आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A.Nos.3194 & 478/Chny/2017**

(निर्धारणवर्ष / Assessment Years: (2013-14 & 2012-13)

M/s. Lite-on Mobile India Pvt.Ltd. Nokia Telecom Special Economic Zone, Plot No.1A, SIPCOT Industrial Park, Phase-III Chennai-Bangalore Highway, Sriperumbudur, Kancheepuram Dist. PIN- 602 105.	Vs	The Deputy Commissioner of Income Tax, Corporate Circle-4(1) Chennai-600 034.
PAN: AADCP 9246K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. Ashik Shah, C.A
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. B.Jayaraghavan, CIT

सुनवाईकीतारीख/Date of hearing	:	16.09.2021
घोषणाकीतारीख /Date of Pronouncement	:	03.11.2021

आदेश / O R D E R

PER G.MANJUNATHA, AM:

These two appeals filed by the assessee are directed against separate, but identical orders of Dispute Resolution Panel-2, Bengaluru dated 11.09.2017 and 04.11.2016 and pertain to assessment years 2013-14 and 2012-13. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

ITA No.478/Chny/2017 (A.Y.2012-13):

2. The assessee has raised following grounds of appeal:-

"1. The orders of the learned Assessing Officer ("Ld. AO"), the Transfer Pricing Officer ("Ld. TPO") and the Honourable Dispute Resolution Panel ("Ld. DRP"), to the extent prejudicial to the interests of the Appellant, are passed in violation of the principles of equity and natural justice, contrary to law, without appreciating the facts and circumstances of the case.

2. The Ld. DRP, Ld. AU and the Ld. TPO erred in re-characterising the assessee as a contract manufacturer executing work orders as per the directions of the AEs, thereby concluding that the requirement for availing management services did not arise.

3. The Ld. DRP, the Ld. AU and the Ld. TPO have erred in determining the arm's length value of management services to be 'NIL':

• by questioning the commercial wisdom of the assessee without merely restricting himself to the determination of the Arm's Length Price;

• by concluding that there were no evidences filed towards the receipt of services, completely disregarding the information / documents / clarifications provided to substantiate that the services were in fact received.despite accepting the aggregation approach of benchmarking adopted by the Appellant in its TPdocumentation;

• by adopting a transaction — by — transaction approach with respect to the transaction of payment of management fee alone though there was no rejection of the Transfer Pricing ("TP") documentation of the Appellant as required under section 92C(3) of the Act;

• without appreciating that the management services transaction undertaken by the Appellant was closely interlinked with its primary operations, thus necessitating aggregation approach for the purposes of TP in accordance with section 92C of the Act read with Rule10B of the Income- tax Rules, 1962 ("the Rules") and the relevant OECD guidelines;

• without adopting one of the mandatory methods prescribed for determination of ALP under section 92C of the Act read with Rule 10B of the Rules;

• without considering several judicial precedents which have held that the Ld. TPO cannot determine the ALP of a said transaction to be at NIL.

Without prejudice to the above grounds, the Ld. DRP, the Ld. TPO and the Ld. AO erred in making a downward adjustment amounting to 1NR 1,72,49,410/-, which includes the grossed up amount of TDS, as against the net amount of INR 15,52,45,113."

3. Brief facts of the case are that M/s. Lite-on Mobile India Pvt.Ltd. is wholly owned subsidiary of Perlos Oyj, Finland, is engaged in the business of manufacture and supply of moulded components for telecommunication industry. The assessee does moulding, painting, punching and assembly for manufacture of plastic covers of mobile phones. The assessee imports raw materials like display window, key pads from its Associated Enterprises. The assessee does not possess technology for manufacture of aforesaid materials in India. The assessee had entered into an agreement with its AE on 12.12.2011 for availing various managerial services for which it has paid management fees. The assessee had also entered into various other international transactions with its AEs. The assessee has aggregated all transactions with its AEs and has adopted Transactional Net Margin Method (TNMM) to bench mark all international transactions, except transaction

pertaining to payment of interest on ECB (External Commercial Borrowings) which was benchmarked under Comparable Uncontrolled Price method (CUP) and concluded that international transactions with its AEs are at arms' length price.

4. The assessee has filed its return of income for assessment year 2012-13 on 30.11.2012 admitting total income of Rs.42,53,25,645/-. The assessee had also filed revised return on 27.03.2014 admitting total income of Rs.32,31,23,250/-. The case was taken up for scrutiny and during the course of assessment proceedings, a reference was made to the TPO to determine arm's length price of international transactions of the assessee with its AEs. During transfer pricing proceedings, the TPO has accepted TP study conducted by the assessee by adopting Transactional Net Margin Method in respect of all international transactions. However, in respect of procurement of management services, determined Nil arm's length price by holding that the assessee did not bring any evidence on record to suggest that it was in need for services for which it has paid to its AEs. The TPO had

also observed that the assessee did not bring any evidence to prove the AE has rendered services for which it was paid. Therefore, he has determined arm's length price of management fees paid to its AE at Rs. Nil.

5. Consequent to TP adjustment, as suggested by TPO vide his order dated 25.01.2016 u/s.92CA(3) of the Act, the Assessing Officer has passed draft assessment order u/s.144C(1) of the Income Tax Act, 1961 on 30.03.2016 and proposed transfer pricing adjustment of Rs.17,24,94,523/- in respect of management fees paid to its AEs. The assessee has challenged draft assessment order passed by the Assessing Officer before the DRP-2, Bengaluru and filed objections for making adjustment for management fees paid to its AEs and argued that when the assessee has demonstrated and justified payment of management fees with necessary evidences, including agreement with its AEs, invoices raised by AEs for rendering services and also other evidences including e-mail correspondence between the assessee and its AEs, the TPO has erred in determining Nil arm's length price for management

fees on the ground that the assessee has not demonstrated with evidences necessity of availing services from its AEs.

6. The ld. DRP vide its directions dated 04.11.2016 issued u/s.144C(5) of the Income Tax Act, 1961, rejected arguments taken by the assessee and confirmed additions made by the Assessing Officer by holding that on the basis of evidences filed by the assessee, including agreement between parties dated 12.12.2011, it is difficult to imagine that such services as indicated could have been discussed verbally by two parties have been availed. The ld. DRP has discussed issue at length in light of agreement between parties and other evidences filed by the assessee to come to conclusion that the assessee had not availed any services from its AE to justify payment of management fees. The ld. DRP further observed that since payment for management fee has been paid without getting any actual services, the TPO/ AO was right in disallowing total amount paid by the assessee to its AE for management services. The relevant findings of the Ld. DRP are as under:-

> *"3.8 On perusal of the above clauses of the agreement, following conclusion can be drawn:*
> *The agreement is dated 12 December 2011, but made effective w.e.f 01.0l.20ll. The assessee has claimed that the services*

were rendered wef 01.0I. 20II on the basis of verbal agreement with the service provider, however the assessee failed to substantiate this claim. The assessee was asked by this Panel to provide cops of any email or other document giving reference to such verbal agreement and the bare minimum condition/services/rates decided verbally, however assessee expressed its inability to do so. These facts themselves reflect that the agreement being produced before the TPO or this Panel is just meant to create some record to justify the payments as having been made for certain services, although the services sere never ever rendered. The two pages appendix I to the agreement gives detailed description of the categories of services. Ii is difficult to imagine that such services as indicated should have been discussed verbally by the two parties and such agreement continued fir almost one year. before the above referred agreement was signed.

A careful examination of the agreement dated 12 December 2011 itself shows that no two parties operating at arm's length would enter into such an agreement. The agreement does not have any clause to protect the beneficiary from deficiency in services provided by the service provider. So. even if there is deficiency in service, the assessee still has to make payments to the service provider at the agreed rate and there isn't any scope of imposing penalty on the service provider.

'Appendix Ill gives the allocation keys for determining fees for various services. The allocation is based mainly on % of external sales against group total sales'. Thus, in relation to most of the services, there isn't any link between the services actually rendered and fees paid. Even if no such service is rendered by the service provider, the assessee has to pay the

fee as the service provider will send invoice based on the cost worked out on basis of allocation key plus its mark up. No two parties operating at arm's length would enter into such an agreement, where they have to pay even if no services are rendered to it.

• Clause 2.7 of' the agreement provides that the cost of the HQ Management Services would be substantiated by documents evidencing trips carried out, meeting held arid, more general!'., work performed for the benefit of' the Beneficiary and involving LOM personnel and that those documents would he provided to the beneficiary. However, despite being given opportunity by the TPO, no such documents were produced by the assessee before him. So even if the agreement is considered to be genuine, the assessee has never tried to verify the correctness of the cost allocation done by the service provider. In an arm's length case a person would verify the costs having been incurred by the service provider, if the payments are agreed to be on cost plus basis. However, in the present case the assessee has accepted the invoices at face value although it had right to get all those documents.

Considering above, there is no reason to differ with the findings of TPO that no services have actually been rendered by the AE to the assessec and so the ALP of the international transaction has to be treated as nil. Further, since the payment for management fee has been made without getting an actual services, the amount should also base been disallowed by the assessing officer by considering the same as not incurred for business purposes. However, such addition would only be on protective basis as the entire expenditure gets disallowed on account of transfer pricing adjustment. The AO is directed to act accordingly.

3.9. One of the objections of the assessee is that it had paid tax at source of' Rs 1,72,49,410/- on behalf of the service provider and the same should not be considered as part of the international transaction as the actual amount remitted to the AL was Rs 15,52,45,ll3. The submissions of the assessee have duly been considered. however, there isn't any merit in the same. As per clause 2.5 of the agreement the beneficiary is required to bear and pay withholding taxes and all other applicable taxes attracted by such services in India. Since the assessee was obliged to deduct tax at source on the above said payments, so the actual cost of the services to it is Rs 17,24,94.523/-, of which it has deposited Rs 1,72,49,410/- as tax deducted at source and the balance amount has been remitted to the AE. Since the tax deducted at source is a payment made on behalf of the AE so it was a liability which the assessee has met. Tax deducted is income of the person from whose payment the tax has been deducted . Any credit for such TDS can be claimed by the AE, if it is eligible to do so. Considering above, the objection of the assessee is not accepted."

7. The learned A.R for the assessee submitted that the ld. DRP has erred in sustaining additions made by the TPO/Assessing Officer towards TP adjustments on management fees paid to its AE without appreciating fact that the TPO/AO had never disputed fact that the assessee has justified payment of management fees with necessary evidences, but has disputed payment only on the ground that the assessee has not demonstrated with evidence necessity of

availing such services. The learned A.R further submitted that it is well settled principles of law by the decisions of various courts, including decision of the Hon'ble Delhi High Court in the case of M/s.Magneti Marelli Powertrain India Pvt. Ltd., vs. DCIT 389 ITR 469, where the Hon'ble High Court made it very clear that the TPO cannot question necessity of incurring of particular expenditure and further he cannot question cost benefit ratio of any particular expenditure incurred by the assessee. It is for the assessee to decide whether particular expenditure is required to be incurred or not. But what is to be seen is whether said expenditure is supported by necessary evidence or not. In this case, the TPO has not doubted genuineness of payment, however disputed payment only on the ground that such payment was made for services, which are not required to be obtained from its AE. The AR further submitted that the TPO has accepted international transactions of the assessee with its AE are at arm's length price and has not made any adjustment in TP proceedings. However, the TPO disputed one element of international transactions and has made Nil adjustment by holding that the assessee has not

demonstrated receiving of services from its AE, even though the assessee has filed various evidences including agreement between parties, invoices raised by AE and certain e-mail correspondences between two parties. In this regard, he relied upon following judicial precedents:-

1.DCIT Vs.Magneti Marelli Powertrain India P.Ltd. SLP No.15244/2017

2. Magneti Marelli Powertrain India P.Ltd. vs.DCIT 389 ITR 469

3. Bonfiglioli Transmissions P.Ltd.vs.DCIT in ITA No.2977/Chny/2017 dt.14.05.2018

4. Siemens Gamesa Renewable Power P.Ltd. Vs. DCIT (2018)92 Taxmann.com 330

5. M/s. Rotork Controls India P.Ltd. Vs.DCIT ITA No.2581/Chny/2017 dt. 14.11.2018

6. Schneider Electric India Pvt.Ltd. Vs.DCIT in ITA No 209/Ahd/2015 dt.31.05.2017

7. Dimension Data India Pvt.Ltd.Vs.DCIT in ITA No.2280/Mum/2016 dt.16.08.2017

8. Dresser Rand India P.Ltd. Vs.Addl CIT (2011) 13 taxmann.com 82 (Mum)

8. The learned DR, on the other hand, strongly supporting order of the ld. DRP submitted that the assessee is a contract manufacturer engaged in manufacturing moulded components

for mobile phones with technology support from its AE for which it has paid royalty. The assessee had also made periodical payment of management fees on the basis of agreement between parties without any supporting evidences including proof of rendering of services by its AE. The assessee has paid periodical payments on monthly basis without any justification for making payment to its AE. The TPO as well as ld.DRP has brought out clear facts to the effect that the assessee is shifting profit to its AE in the guise of payment of management fees without any justification for making such payment. Therefore, there is no merit in arguments taken by the assessee that the TPO has made adjustment to management fees only on the basis of necessity of availing such services.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee is in the business of contract manufacturing of moulded components for mobile phones had entered into managerial services agreement with its AE for rendering various services. As per agreement between parties dated 12.12.2011, which is made applicable from 01.01.2011,

the assessee has listed out various services to be provided by its AE. A careful examination of agreement dated 12.12.2011 shows that agreement is general one, which specifies various need based services to be provided by its AEs to its group company without any specific services that required by the assessee. We further noted from agreement between parties that agreement does not have any clause to protect beneficiary from deficiency in services provided by service provider. From the above, what we understand is agreement between parties is only refers to various services to be provided by its AEs, but not specific document of rendering actual services to the assessee. Further, Appendix III to agreement gives allocation keys for determining fees for various services. The allocation is based mainly on percentage of external sales against group total sales. Therefore, from the above, what we understand is charges are fixed in relation to most of the services on the basis of sales without any reference to what services that are required by AE and their technical specification. Further, clause 2.7 of agreement provides that cost of HO management services would be substantiated by documents evidencing trips

carried out, meeting held and more generally, work performed for benefit of beneficiary and involving LOM personnel and those documents would be provided to beneficiary. In this case, the assessee, except furnishing agreement between parties, invoices raised by AE and few e-mail correspondence, no other documents have been filed to prove any services in fact, was rendered by its AE. Therefore, in our considered view, even if agreement is considered to be genuine, the assessee has never tried to verify correctness of cost allocation done by service provider. Further, the assessee has failed to substantiate payment of such huge managerial fees month on month without any supporting evidences like technical specification of services rendered by its AE, personnel deployed for said purposes and other evidences including correspondence between parties. Although, the assessee refers to number of e-mail correspondence between few employees of the assessee and its AE, but on perusal of e-mail samples filed by the assessee, what we could notice is these e-mails are general in nature and further with reference to daily production of products manufactured by the assessee in respect of sales

to different regions. Further, none of e-mail correspondence filed by the assessee depicts any evidence of rendering any kind of managerial or technical services to justify claim of the assessee that it has received managerial services from its AE. Therefore, we are of the considered view, that the assessee has made periodical payment to its AE in the guise of managerial fee without any justification for such payment and further without any evidence on record to suggest that services were actually rendered.

10. Another important aspect of the issue is that, the assessee is contesting findings of the TPO in respect of cost benefit analysis of expenditure incurred by the assessee. No doubt, the TPO has made a specific observation of necessity of availing such services by the assessee. But, fact remains that disallowances made by the TPO is on cumulative ground, including necessity of services and want of evidence to justify payment of management fees. It is well settled principle of law by the decisions of various courts, including decision of the Hon'ble Delhi High Court in the case of CIT vs Ekl Appliances Ltd., 345 ITR 241, that the Assessing Officer cannot question

wisdom of businessman to incur a particular expenditure. But, fact remains that the AO/TPO is having all powers to examine whether particular expenditure incurred is genuine in nature and further it is supported by necessary evidence. In this case, on the basis of facts brought out by the authorities below clearly indicate that the assessee has failed to file any evidence to justify payment of management fees. In fact, the assessee has failed to file any evidence except few e-mail correspondence and agreement between parties. Further, no other credible evidences were filed to justify payment of management fees.

11. As regards arguments of the assessee that it has tested its international transactions with its AE by adopting TNMM as most appropriate method and the Assessing Officer has accepted TP study conducted by the assessee without any adjustment, we find that whether particular expenditure is incurred or not has to be tested with reference to evidences placed on record. The operating margin of the assessee and method adopted for testing arm's length price does not prove fact of rendering services and payment of management fees.

Therefore, in our considered view, payment of management fees has to be examined, qua, evidences without going into aspect of operating margin of assessee and TP study conducted for that purpose. No doubt, the Hon'ble Delhi High Court in the case of DCIT vs. Magneti Marelli Powertrain India P. Ltd. (supra) has held that once the Assessing Officer has tested aggregate international transactions by adopting a particular method, then he cannot select few transactions and apply different method to test arm's length price of said transactions. No doubt, once aggregate transactions of the assessee with its AEs has been tested by applying TNMM as most appropriate method, then the Assessing Officer/TPO cannot pick few transactions and apply different method to determine arm's length price. We are fully in agreement with said proposition. In the present case, the question before us is whether payment made by the assessee to its AE for managerial services is in fact, incurred wholly and exclusively for the purpose of business and further said expenditure is supported by necessary evidence or not. On perusal of facts available on record and on the basis of facts brought out by

authorities below, we are of the considered view that the assessee has failed to bring on record any evidences to justify payment of management fees. Therefore, we are of the considered view that case laws relied upon by the assessee on the issue of necessity of availing services and question of cost benefit analysis of said expenditure has no application to present issue on hand.

12. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that there is no error in reasons given by ld.TPO/DRP in making TP adjustments for payment of managerial services fee to its AE. Therefore, we are inclined to uphold findings of the learned DRP and reject grounds taken by the assessee.

13. In the result, appeal filed by the assessee for assessment year 2012-13 is dismissed.

ITA No.3194/Chny/2017 (A.Y.2013-14):

14. The assessee has raised following grounds of appeal:-

> *1. The orders of the learned Assessing Officer ("Ld. AO"), the Transfer Pricing Officer ("Ld. TPO") the Honourable Dispute Resolution Panel ("Ld. DRP"), to the extent prejudicial to the interests o Appellant, are passed in violation of the principles of*

equity and natural justice, contrary to without appreciating the facts and circumstances of the case.

Transfer Pricing

2. The Ld. DRP, Ld. AO and the Ld. TPO erred in re-characterising the Appellant as a cor manufacturer executing work orders as per the directions of the AEs, thereby concluding the requirement for availing management services did not arise.

3. The Ld. DRP, the Ld. AO and the Ld. TPO have erred in determining the arm's length value of management services to be 'NIL':

By questioning the commercial wisdom of the Appellant without merely restricting him the determination of the Arm's Length Price;

• By concluding that there were no evidences filed towards receipt of services completely disregarding the information / documents / clarifications provided to substantiate that the services were in fact received.

• Despite accepting the aggregation approach of benchmarking adopted by the Appellant in its TP documentation;
• By adopting a transaction — by — transaction approach with respect to the transaction of payment of management fee alone though there was no rejection of the Transfer Pricing ("TP")documentation of the Appellant as required under section 92C(3) of the Act;

• Without appreciating that the management services transaction undertaken by the Appellant was closely interlinked with its primary operations, thus necessitating aggregation approach for the purposes of TP in accordance with section 92C of the Act read with Rule l0B of the Income tax Rules, 1962 ("the Rules") and the relevant OECD guidelines;

• Without adopting one of the mandatory methods prescribed for determination of ALP under section 92C of the Act read with Rule 10B of the Rules;

• Without considering several judicial precedents which have held that the Ld. TPO cannot determine the ALP of a said transaction to be at NIL.

4. Without prejudice to the above grounds, the Ld. DRP, the Ld. TPO and the Ld. AO erred in making a downward adjustment amounting to INR 9,94,04,055, which includes the grossed up

amount of TDS representing INR 77,21,033. Whereas the adjustment, if at all, should be restricted to INR 9,16,83,022 as the grossed up portion of TDS represents a cost borne by the Appellant and not an international transaction with its Associated Enterprise.

Corporate Tax

5. The Ld. DRP and the Ld. AO erred in disallowing the grossed up portion of Taxes Deducted at Source ("TDS") on external commercial borrowings ("ECB") amounting to INR 78,15,435 which was borne by the Appellant on behalf of Lite—On Finland and Lite-On Mobile Pte Ltd, Singapore ("Lite-On Singapore") by:

• Erroneously applying section 4oa(n) of the Act for the purpose of disallowing the amounts in question, when the applicability of the subject provision for the issue did not arise;

• Not appreciating that, such grossed up portions of TDS, represent discharge of liability incurred which the assessee had undertaken to pay as part of the terms and conditions of the ECB contract; and

• Not appreciating Court and Tribunal rulings which have allowed grossed up portions of TDS borne on behalf of the payee on account of contractual obligations."

15. The facts and issues involved in this appeal are identical to facts and issues, which we had considered in ITA No.478/Chny/2017 for assessment year 2012-13.

16. The first issue that came up for our consideration from ground no.2 to 4 of assessee's appeal is TP adjustment made by the TPO and confirmed by the Ld.DRP in respect of managerial fees paid by the assessee to its AE. An identical issue has been considered by us in preceding paragraphs in ITA No.478/Chny/2017 for assessment year 2012-13. The

reasons given by us in preceding paragraphs shall *mutatis mutandis* shall apply to this appeal as well. Therefore, for similar reasons, we are inclined to uphold findings of the ld.DRP and reject ground taken by the assessee.

17. The next issue that came up for our consideration from ground no.5 of assessee appeal is disallowance of grossed up portion of TDS on payment of interest on external commercial borrowings amounting to Rs.78,15,435/-. The assessee has availed ECB loan from related parties and provided interest of Rs. 4,93,04,021/-. The assessee has grossed up interest payment for TDS portion amounting to Rs.78,15,435/-.The TPO has disallowed grossing up of TDS amounting to Rs.78,15,435/- on the ground that TDS deducted on payment made to AE was liability of AE which the assessee has met and thus, same cannot be allowed as deduction u/s.40A(2) of the Income Tax Act, 1961. It was explanation of the assessee before the Assessing Officer that as per agreement between the assessee and AE, beneficiary is required to bear and pay withholding taxes and all other applicable taxes attracted on services rendered in India. Therefore, the assessee has

grossed up TDS remitted on payment made to AE and thus, same is in the nature of expenditure incurred and hence, needs to be allowed as deduction u/s.37 of the Income Tax Act, 1961.

18. The learned AR for the assessee submitted that the learned DRP has erred in sustaining additions made by the TPO towards disallowance of grossed up portion of TDS of Rs.78,15,435/- without appreciating fact that as per contractual arrangement between parties, the assessee is liable to deposit TDS applicable on said payment and thus, same partakes nature of expenditure which needs to be allowed as deduction.

19. The learned D.R., on the other hand, strongly supporting order of the learned DRP submitted that what was paid by the assessee is liability of AE, but not payment for services rendered by the AE. Therefore, the learned TPO/DRP has rightly disallowed TDS deducted and remitted on behalf of AE and grossed up in interest provided on ECB loan and thus, their orders should be upheld.

20. We have heard both the parties, perused materials available on record and gone through orders of the authorities

below. We have also carefully considered agreement between the parties dated 28.09.2006. As per said agreement, any tax liability including income tax, if any, on interest accrued to the lender under the agreement would be borne by lender. The agreement further states that borrower will compute appropriate amount of taxes required to be withheld and deposit same to credit of Indian Govt. treasury. The borrower will provide lender with a certificate evidencing deposit of such taxes. Therefore, from the conditions of agreement between parties, it is very clear that tax liability, if any, on interest paid to lender is responsibility of lender. However, the assessee should deduct applicable tax deducted at source as per law, remit the same to Govt. treasury and furnish proof to lender. In this case, the assessee has deducted TDS on interest payment. But, instead of reducing it from payment made to the AE, has grossed up TDS portion to interest paid to AE and claimed as deduction. In our view, procedure followed by the assessee for grossing up of interest is contrary to agreement between the parties and also contrary to provisions of law. Therefore, we are of the considered view that there is no error in the reasons given by

the learned TPO/DRP in disallowing grossed up portion of TDS deducted on interest paid to AE on External Commercial Borrowings. Hence, we are inclined to uphold findings of the learned DRP and reject ground taken by the assessee.

21. In the result, appeal filed by the assessee for assessment year 2013-14 is dismissed.

22. As a result, both these appeals filed by the assessee are dismissed.

Order pronounced in the open court on 3rd November, 2021

Sd/-	Sd/-
(धुव्वुरु आर.एल रेड्डी)	**(जी. मंजुनाथ)**
(Duvvuru RL Reddy)	(G.Manjunatha)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 3rd November, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.