

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

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)  
AND  
SHRI MANOJ KUMAR AGGARWAL (ACCOUNTANT MEMBER)

I.T.A. No.901 /Mum/2015  
(Assessment year 2010-11)

Greatship (India) Ltd C/o Kalyaniwalla & Mistry Army & Navy Building 3 <sup>rd</sup> Floor, 148, Mahatma Gandhi Road, Fort, Mumbai-400 001 PAN : AABCG8542K	vs	Deputy Commissioner of Income-tax- 5(1)(1), Mumbai
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	Shri Nitesh Joshi
Respondent by	Shri Sushil Kumar Mishra, DR

Date of hearing	24-03-2021
Date of pronouncement	22-04-2021

**ORDER**

Per Saktijit Dey, JM:

This is an appeal by the assessee against the final assessment order dated 05-12-2014 passed under section 143(3) r.w.s. 144C(13) of the Income-Tax Act, 1961 for the assessment year 2009-10, in pursuance to the directions of the Dispute Resolution Panel (DRP).

2. In grounds 1 to 5 assessee has challenged the additions of Rs.67,07,315/- on account of transfer pricing adjustment to the arm's length price of inventories purchased from the associated enterprises (AEs).

3. Briefly, the facts as stated by the transfer pricing officer (TPO) are, the assessee, a resident company, is engaged in the business of owning, operating and charter/hire of supply vessels, tugs, barges, rigs and all types of vessels related to off-shore services including deepwater and shipping related activities. As discussed by the TPO, assessee's AE in USA, viz. M/s Greatship Global Services Pte Ltd (GGES), entered into a bareboat charter agreement with Mercator, Singapore to hire a rig for a period of three years. Since, the assessee was successful in obtaining a charter from Oil & Natural Gas Commission (ONGC), it entered into a bareboat charter agreement with GGES for the rig. Consequently, the rig was delivered by Mercator, Singapore to GGES and GGES, in turn, delivered the rig to the assessee. As observed by the TPO, Mercator, Singapore had ordered certain spares on aboard the rig. As per the terms of the contract between Mercator, Singapore and GGES, GGES was to take over the spares from them and was not to pay for the spares at the time of delivery but only to replace the spares used prior to handing over of the rig again to Mercator, Singapore. As observed by the TPO, GGES itself also purchased certain spares and as per the agreement between GGES and the assessee, assessee would purchase such inventory of spares and stores at the time of delivery and resell them back to GGES at the time of handing over the rig. After perusing the material on record, TPO was of the view that the inventory of spares came with the rig and payment is to be made only to the extent of inventory actually consumed and such payment was required to be made not at the time of delivery, but only at the time

of handing over the rig at the end of the contract period. Analysing the two bareboat charter agreements, the TPO observed that in case of a similar transaction between GGES and Mercator, Singapore, the assessee ought not to have paid for the spares to its associate enterprise, but nevertheless, benefitted the associate enterprise by making payment towards the inventory taken over from GGES. Accordingly, the TPO determined the arm's length price (ALP) of the entire inventory at nil and proposed an adjustment of Rs.5,95,21,382/-. Against the adjustment so proposed, assessee raised objections before the DRP. After considering the submissions of the assessee, learned DRP observed that the assessee had accepted the liability for payment of Rs.67,07,315/- for spares provided by its AE alone and not for the spares provided by Mercator, Singapore. Therefore, learned DRP directed the assessing officer to restrict the adjustment to Rs.67,07,760/-.

4. Shri Nitesh Joshi, the learned Counsel for the assessee submitted, while deciding identical issue in assessee's own case for Assessment Years 2008-09 and 2009-10, the Tribunal has decided in favour of the assessee by deleting the adjustment. Thus, he submitted, the aforesaid decision of the Tribunal would squarely apply to the facts of the present case.

5. The learned Departmental Representative, though, agreed that the issue in dispute is covered by the decision of the Tribunal, however, he relied upon the observations of learned DRP.

6. We have considered rival submissions and perused materials on record. Undisputedly, identical issue relating to determination of ALP of amount paid towards purchase of spares/inventories came up for consideration before the Tribunal in assessee's own case for Assessment Years 2008-09 and 2009-10 in ITA

Nos.7673/Mum/2012 and 1703/Mum/2014. While deciding the issue vide order dated 21-06-2019, the Tribunal has held as under:-

*"34. Since the aforesaid aspect goes to the root of the matter, we address the same at the threshold. In the present case, we notice that the international transaction in question is a contractual agreement between assessee and its AE, i.e. GGES, for chartering the rig for three years. It is a well settled proposition that being a contractual agreement, it was open to the concerned parties to incorporate the clauses for payment of inventory of spares as agreed between the parties. Ostensibly, for the present, we are not examining the commercial expediency or otherwise of the arrangement, but merely considering the international transaction in order to benchmark it for the purposes of arriving at the arm's length price. It is well-settled that in the transfer pricing mechanism, it is not open for the Revenue to re-characterise/restructure the transaction. The Hon'ble Delhi High Court in the case of EKL Appliances Ltd. [2012] 345 ITR 241 has held that the revenue authorities cannot restructure/re-characterize a legitimate transaction. It was held as under:-*

*17. The significance of the aforesaid guidelines lies in the fact that they that barring exceptional cases, the tax administration should not the actual transaction or substitute other transactions for them examination of a controlled transaction should ordinarily be based on the actual transaction as it has been actually undertaken and structured by the associated enterprises. It is of further significance that the guidelines discourage restructuring of legitimate business transactions. The reason for characterisation of such restructuring as an arbitrary exercise, as given in the guidelines, is that it has the potential to create double taxation if the other tax administration does not share the same view as to how the transaction should be structured.*

*18. Two exceptions have been allowed to the aforesaid principle and they are (i) where the economic substance of a transaction differs from its form and (ii) where the form and substance of the transaction are the same but arrangements made in relation to the transaction, viewed in their totality, differ from those which would have been adopted by independent enterprises behaving in a commercially rational manner."*

*Further, the Hon'ble Delhi High Court in case of Sony Ericsson Mobile Communications (I) (P.) Ltd. v. CIT [2015] 374 ITR 118/231 Taxman 113/55 taxmann.com 240 relying upon its earlier decision in the case of EKL Appliances Ltd. (supra) held as under:*

*"147. Tax authorities examine a related and associated parties" transaction as actually undertaken and structured by the parties. Normally, tax authorities cannot disregard the actual transaction or*

*substitute the same for another transaction as per their perception. Restructuring of legitimate business transaction would be an arbitrary exercise. This legal position stands affirmed in EKL Appliances Ltd. (supra). The decision accepts two exceptions to the said rule. The first being where the economic substance of the transaction differs from its form. In such cases, the tax authorities may disregard the parties' characterization of the transaction and re-characterize the same in accordance with its substance. The Tribunal has not invoked the said exception, but the second exception, i.e. when the form and substance of the transaction are the same, but the arrangements made in relation to the transaction, when viewed in their totality, differ from those which would have been adopted by the independent enterprise behaving in a commercially rational manner. The second exception also mandates that actual structure should practically impede the tax authorities from determining an appropriate transfer price. The majority judgment does not record the second condition and holds that in their considered opinion, the second exception governs the instant situation as per which, the form and substance of the transaction were the same but the arrangements made in relation to a transaction, when viewed in their totality, differ from those which would have been adopted by an independent enterprise behaving in a commercially rational manner. The aforesaid observations were recorded in the light of the fact in the case of L.G. Electronics (supra). Commenting on the factual matrix of L.G. Electronics case (supra) would be beyond our domain; however, we do not find any factual finding to this effect by the TPO or the Tribunal in any of the present cases. However, in L.G. Electronics decision (supra), it is observed that if the AMP expenses and when such expenses are beyond the bright line, the transaction viewed in their totality would differ from one, which would have been adopted by an independent enterprise behaving in a commercially rational manner. No reason or ground for holding or the ratio, is indicated or stated. There is no material or justification to hold that no independent party would incur the AMP expenses beyond the bright line AMP expenses. Free market conditions would indicate and suggest that an independent third party would be willing to incur heavy and substantial AMP expenses, if he presumes this is beneficial, and he is adequately compensated. The compensation or the rate of return would depend upon whether it is a case of long-term or short-term association and market conditions, turnover and ironically international or worldwide brand value of the intangibles by the third party."*

*Therefore, in the present case, what the TPO has done is to question the commercial rationale of the terms of agreement, thereby restructure the terms of*

*the arrangement. Ostensibly, having regard to the aforesaid legal position, the TPO exceeded his jurisdiction.*

35. *Otherwise also, if the Transfer Pricing Officer was not convinced with the benchmarking done by the assessee, he should have benchmarked the arm's length price of the services availed by following any one of the prescribed methods as provided under the statute. A perusal of the order passed by the Transfer Pricing Officer would reveal that while rejecting the benchmarking done by the assessee and determining the arm's length price at nil, he has not followed any prescribed method as provided under the statute. That being the case, the determination of arm's length price at nil by the Transfer Pricing Officer being contrary to the provisions of the Act is not acceptable. This view of ours gets support from the following decision of Hon'ble Bombay High Court, which were cited by learned Representative before us:*

- i. CIT v. Kodak India (P.) Ltd. [2017] 79 taxmann.com 362 (Bom.)*
- ii. CIT v. Johnson & Johnson Ltd. [2017] 80 taxmann.com 269*
- iii. CIT v. Merck Ltd. [2016] 73 taxmann.com 23*
- iv. CIT v. Lever India Exports Ltd., [2017] 78 taxmann.com*

*Moreover, the Transfer Pricing Officer having failed to point out any specific defect or invalidity in bench marking done by the assessee, the price paid by the assessee to the AE for the purchase of inventory has to be held to be at arm's length. In view of the aforesaid, we direct the Assessing Officer to delete the addition of Rs. 14,67,71,479/-“*

7. Facts being identical, respectfully following the aforesaid decision of the co-ordinate bench in assessee's own case, we delete the adjustment.

8. In view of our decision in grounds 1 to 5, ground 6 has become infructuous; hence, dismissed.

9. In grounds 7 to 13, the assessee has challenged the transfer pricing adjustment on account of guarantee commission.

10. Briefly the facts are, during the year under consideration the assessee had provided financial/corporate guarantee to certain overseas banks for loan/credit availed by two of its AEs, viz. GGES and Greatship Gopal Offshore Services Pte Ltd

(CGOS), Singapore. The TPO found that while providing such financial/corporate guarantee, the assessee has not charged any guarantee commission from the AEs. However, in the return of income filed for the impugned assessment year, the assessee suo motu has made an adjustment of Rs.4,32,74,179/- by computing the ALP of guarantee commission at 0.63%. On a query from the TPO, the assessee submitted that the ALP was computed by applying internal comparable uncontrollable price (CUP) method with reference to the average rate of guarantee commission paid by the assessee to its bankers during the financial year under consideration. The TPO, however, did not accept the contention of the assessee and proceeded to determine the ALP of the guarantee commission at 3.5% in respect of GGES and at 2.5% in case of GGOS. Learned DRP also upheld the decision of the TPO.

11. The learned Counsel for the assessee submitted, while deciding identical issue in assessee's own case for Assessment Years 2008-09 and 2009-10, the Tribunal has accepted the suo motu adjustment made by the assessee towards the ALP of guarantee commission. Thus, he submitted, the issue is covered by the aforesaid decision of the Tribunal. Further, he submitted, the assessee is benchmarking the ALP by applying the same method over the years. Therefore, the method employed by the assessee for benchmarking the ALP of guarantee commission has to be applied irrespective of the quantum of adjustment.

12. The learned Departmental Representative, though, agreed that the issue is covered by the decision of the Tribunal in assessee's own case; however, he relied upon the observations of the TPO and learned DRP.

13. We have considered rival submissions and perused materials on record. Undisputedly, identical issue came up for consideration of the Tribunal in

assessee's own case in Assessment Years 2008-09 and 2009-10 in the order referred to, earlier. The Tribunal, having found that the rate of guarantee commission applied by the assessee is more than the arm's length rate of 0.5% approved in certain judicial precedents, deleted the adjustment made by the TPO. For better appreciation, we reproduce the observations of the Tribunal below:-

*"18. Insofar as the adequacy of 0.55% rate charged by the assessee is concerned, we find enough reasonableness in the same. In this context, the learned representative for the assessee referred to various decisions of the Tribunal, viz., Hindalco Industries Ltd. (supra), Thomas Cook (India) Ltd. (supra) and Godrej Consumer Products Ltd. (supra), wherein the arm's length rate of 0.5% has been approved in the matter of benchmarking Guarantee commission fee chargeable from AE. Thus, considering the entirety of the facts and circumstances of the case in our view, Corporate Guarantee fee charged by the assessee @0.55% is well-founded and does not require any Transfer Pricing adjustment. Thus, we set-aside the order of CIT(A) and direct the to delete the addition of Rs. 42,97,82/-. Thus, Ground of appeal Nos. 6 to 9 are allowed."*

14. Admittedly, in the facts of the present appeal the assessee itself has made an adjustment by applying the rate of 0.63% which is more than the ALP rate of 0.5% referred to in the earlier order of the Tribunal. That being the case, following the aforesaid decision of the co-ordinate bench, we delete the addition.

15. As regards assessee's contention for acceptance of the method adopted by the assessee for benchmarking the guarantee commission irrespective of the rate of guarantee commission applied, we are of the view that this contention is immaterial for deciding the present appeal. Therefore, we refrain from dealing with the aforesaid contention of the assessee. Grounds are allowed to the extent indicated above.

16. In ground 14, assessee has challenged disallowance of loss of Rs.53,05,550/- incurred on cancellation of foreign exchange contract.

17. Briefly the facts are, in course of assessment proceedings, the assessing officer noticed that the assessee has claimed loss of Rs.54,05,550/- on account of exchange difference owing to cancellation of forward contract. On a query being raised by the assessing officer, the assessee furnished a detailed submission justifying its claim. On analyzing the details furnished by the assessee, the assessing officer found that various forward contracts entered into by the assessee were terminated before the maturity date, thereby, resulting in substantial loss. Further, he observed, no material was furnished to indicate that the foreign currency forward contracts were entered against any actual specific import or export bill so as to term them as hedging contracts. He also observed that nothing was brought on record to indicate that foreign currency forward contracts were cancelled because of termination of export/import bills. He observed, the assessee did not furnish any documentary evidence to support its claim that such forward contracts were in respect of receivables from non-tonnage activity. Thus, he ultimately concluded that the loss suffered by the assessee has to be treated as speculative loss and accordingly, disallowed assessee's claim. The learned DRP also upheld the aforesaid view of the TPO.

18. The learned Counsel for the assessee reiterating the stand taken before the departmental authorities submitted, the foreign currency forward contracts are nothing but hedging transaction; hence, loss incurred in respect of such transactions has to be allowed as business loss. He submitted, since in course of its business activity the assessee has receivables in foreign currency, it has to hedge such transactions through forward contracts to protect itself against the loss arising on account of fluctuation in foreign currency. Further, he submitted, nothing has been brought by the assessee to establish one to one linkage

between the forward contracts and the underlying transactions. Further, drawing our attention to certain documents in the paper book, the learned Counsel submitted, the foreign currency forward contracts are in the nature of hedging transaction against receivables; hence, loss claimed should be allowed. In support of such contention, he relied upon the following decisions:-

1. CIT vs Badridas Gauridu 261 ITR 256 (Bom)
2. CIT vs D Chetan & Co 390 ITR 56 (Del)
3. CIT vs Celebrity Fashion Ltd 428 ITR 470 (Mad)
4. CIT vs Friends and Friends Shipping Pvt Ltd 35 taxmann.com 553 (Guj)
5. DCIT vs Mahindra Bros Export P Ltd 161 ITD 772 (Mum)
6. Uni Design Jewellery P Ltd vs DCIT ITA 2578/Mum/2018 dt 30-09-2019

19. The learned Departmental Representative strongly relying upon the observations of the assessing officer and learned DRP submitted, the assessee has not brought enough materials on record to establish that the foreign currency forward contracts were in the nature of hedging transaction for receivables. He submitted, both the assessing officer and learned DRP have specifically recorded the aforesaid findings. Further, learned Departmental Representative submitted, identical issue arose in assessee's own case in Assessment Years 2008-09 and 2009-10 have been decided in favour of the revenue by the Tribunal. Thus, he submitted, there is no need to interfere with the decision of the assessing officer and learned DRP.

20. In rejoinder, learned Counsel for the assessee submitted, in Assessment Years 2008-09 and 2009-10 this particular issue has been restored back to the assessing officer by the Tribunal and has not been decided in favour of the revenue.

21. We have considered rival submissions in the light of decisions relied upon and perused materials on record. We have also applied our mind to the decisions relied upon. As discussed earlier in the order, the assessing officer while examining the issue has noted that forward contracts in respect of which loss has been claimed were cancelled prior to their maturity. Further, he had observed that no material has been brought on record to demonstrate that the forward contracts were entered against any actual import or export bill and they were cancelled because of termination of export/import bill. He has also observed that the assessee has not furnished any documentary evidence to indicate that the forward contracts are in respect of any underlying receivables from any tonnage activity. Further, on perusal of the order of learned DRP we find that learned DRP has recorded a factual finding that out of the total loss incurred of Rs.91,47,500 relating to the cancellation of three foreign exchange forward contracts, the assessee had apportioned loss between tonnage and non tonnage activities in the ratio of turnover. However, the rationale/logic behind such apportionment of loss between two activities has neither been explained by the assessee nor it can be understood from the materials on record. Therefore, in our considered opinion, the facts and evidences relating to assessee's claim of loss in respect of foreign exchange forward contracts have not fully been brought on record. The assessee has to justify the apportionment of the loss between tonnage and non tonnage business activities. It is further relevant to observe, in assessment year 2008-09, the assessee had claimed the gain derived from cancellation of forward contract as tonnage income, whereas, the assessing officer treated it as gain from non tonnage activities. Further, in Assessment Year 2009-10, the assessee, vide ground 14 had raised identical issue of disallowance of loss incurred on

cancellation of forward contract in respect of receivables in foreign currency. As it appears, these issues raised by the assessee in those assessment years were set aside by the Tribunal to the assessing officer for re-consideration. Insofar as the decisions cited before us by the learned Counsel for the assessee, we must observe, the ratio laid down in these decisions are on the basis of facts involved therein. Therefore, they cannot be applied generally, de hors the factual position. Therefore, considering the overall facts and circumstances of the case as well as the decision of the Tribunal in assessee's own case in Assessment Years 2008-09 and 2009-10, we are inclined to remit the issue to the assessing officer for fresh adjudication, after due opportunity of being heard to the assessee. Ground 14 is allowed, for statistical purpose.

22. In grounds 15 & 16 assessee has challenged disallowance made under section 14A r.w.r. 8D.

23. Briefly the facts are, during the year under consideration, the assessee had earned exempt income of Rs.3,05,74,532/- where as it made suo motu disallowance of Rs.22,80,268/- under section 14A of the Act towards expenditure incurred for earning the exempt income. The assessing officer, however, was of the view that the suo motu disallowance made by the assessee is not in accordance with Rule 8D(2). Therefore, he proceeded to compute disallowance by applying Rule 8D(2) and in the process, made a disallowance of Rs.52,35,096/- under rule 8D(2)(iii). Since, the assessee itself has disallowed Rs.22,80,268/-, the assessing officer made a net disallowance of Rs.29,54,828/-. The aforesaid disallowance made by the assessing officer was also sustained by learned DRP.

24. Learned Counsel for the assessee submitted, the assessing officer, while rejecting assessee's computation and invoking rule 8D(2), has not recorded

objective satisfaction as required under section 14A(2) of the Act. Drawing our attention to the observations of the assessing officer in this regard he submitted, the satisfaction recorded by the assessing officer clearly reveals non application of mind as the assessee has not utilized any borrowed funds and the assessing officer himself has not made any disallowance of interest expenditure. Further, he submitted, though, the assessee has made suo motu disallowance, the assessing officer has proceeded as if the assessee has not made any disallowance. Thus, he submitted, due to non-recording of objective satisfaction, the disallowance made should be deleted.

25. Without prejudice, he submitted, the assessee has provided the basis for the computation of suo motu disallowance wherein certain expenditure incurred for the treasury department has been allocated for earning the exempt income. In this context, he drew our attention to the computation of suo motu disallowance and the details of expenditure allocated towards earning of exempt income. He submitted, the assessee is following the aforesaid method of allocation of expenditure for business and investment activity consistently. Therefore, he submitted, the disallowance made by the assessing officer should be deleted. In support of such contention, the learned Counsel relied upon the following decisions:-

1. Maxxop Investments (I) Pvt Ltd vs CIT 402 ITR 640 (SC)
2. Godrej & Boyce Mfg Co Ltd vs DCIT 394 ITR 449 (SC)
3. PCIT vs Reliance Capital Asset Management Ltd 400 ITR 212 (Bom)
4. PCIT vs Bombay Stock Exchange Ltd 113 taxmann.com 303 (Bom)

26. The learned Departmental Representative submitted, the assessing officer having recorded proper satisfaction while invoking section 14A r.w.r. 8D(2),

assessee's claim cannot be accepted. Further, he submitted, while deciding identical issue in assessee's own case in Assessment Years 2008-09 and 2009-10, the Tribunal has restored the issue to the assessing officer for fresh adjudication. He submitted, the assessee has also made the suo motu disallowance on purely adhoc/estimate basis. He submitted, once Rule 8D has come into the statute from assessment year 2008-09, disallowance has to be computed in accordance with the said rule. Thus, he submitted, the issue may be restored back to the assessing officer.

27. In rejoinder, learned Counsel for the assessee submitted, in Assessment Years 2008-09 and 2009-10, the assessee has not raised the issue of non recording of satisfaction by the assessing officer.

28. We have considered rival submissions in the light of decisions relied upon and perused materials on record. On a reading of the assessment order, we find that the assessing officer has recorded some satisfaction for rejecting the computation of suo motu disallowance made by the assessee and for invoking Rule 8D(2). Therefore, it is not a case where the assessing officer has not at all recorded any satisfaction. No doubt, assessee has made suo motu disallowance by adopting certain method of apportionment of expenditure between taxable income and exempt income. However, it is for the assessee to establish the validity of such apportionment. As it appears, the assessee has consistently adopted the aforesaid method of disallowing expenditure for earning exempt income. While deciding identical issue in assessee's own case for Assessment Years 2008-09 and 2009-10, the Tribunal, in the order referred to by us earlier, has remitted it back to the assessing officer with the following observations:-

*“25. Ground of appeal No. 11 pertains to the application of provisions of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short ‘the Rules’). The learned Representative for the assessee submitted that the assessee has made suo moto disallowance of Rs. 21,11,790/- under Section 14A of the Act. The Assessing Officer asked the assessee was accordingly asked to explain as to why the disallowance under Section 14A of the Act read with Rule 8D of the Rules should not be determined. The assessee contended that since it had made a reasonable disallowance, no further disallowance under Rule 8D of the Rules was required to be made. The Assessing Officer rejecting the contention of the assessee further disallowed Rs. 1,11,640/- applying Rule 8D(2)(iii) of the Rules. Before the DRP, the assessee contended that the Assessing Officer has erred in invoking Rule 8D of the Rules and submitted that the Assessing Officer should be directed to accept the computation of voluntarily disallowance made by the assessee under Section 14A of the Act. However, the DRP upheld the disallowance made by the Assessing Officer. In this background, the rival parties have reiterated their respective position before us.*

*16. We have carefully considered the rival submissions and the material on record. The Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154/254 Taxman 325/402 ITR 640 (SC) has held that only the expenditure which is in relation to earning an exempt income can be disallowed under Section 14A read with Rule 8D of the Rules. The dominant purpose for which investment into shares is made by the assessee may not be relevant as Section 14 of the Act applies irrespective of whether shares are held to gain control or as stock in trade. Hence, respectfully following the cf^sl&aof the Hon'ble Supreme Court, we set-aside this Ground of appeal to Assessing Officer for determining the disallowance afresh in the laid down after giving a reasonable opportunity of being heard . Accordingly, this Ground of appeal is allowed for statistical purpose.”*

29. Consistent with the view expressed by the co-ordinate bench as aforesaid, we restore the issue to the assessing officer for deciding afresh keeping in view the ratio laid down in the decisions referred to above. Needless to mention, the assessing officer must afford reasonable opportunity of being heard to the assessee before deciding it afresh. This ground is allowed for statistical purposes.

30. In ground 17, assessee has challenged the decision of the departmental authorities in reducing the set off of brought forward business loss from the claim made by the assessee.

31. Learned counsels appearing for the parties submitted before us that consequential effect regarding set off of loss has to be given after giving effect to the decision of the Tribunal in assessment year 2009-10.

32. We have observed, in Assessment Year 2009-10 the loss claimed by the assessee was reduced due to various additions/disallowances made in the assessment. However, the Tribunal, while deciding the appeal of the assessee has granted certain relief by deleting some of the additions/disallowances. Thus, the loss determined by the assessing officer in Assessment Year 2009-10 would certainly get increased by virtue of the Tribunal's order. Therefore, whatever loss is determined in Assessment Year 2009-10 after giving effect to Tribunal's order, would be available for set off in the impugned assessment year. Therefore, the assessing officer is directed to allow set off of brought forward business loss on the basis of determination to be made in Assessment Year 2009-10 after giving effect to the order of the Tribunal. This ground is allowed.

33. In the result, appeal is partly allowed.

Order pronounced in the open court on 22/04/2021

Sd/-

sd/-

<b>(MANOJ KUMAR AGGARWAL)</b>	<b>(SAKTIJIT DEY)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dt : 22/04/2021

Pavanan

Copy to :

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4. The CIT(A)
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By Order

Asstt. Registrar, ITAT, Mumbai