.

2. At the outset, we notice that assessee has filed the additional grounds of appeal which are legal in nature, therefore we deem it fit to adjudicate the same. Accordingly, the additional ground raised by the assessee is admitted for adjudication on merits.

3. Since the issues raised in both the appeal /cross appeal are identical, therefore, for the sake of convenience, these appeals are heard and disposed off by this consolidated order. Therefore, we are dealing issues ground-wise raised by assessee firstly.

Ground no. 1 with regard to adjustment to the total income at Rs. 298.85 as against returned income of Rs. 125.29 crores.

4. This ground raised by the assessee is general in nature, therefore needs no specific adjudication.

Ground no. 2 to 16 with regard to adjustment in respect of Advertising, Marketing and Promotion (AMP) expenditure.

5. Before us, Ld. AR submitted that the effective grounds of appeal are Ground No. 2, 3 & 5. Therefore, the other grounds raised by the assessee are alternative pleas, which requires no adjudication. He brought to our notice para 9.27 & 10.11 of TPO order and para 8.2 of Ld. DRP order and submitted that the similar issue has already been decided by the Coordinate Bench of ITAT in assessee's own case for Assessment Year : 2008-09 (ITA No. 6142/Mum/2017) on merits in favour of the assessee.

6. On the other hand, Ld. DR relied on the orders passed by revenue authorities, however he conceded that these ground are covered by the order of ITAT.

7. Considered the rival submission and material placed on record. We are adjudicating the grounds no. 2, 3 & 5 and all other grounds are dismissed which are alternative pleas and academic

in nature. We notice from the records that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 6142/Mum/2017 for AY 2008-09 in assessee's own case on merits. For the sake of clarity, which is reproduced below:-

15. Thus, it is to be understood from the decision of the Hon'ble Delhi High Court in Maruti Suzuki India Ltd. (supra), unless, there is an arrangement between the assessee and the AE for incurring AMP expenditure, it cannot be considered as international transaction under section 92B of the Act. Further, the Hon'ble Court has held that no adjustment for determination of arm's length price with regard to AMP expenditure can be made by resorting to bright line test or any other similar method which is not provided in the statute. Undisputedly, the decision in Maruti Suzuki India Ltd. (supra) was delivered by the Hon'ble Delhi High Court at a later point of time and after taking note of its own decision in Sony Ericson Mobile Communications (supra). Therefore, the ratio laid down in Maruti Suzuki India Ltd. (supra) would prevail. Moreover, the ratio laid down in Maruti Suzuki India Ltd. (supra) would be applicable to the present appeal since facts are more or less similar. Like in Maruti Suzuki India

Ltd. (supra), the assessee before us is involved in manufacturing activity, hence, the AMP expenditure incurred in India by making payment to third parties in India certainly is connected with such manufacturing activities. Moreover, the Department has failed to establish on record that there is an arrangement between the assessee and the AE for incurring AMP expenditure. In any case of the matter, quantification of AMP expenditure by applying the bright line test or any such similar method has not only been disapproved by the Hon'ble Delhi High Court in Sony Ericson Mobile Communications (supra) but also in Maruti Suzuki India Ltd. (supra). In our considered view, the Transfer Pricing Officer was totally wrong in not applying the principle laid down in the decision of the Maruti Suzuki India Ltd. (supra) by taking the alibi that the decision is of a Non-Jurisdictional High Court. Further, the Transfer Pricing Officer was totally wrong in determining the arm's length price expenditure by applying the bright line test or routine arm's length price simply relying upon the Special Bench decision of the Tribunal, Delhi Bench, conveniently ignoring the fact that the bright line test method adopted in case of L.G. Electronics India Pvt. Ltd. (supra) was disapproved by the Hon'ble Delhi High Court not only in case of Sony Ericson Mobile

Communications (supra) but also in case of Maruti Suzuki India Ltd. (supra). Thus, the reasoning of the Assessing Officer in not following the decision of Maruti Suzuki India Ltd. (supra) is totally unacceptable. We must put it on record, the decision of the Hon'ble Delhi High Court in Maruti Suzuki India Ltd. (supra) has subsequently been followed not only by the same High Court in a number of other cases but also by different Benches of Tribunal, including Mumbai Benches, insofar it relates to the issue whether AMP expenditure incurred in India gives rise to international transaction with the AEs. It is relevant to observe, the DRP has upheld the adjustment made by the Transfer Pricing Officer simply for the reason that the Department has no remedy available against an order of the DRP favourable to the assessee. As regards the decisions relied upon by the learned Departmental Representative as noted herein before, on a careful analysis of each one of these decisions we are of the considered opinion that they will not be of any help to the Department, since, they were rendered prior to the decision of the Hon'ble Delhi High Court in Maruti Suzuki India Ltd. (supra) and all of them proceeded on the basis of the decision rendered in Sony Ericson Mobile Communications (supra). In view of the aforesaid, we hold that the AMP expenditure

incurred by the assessee not being an international transaction as defined under section 92B of the Act, no transfer pricing adjustment could have been made by the Transfer Pricing Officer. More so, when the method adopted by the Transfer Pricing Officer for making such adjustment is not provided under the statute. Before parting, we must observe that all other international transactions entered into between the assessee and its AE were found to be at arm's length. It is also not disputed, if the international transactions are considered as a whole, the margin shown by the assessee is more than the margin shown by the comparables selected by the Transfer Pricing Officer. Grounds raised are allowed.

8. Therefore, respectfully following the above decision of Coordinate Bench in assessee's own case in turn relying on the decision of Assessment Year 2008-09. These issue are settled in favour of the assessee. Therefore, we are inclined to accept the submission of Ld. AR. Accordingly, the ground nos. 2, 3 & 5 raised by the assessee are **allowed**.

Ground no. 17 to 25 with regard to adjustment in respect of technical support services, other support services and pass through cost.

9. Before us, Ld. AR brought to our notice para 12.15 to 12.18 of TPO order and para 9.2 of Ld. DRP order and submitted that assessee has submitted voluminous information before TPO and Ld. DRP has not examined the facts of the case and upheld the adjustment made by the TPO without providing any substantial comments. He brought to our notice that in Assessment Year 2008-09, detailed examination of the data were conducted and assessee has accepted the findings. Therefore, he prayed to restore the issue.

10. On the other hand, Ld. DR relied on the orders passed by revenue authorities.

11. Considered the rival submission and material placed on record. We notice from the records that TPO & Ld. DRP has not examined the voluminous data submitted by assessee. Ld. DRP merely observed that the clinical trials are not conducted on its own, the assessee neither has personnel nor infrastructure to conduct such trials, therefore, it cannot be termed as technical service. Hence, he rejected the submissions of the assessee without actually verifying the data before them. Therefore, it is

fit case for restoring the matter to the AO /TPO for fresh adjudication of the matter on merits. Accordingly, these grounds raised by the assessee are **allowed for statistical purposes**.

Ground no. 26 with regard to adjustment u/s 145A of the Act.

12. This ground is not pressed by the assessee, therefore this ground becomes infructuous as not pressed.

Ground no. 27 to 28 with regard to disallowance u/s 36(1)(iii) of the Act.

13. Before us, Ld. AR brought to our notice para 11 of TPO order and para 15 of Ld. DRP order and submitted that the similar issue has already been decided by the Coordinate Bench of ITAT in assessee's own case and the decision of Jurisdictional Bombay High Court in the case of Reliance Utilities, wherein the Hon'ble Bombay High Court observed that assessee has interest free funds, therefore no disallowance u/s 36(1)(iii) is warranted.

14. On the other hand, Ld. DR relied on the orders passed by revenue authorities.

15. Considered the rival submission and material placed on record. We notice from the records that the identical ground has

already been decided by the Coordinate Bench of ITAT in assessee's own case and ITAT had restored the issue to the AO to analyse the existence of interest free funds and while applying the judgment of Hon'ble Jurisdictional Bombay High Court in the case of Reliance Utilities (313 ITR 340). While giving effect to the ITAT order, the AO in order passed assessment u/s 143(3) r.w.s 254 of the Act observing that assessee has interest free funds as against advance, therefore no disallowance u/s 36(1)(iii) is warranted.

16. For the year under consideration, assessee has interest free fund of Rs. 643.18 crores and advance of Rs. 23.48 crores. Since, assessee has sufficient funds and by following the above decision, no disallowance of interest u/s 36(1)(iii) of the Act is warranted. Accordingly these grounds raised by the assessee are allowed.

Ground no. 29 with regard to short grant of credit of TDS.

17. Considered the rival submission on this ground and material placed on record. We are directing the AO to consider the submissions of the assessee and allow the TDS credit after

verification as per law. Accordingly, this ground raised by the assessee are **allowed for statistical purposes.**

Ground no. 30 & 31 with regard to levy of interest u/s 234B and 234D.

18. These ground raised by the assessee are consequential in nature, therefore it becomes infructuous as dismissed.

Ground no. 32 with regard to initiating penalty u/s 274 r.w.s. 271(1) of the Act.

19. These ground raised by the assessee is premature at this stage, therefore it becomes infructuous, accordingly dismissed.

Additional Ground no. 33 with regard to levy of interest u/s 234B and 234D.

20. Before us, Ld. AR submitted that payment of education cess is a necessary for smooth running of the business and hence is a deductible expenses u/s 37 of the Act. He further submitted that as per the provision of section 40(a)(ii), education cess is neither levied on the profits or gains of any business or profession and education cess is levied on the amount of tax. Therefore by relying on the various decisions in the respect, he prayed education cess be allowed as deduction u/s 37(1) of the Act.

21. On the other hand, Ld. DR relied on the orders passed by revenue authorities.

22. Considered the rival submission and material placed on record. We notice from the records that the identical ground has already been decided by the Hon'ble Bombay High Court in the case of Sesa Goa Ltd. (202) 107 CCH 0376 – Bom. For the sake of clarity, which is reproduced below:-

27. The CBDT Circular, is binding upon the authorities under the IT Act like Assessing Officer and the Appellate Authority. The CBDT Circular is quite consistent with the principles of interpretation of taxing statute. This, according to us, is an additional reason as to why the expression “cess” ought not to be read or included in the expression “any rate or tax levied” as appearing in Section 40(a)(ii) of the IT Act.

28. In the Income Tax Act, 1922, Section 10(4) had banned allowance of any sum paid on account of ‘any cess, rate or tax levied on the profits or gains of any business or profession’. In the corresponding Section 40(a)(ii) of the IT Act, 1961 the expression “cess” is quite conspicuous by its absence. In fact, legislative history bears out that this expression was in fact to be found in the Income Tax Bill, 1961 which was

introduced in the Parliament. However, the Select Committee recommended the omission of expression “cess” and consequently, this expression finds no place in the final text of the provision in Section 40(a)(ii) of the IT Act, 1961. The effect of such omission is that the provision in Section 40(a)(ii) does not include, “cess” and consequently, “cess” whenever paid in relation to business, is allowable as deductible expenditure.

23. Therefore, respectfully following the above decision, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the assessee is **allowed**.

24. Now we are dealing issues ground-wise raised by the revenue in **ITA No. 1043/Mum/2015 for Assessment Year 2010-11**.

Ground no. 1 with regard to disallowance of tax deduction on brand usage royalty.

25. Considered the rival submissions and material placed on record on this ground. We notice from the record that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 4161/Mum/2017 for Assessment

Year 2007-08 in assessee's own case on merits. For the sake of clarity, which is reproduced below:-

2. The ground No.1 raised by the Revenue is with regard to the action of the ld.CIT(A) in deleting the adjustment made on account of income tax on brand usage royalty. At the outset, we find that this issue is covered by the co-ordinate Bench decision of this Tribunal in assessee's own case for assessment year 2005-2006 in ITA No.2547/Mum/2017 dated 26.12.2018 except for variance in figures, wherein it was held as under:- "8. We have considered the submission of the parties and have gone through the order of authorities below.

We have noted that similar ground of appeal was raised before Tribunal in assessee's own case for A.Y. 2002-03 in ITA No. 4092/Mum/2007 and the co-ordinate bench of Tribunal passed the following order:

34. We have heard the rival submissions, perused the orders of the lower authorities and also the copy of agreement submitted alongwith application to RBI as exhibited at pages 1143 to 1145 of the Paper book. We find that the application made by the assessee to RBI for brand

usage agreement specifically mentions that the royalty to be remitted is net of taxes. Further, the approval was received from the RBI to remit the royalty on brand usage by the assessee @ 1 % net of taxes. Considering the brand usage agreement vis-à-vis the approval granted by RBI, it can be safely inferred that taxes were liability of J&J India under the terms of agreement. The assessee has entered into a commercial arrangement with J&J US and it has been so arranged that the payment of taxes have to be borne by the assessee being a commercial arrangement, the same should not be questioned while calculating arms length price. Reliance by the assessee on the decision of the Tribunal in the case of Dresser Rand India Pvt. Ltd. in ITA No. 3509/M/08 is well founded. Considering the entire facts in totality in the light of the brand usage agreement and the approval of the RBI, the findings of the Ld. CIT(A) is set aside. The AO is directed to delete the addition of Rs. 60,00,000/-. Ground No. 13 is allowed.

9. *Considering the decision of Tribunal in assessee's own case for A.Y. 2002-03 which was followed in A.Y. 2006-07 in ITA No. 83/Mum/2011, for A.Y. 2008-09 in ITA No.*

7133/Mum/2012 and further in A.Y. 2009-10 in ITA No. 829/Mum/2014, on identical ground, we confirmed the order of Ld. CIT(A). In the result, ground no.1 of the appeal is dismissed.”

2.1. Respectfully following the said decision, ground No.1 raised by the Revenue is dismissed.

26. Therefore, respectfully following the above decision, we reject the contention of revenue. Accordingly, this ground raised by the revenue is **dismissed**.

Ground no. 2 & 6 with regard to Service Tax paid on brand usage royalty paid and on know how royalty paid.

27. Considered the rival submissions and material placed on record on these grounds. We notice from the record that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 83/Mum/2011 for Assessment Year 2006-07 in assessee's own case on merits. For the sake of clarity, which is reproduced below:-

34. In respect of Ground taken by assessee for making disallowance on account of tax, service tax paid by assessee on the payment of royalty, we observe that the said issue has already been considered by Tribunal in assessee's own case for the assessment year 2002-03

(supra) and the Tribunal has held after considering the agreements entered into between the assessee and J&J US and also the decision in the case of Dresser Rand India P. Ltd. *(supra)* that the taxes were liability of the assessee company under the terms of agreements and accordingly disallowance made by AO were deleted. Further, we also observe that liability of payment of service tax is of recipient of services and since assessee is the receiver of services, it is the liability of the assessee company to bear service tax. Hence we hold that TPO was not justified to state that liability of bearing service tax was of assessee-company. In view of above, we hold that disallowances made by TPO on account of taxes, services tax is not justified and we direct to delete the same. Hence, Ground Nos.12, 13 and 17 of the appeal taken by assessee are allowed.

35. In respect of disallowance of tax and R&D cess paid on technical know-how royalty on traded finished goods and manufactured products, we observe that the said issue was also considered by Tribunal in assessee's own case for the assessment year 2002-03 and the Tribunal (vide para 42 of the order) held that said payments have been made by assessee in the light of agreement with J&J US and as per approval/guidelines of RBI and accordingly directed the AO to delete the disallowance/ tax and R&D cess

paid on technical royalty. Respectfully following the above order of the Tribunal in assessee's own case and also considering the alternative contention of assessee that R&D cess and service tax cannot be treated as International transaction, in view of the decision of ITAT, Pune Bench in the case of Kirloskar Ebara Pumps Ltd(supra), we delete the disallowance made by AO/DRP of tax and R&D cess paid on technical know-how royalty on traded goods and manufactured products by allowing ground No.16 of the appeal taken by the assessee.

28. Therefore, respectfully following the above decision, we reject the contention of revenue. Accordingly, these ground raised by the revenue are **dismissed**.

Ground no. 3 with regard to disallowance of entire technical know how royalty payment on traded goods.

29. Considered the rival submissions and material placed on record on these grounds. We notice from the record that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 4161/Mum/2017 for Assessment Year 2007-08 in assessee's own case on merits. For the sake of clarity, which is reproduced below:-

3. Ground No.2 raised by the Revenue is with regard to the action of the Id.CIT(A) in deleting the adjustment made on account of payment of royalty on traded finished goods made by the assessee to Johnson & Johnson, USA. We find that this issue is also covered by the decision of this Tribunal in assessee's own case (supra) for assessment year 2005-2006, wherein it was held as under:-

14. We have considered the submission of the parties and find that in assessee's own case for A.Y. 2002-03 in ITA No. 4092/Mum/2007 and ITA No. 4070/Mum/2007, the Tribunal passed the following order:

49. We have considered the rival submissions, perused the orders of the lower authorities and the material evidence brought on record in the form of paper book. In assessee's appeal, we have already held that the agreements between J&J India and J&J USA for payment of royalty has to be considered in the light of the approval of the RBI. We do not find any substance in the findings of the TPO that there is no need for paying royalty for technical/marketing know-how.

We also do not find any force in the findings of the TPO that this royalty is deemed to be included in

Brand royalty. The Ld. CTT(A) has rightly considered the relevant clauses of the agreement between J&J India and J&J USA. We, therefore, do not find any reason to interfere with the findings of the Ld. CIT(A).

15. Considering the decision of Tribunal in assessee's own case for A.Y. 2002- 03 in ITA No. 4092/Mum/2007 and in ITA No. 4070/Mum/2007, which was followed in A.Y. 2006-07 in ITA No.83/Mum/201 1 and in A.Y. 200809 and A. Y. 2009-10 in ITA No. 829/Mum/2014, on identical ground, we confirmed the order of Id. CIT(A). In the result, ground no.4 of the appeal is dismissed.”

3.1. Respectfully following the said decision, ground No.2 raised by the Revenue is dismissed.

30. Therefore, respectfully following the above decision, we reject the contention of revenue. Accordingly, this ground raised by the revenue is **dismissed**.

Ground no. 4 with regard to restricting technical know-how royalty to 1% in respect of manufactured goods.

31. Considered the rival submissions and material placed on record on these grounds. We notice from the record that the identical ground has already been decided by the Coordinate

Bench of ITAT in ITA No. 4161/Mum/2017 for Assessment Year 2007-08 in assessee's own case on merits. For the sake of clarity, which is reproduced below:-

4. Ground No.3 raised by the Revenue is with regard to the action of the ld.CIT(A) in allowing the technical know-how royalty payment at 2% / 4% instead of 1% as done by the ld.TPO. We find that this issue is also covered by the order of the Tribunal in assessee's own case (supra) for assessment year 2005-2006, wherein it was held as under:-

"17.We have considered the submission of the parties and find that in assessee's own case for A.Y. 2002-03 in ITA No. 4092/Mum/2007 and ITA No. 4070/Mum/2007, the Tribunal passed the following order: "

55. We have considered the submissions and perused the orders. As we have already held hereinabove that the payment of royalty has to be considered in the light of the agreement between the assessee and J & J USA, for the same reasons, we do not find any reason to interfere with the findings of the Id. CIT(A)."

18. Further, on similar issue for A.Y. 2006-07 in ITA No. 83/Mum/2011 dated 05.02.2014 the tribunal passed the following order:

55. We have considered the submissions and perused the orders. As we have already held hereinabove that the payment of royalty has to be considered in the light of the agreement between the assessee and J&J USA, for the same reasons, we do not find any reason to interfere with the findings of the Ld. CIT(A). Ground No. 2 is accordingly dismissed.

19. Considering the decision of Tribunal in assessee's own case for A.Y. 2002- 03 in ITA No. 4092/Mum/2007 and in ITA No. 4070/UM/2007, which was followed in A.Y. 2006-07 in ITA No.83/Mum/2011 and in A.Y. 2008-09 and A.Y. 2009-10 in ITA No. 829/Mum/2014, on identical ground, we confirmed the order of Id. CIT(A). In the result, ground no.5 of the appeal is dismissed.”

4.1. Respectfully following the said decision, ground No.3 raised by the Revenue is dismissed.

32. Therefore, respectfully following the above decision, we reject the contention of revenue. Accordingly, this ground raised by the revenue is **dismissed**.

Ground no. 5 with regard to disallowance of Tax and R & D Cess paid on technical know-how royalty.

33. Considered the rival submissions and material placed on record on these grounds. We notice from the record that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 4161/Mum/2017 for Assessment Year 2007-08 in assessee's own case on merits. For the sake of clarity, which is reproduced below:-

6. Ground No.5 raised by the Revenue is with regard to the action of the ld.CIT(A) in deleting the adjustment made on account of tax, R&D cess on know-how royalty and traded finished goods and manufactured products. We find that this issue is covered by the decision of by this Tribunal in assessee's own case for assessment year 2005-2006 (supra), wherein it was held as under:-

“21.We have considered the submission of the parties and find that in assessee's own case for A.Y. 2002-03 in ITA No. 4092/Mum12007 and ITA No. 4070/Mum12007, the Tribunal passed the following order:

42. As we have already held elsewhere that royalty payments has been approved by RBI and

therefore deserves to be allowed. Accordingly as the payments have been made in the light of the agreement with J&J US and as per the approval/guidelines of the RBI, we do not find any reason to disallow the tax and R&D Cess paid on technical royalty. We accordingly direct the AO to delete the addition made on this account.

22. Considering the decision of Tribunal in assessee's own case for A.Y. 2002-03 in ITA No. 4092/Mum/2007 and in ITA No. 4070/Mum/2007, which was followed in A.Y. 2006-07 in ITA No.83/Mum/2011 and in A.Y. 2008-09 and A.Y. 2009-10 in ITA No. 829/Mum/2014, on identical ground, we confirmed the order of id. CIT(A). In the result, ground no.6 of the appeal is dismissed.”

6.1. Respectfully following the said decision, ground No.5 raised by the Revenue is dismissed.

34. Therefore, respectfully following the above decision, we reject the contention of revenue. Accordingly, this ground raised by the revenue is **dismissed**.

Ground no. 7 with regard to depreciation on testing equipments.

35. Considered the rival submissions and material placed on record on these grounds. We notice from the record that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 7133/Mum/2012 for Assessment Year 2008-09 in assessee's own case on merits. For the sake of clarity, which is reproduced below:-

36. Ground No. 31 & 32 relate to the disallowance of depreciation claimed on testing equipments. This grievance of the assessee was considered by the DRP vide Objection No. 13 at page-18 of its order wherein the DRP has followed his own finding for A.Y. 2006-07. Similar issue was considered by the Tribunal for A.Y. 2000-01, 2001-02, 2002-03 and 2006-07 in ITA Nos. 2774/M/04, 9106/M/04, 4070/M/07 and 83/M/2011. We find that the Tribunal in A.Y. 2006-07 has considered this issue at para-16 of its order and at para-18, the Tribunal has considered its finding of the Co-ordinate Bench in assessee's own case for earlier assessment years and allowed the claim of depreciation on the testing equipments. Respectfully following the findings of the Tribunal (supra), we direct the AO to allow the claim of depreciation on testing equipments amounting to Rs. 199.06 lakhs . Ground No. 31 & 32 are accordingly allowed.

36. Therefore, respectfully following the above decision, we reject the contention of revenue. Accordingly, this ground raised by the revenue is **dismissed**.

37. In the net result, the appeal filed by the assessee is **partly allowed** and appeal filed by the revenue is **dismissed**.

Order pronounced in the open court 19/03/2021.

Sd/-

sd/-

(Vikash Awasthy)
Judicial Member

(S. Rifaur Rahman)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 19/03/2021
Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER, .

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**