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

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)
AND
SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)

I.T.A. No.6649/Mum/2018
(Assessment year 2014-15)

Star India Pvt Ltd Star House, Urmi Estate, 95 Ganpatrao Kadam Marg, Lower Parel (W), Mumbai 400 013 PAN : AAACN1335Q	vs	ACIT-16(1), Mumbai
APPELLANT		**RESPONDENT**

Appellant by	Shri Porus Kaka (AR)
Respondent by	Shri A Mohan [CIT(DR)]

Date of hearing	24-09-2021
Date of pronouncement	25-11-2021

O R D E R

Per :Saktijit Dey (JM):

Captioned appeal by the assessee arises out of final assessment order dated 23-12-2018 passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 for the assessment year 2014-15, in pursuance to the directions of the learned Dispute Resolution Panel (DRP, hereinafter).

2. Gorund no. 1 being a general ground no adjudication is required.

3. In grounds 2 to 12, assessee has challenged the addition made on account of adjustment made to the payment for grant of access to bundle of sports rights.

Briefly the facts are, as stated by the Transfer Pricing Officer (TPO, hereinafter) the assessee, a resident company, is engaged in media industry and is a part of Star Group of companies. It is stated, the Star group is engaged in broadcast and distribution of various satellite channels primarily in India. The assessee is a broadcaster of various channels owned by it, such as, Star Plus, Star One, Star Utsav, Star Gold, Life OK, etc. ESPN Star Sports Ltd (ESS), a US based associated enterprise (AE) of the assessee, having its branch office and headquarters in Singapore is engaged in the business of owning and operating sports channels in certain territories in Asia including India. As stated, ESS conducted business in India through Star Sports India Pvt Ltd (SSIPL) for earning distribution and advertisement revenue with some margin left to SSIPL. Intending to establish its own sports channel, the assessee bidded for obtaining rights in tournaments held by Board of Cricket Control in India (BCCI) and was successful. To further expand its foray into sports channels, assessee initially obtained slots on channels owned by ESS. Subsequently, ESS agreed to grant access to the sports broadcasting on a bundle basis and not on an individual rights basis. After negotiation and deliberation between the assessee and ESS, the assessee entered into an agreement with ESS termed as Master Rights Agreement (MRA) executed on 31-10-2013. By virtue of such agreement, the assessee acquired bundle of right earlier held by ESS for specified sports events. Such bundle of rights acquired by the assessee include the rights to broadcast through television/internet/ mobile various sporting events like ICC tournaments including Cricket World Cup, Champions League T20 cricket, Formula 1 GP 2, Wimbledon, etc. After acquiring the bundle of rights, the assessee became full-fledged owner and broadcaster of sports channels 24 x 7. Further, the assessee also acquired Star Sports India Pvt

Ltd which was involved in sale of advertisement airtime and subscription of sports channel in India broadcasted by ESS. For acquiring the bundle of rights, the assessee paid an amount of USD 1,211 million to ESS. Additionally, the assessee also paid an amount of 47.46 crores to AE for transitional services.

4. As per the terms of MRA, ESS granted the bundle of rights to the assessee either by way of novation of contracts entered by it with third parties or by way of sub contract. The price paid to ESS towards acquiring the bundle of rights was benchmarked by the assessee adopting Comparable Uncontrolled Price (CUP) method. While doing so, the assessee compared the amount paid by ESS to international sports body (ISB) for purchasing such rights for a finite period of time at USD 1338 million. Such amount paid by ESS to ISB was applied as CUP to benchmark the amount paid of USD 1211 million to ESS for acquiring the bundle of righs. Since, the amount paid by the assessee was lesser than the amount paid by ESS to ISB, the assessee claimed the transaction with the AE to be at arm's length.

5. To support the payment of USD 1211 million to ESS for acquiring the bundle of rights, the assessee furnished a report by an independent valuer viz, DS Consultants Pvt Ltd determining the value of the bundle of rights at USD 1211 million. After perusing the valuation report, the TPO found various deficiencies. Firstly, he observed, while, the general entertainment channels owned and broadcasted by the assessee were earning profit, ESS was incurring loss continuously for past five years. He observed, after acquiring the bundle of rights from ESS in respect of various sports channels, the assessee has also started incurring loss, as against profit from general entertainment channels. Referring to

the valuation report, the TPO observed that the independent valuer himself has said that comparison with third party cost at the hands of ESS may not be acceptable. The TPO observed, as per the independent valuer, cost approach method may not be advantageous as it only considers the cost to purchase the asset and it does not consider the future economic benefit arising from access to the bundle of rights so determined by ESS based on various market conditions existing at the time of bidding the events, which, must have undergone change on the date of transfer to the assessee. The TPO observed, one of the major deficiencies in the valuation report of the independent valuer is the incorporation of terminal value extrapolated till perpetuity for the purpose of valuation of an asset with a finite period of life. The TPO observed, the assessee has obtained the rights from the AE for a limited finite period of time which expires subsequently. Therefore, the value that is derived from these rights has also a finite life span. Whereas, the independent valuer has adopted terminal value under discounted cash flow (DCF) method presuming that the value will be generated till perpetuity, though, the rights themselves may not exist. The TPO observed, as per the valuation report, there is a negative cash flow during the finite/explicit period as per the valuation from ESS's perspective as well as assessee's perspective, even after considering unsubstantiated and highly inflated projections of the assessee. He observed, the incorporation on unsubstantiated and unverified terminal value has been used to substantiate the value of benefit to be received from the rights. Having so observed, the TPO referred to the international valuation methodology from the book, 'International Valuation Standard' – 6th Edition, wherein it is held that the time period for which estimates of the cash flow should be made should be the economic life of the asset. The economic life has been defined as the

period for which an economic return can be received from the assets. Thus, there is a distinction between the legal and the economic life of the asset. He observed, legal life exists for the period for which the assessee is protected by law, whereas, the economic life is measured as the period for which the intangible asset can provide economic return to the owner. Thus, as per the international valuation standard, an intangible asset which has finite life can be valued for a finite period only.

6. Thereafter, the TPO also referred to a book authored by Professor Aswath Damodaran wherein according to the TPO, it has been stated that in case of a finite period asset, DCF cannot have a terminal value. In fact, the TPO quoted certain remarks of the said author in this respect. Further, the TPO also referred to www.investopaedia.com wherein it is stated that for finite period asset there is no need for assuming till perpetuity. The TPO observed, when the assessee had purchased the rights having finite life and are specific to certain events, the revenue it is expected to generate from the bundle of rights will also be confined to the definite life time only as there is limited residual value for sports events in repeat telecast. Thus, he observed, as per the prescribed methodology for valuation of a finite period asset, there could be no terminal value. Whereas, assessee's independent valuer has provided maximum value to the terminal value.

7. Thus, the TPO observed, since the valuation done by the independent valuer is not in accordance with prescribed guidelines/valuation standard, it cannot be accepted. Referring to certain observations of the valuer, the TPO observed, while the valuer has stated that the bundle of rights the assessee had

purchased would enable it to generate enough cash to buy or renew rights after the expiry period; however, he has contradicted his own valuation as the cash flow has been found to be negative for the explicit period. That being the case, there is a chance that the bundle of rights purchased by the assessee will leave it with lesser cash flow for renewing the right. He observed, the valuer has also not considered the possibility of some other party bidding a higher price for subsequent rights and consequently, the assessee not being able to buy or renew the rights after the expiry period. He observed, the valuer has also not considered the possibility that the assessee may decide not to continue with sports telecast business due to some economic or strategic reasons. In that case also, cash flow after explicit period will be zero. Therefore, the valuer has committed a fundamental error. The TPO observed, there is a big probability that the rights which are now available with the assessee under the bundle may not be available or may be renewed. In this context, he specifically referred to Champions' League, T20 right, which the assessee and the valuer have assumed will not be renewed. He observed, the valuer has also not taken note of the fact, the price at which the rights are available, the competitor in the market and even the viability of the sports channel business itself. The TPO observed, the valuer has not accounted for various contingencies even while computing the terminal value. He observed, the valuer has only attributed benefit till perpetuity without the corresponding cost or risk being assigned for the same. The TPO observed, the synergy value theoretically is not one of the considerations between the parties, but there can be a reverse valuation of synergy as well. Whereas, no value or negative value considering the synergy effect of the general entertainment channel or existing supports business on the valuation for bouquet of rights has been discussed in the

valuation report. In other words, the TPO observed, the cash flow generated by the bouquet of rights considered by the valuer could be partly due to the synergy from general entertainment channel and the existing sports business. Therefore, that much value could have been deducted for valuing the bundle of rights. The TPO observed, a proper FAR analysis would reveal that ESS has not been able to generate profit even though it was in possession of the very same right and if the assessee is able to generate the same and that too, after the rights have expired it will definitely lead to the conclusion that the assessee's own resources have ensured that the bundle of rights will yield revenue and profit. This factor was also not considered by the valuer. The TPO observed, the valuer has not attributed any value to the renewed rights or fresh rights under which the assessee would actually be generating revenue. On the contrary, the value has attributed the benefit entirely to the old rights. Referring to the OECD guidelines on intangibles, the TPO observed, the intangibles, which have a finite legal life may be considered to contribute to the value in the future after expiry only when the intangibles create a base on which new intangibles are developed and in that situation, part of the cash flow from the new intangibles can be attributed to the old intangibles. Proceeding further, the TPO observed that the projection of revenue and the growth rate adopted by the valuer are based on incorrect / unverified assumption. In this context, the TPO discussed the projected and the actual figures in a tabular form. As per the said table, though, in financial year 2015-16, the actual loss was USD 536 million; however, the valuer has projected at USD 165 million. After analyzing valuation report and the submissions of the assessee, the TPO observed that the consistent loss incurred by ESS clearly indicate that the assumption of huge profit in future projection in case of the

assessee is totally misplaced. He observed, as per the principles of valuation, primary reliance is to be placed on available historical data. He observed, the valuer has conveniently ignored the historical data available in the case of ESS and built up on his assumption to project distributor profit in distant future to justify the transaction. After rejecting the valuation report as well as submissions of the assessee, the TPO ultimately concluded that the terminal value of USD 548 million for which payment was made as part of payment made towards acquiring the bundle of rights is not at arm's length. Accordingly, he determined the ALP value of consideration paid at USD 411 million. Accordingly, he proposed an adjustment of Rs.669,36,04,230/-.

8. Against the adjustment so proposed, assessee raised objection before the learned Dispute Resolution Panel (DRP). However, learned DRP, more or less concurring with the view expressed by the TPO, upheld the adjustment.

9. Shri Porus Kaka, learned counsel appearing for the assessee submitted that with the intention to becoming a full-fledged broadcaster and owner of sports channel in India and to create a 24x7 business, assessee acquired the bundle of rights. He submitted, without appreciating the object and business intent for acquiring the bundle of rights, the departmental authorities have only focussed on the losses incurred by ESS prior to transferring the bundle of rights to the assessee. He submitted, assessee's revenue from the sports segment has gained exceptionally over the years due to acquisition of brodcasting rights. He submitted, due to the acquisition of bundle of rights, the assessee was not only successful in creating a 24x7 sports channel business but was successful in renewal of the ICCI and BCCI rights. He submitted, acquisition of sports rights also

helped the assessee in successfully bidding for the IPL rights, considered to be one of the top five global sports property. He submitted, after acquiring the bundle of rights, the entire income from sports broadcasting is offered to tax in India as the assessee became an entrepreneur, as against the small distribution margin offered to tax in the earlier years.

10. He submitted, like all other business, the assessee incurred expenditure for initially setting up the sports business. However, the initial period losses did not undermine the value paid by the assessee for bundle of rights or undermined the decision of the assessee to obtain the bundle of rights. He submitted, the assessee had purchased the bundle of rights with discount of 9.5%. He submitted, the loss incurred by ESS was in the range of 10% to 13% of its revenue. Therefore, the loss incurred by ESS was very close to the discount percentage given to the assessee. He submitted that the price paid for acquiring the bundle of right is at arm's length. Learned counsel submitted, the premium paid by the assessee to third parties for obtaining / renewing sports rights first obtained from the AE as part of bundle of rights was much more. He submitted, the TPO cannot question the business rationale of any transaction undertaken by the assessee. The learned counsel submitted, while benchmarking the transaction with AE assessee had applied CUP, being the amount paid by AE to ISB. He submitted, while the AE had paid USD 1338 million to ISB for acquiring the sports rights, assessee acquired such rights from the AE at a discounted price of USD 1211 million. Therefore, since the payment made by the AE to third parties is more than the payment made by the assessee to the AE for the same set of rights, a valid CUP exists. Learned Counsel submitted, to support the amount paid to the AE for acquiring bundle of rights, the assessee has furnished valuation report of an independent

valuer, whereas, the TPO has accepted the valuation report selectively by conveniently cherry-picking a part of the report while partly rejecting it.

11. He submitted, the TPO has erroneously concluded that the independent valuer has rejected the cost approach and considered it as unsuitable for determining the value of bundle of sports rights. He submitted, on the contrary, the independent valuer has clearly stated that the cost approach suffers from the disadvantage of only considering the cost of an asset and not considering the future economic benefit from the asset. Thus, what the independent value has said is, the value of the bundle of right would only be higher if the future economic benefit of the rights are considered and added to the cost of the sports rights. He submitted that the TPO while rejecting the valuation report has selectively used it to reject the cost approach. He submitted, while doing so, the TPO has erroneously interpreted the decision of the Hon'ble Supreme Court in case of GL Sultania and Another vs SEBI (Civil Appeal No 1672/2006) and has not applied the principle laid down therein correctly. Referring to the said decision, the learned counsel submitted, the Hon'ble Supreme Court has clearly stated and reiterated at several places that what is forbidden to act as an expert itself and may interfere with the valuation only in case there is fundamental error in valuation, patent mistake, etc. Even while doing so, the Hon'ble Supreme Court said, the Court shall not act as a valuer itself. He submitted, if, according to the TPO, the valuation report had fundamental and serious deficiency, he should not have used a part of the valuation report selectively, which suited him. He submitted, while the assessee had furnished a valuation report in support of the payment made, the TPO has not brought on record any alternative valuation at any stage. He submitted, when the TPO has failed to bring on record a counter

valuation report, the valuation report furnished by the assessee, being of an expert, has to be accepted. In support of such contention, assessee relied upon certain judicial precedents.

12. The learned counsel submitted, the TPO has rejected the terminal value determined by the independent valuer erroneously. He submitted, the assessee had demonstrated before the departmental authorities the benefits derived from acquiring the bundle of sports rights. He submitted, setting up of the 24x7 sports channel has resulted in the following benefits:

- Creationation of exclusive sports studio;
- Opporunity to develop and establish relationships with new advertisers; and
- Cross-selling of viewership between sports and general entertainment business.

13. He submitted, the benefit has also resulted in tangible economic benefit as presently, the assessee is the largest sports broadcaster in India. Assessee's revenue from sports business has grown exponentially to almost five times in financial year 2018-19. Presently, the assessee operates more than 10 sports channel on 24x7 basis. It has also enabled the assessee to successfully bid and renew various ICC and BCCI rights including IPL right in spite of stiff competition from other sports channels. Thus, he submitted, all these factors would show that the independent valuer has correctly considered the economic life of the bundle of broadcasting rights to be valued beyond the finite period of the right. He submitted, the TPO has completely overlooked / disregarded all these facts while rejecting the terminal value in the valuation report. He submitted, to justify his view, the TPO has erroneously and selectively relied upon various literatures. He

submitted, even while doing so also the TPO has committed gross error. He submitted, the reference by the TPO to international valuation standards on intangible assets as well as the book written by Shri Aswath Damodaran is also perfunctory.

14. He submitted, similar is the fact relating to reference made by the TPO to investopaedia.com. He submitted, in course of proceedings before the DRP, the assessee had furnished two more reports from experts to justify the valuation report of the independent valuer. He submitted, in both these reports the expert opinions recognized the difference between economic life and contractual life of an asset. They have further concluded that the bundle of rights will have an economic life that will exceed the liquidity of the contractual life of the bundle of rights. He submitted, in their opinion the experts have provided the examples of valuation, wherein, the terminal value has been adopted and it represents a significant part of the total transactional value. He submitted, in assessee's own case in assessment year 2009-10, when the assessee entered into a new agreement for distribution rights for a finite period of two years reversing the earlier agreement, the DRP considered that the change in the agreement would constitute business restructuring. While computing the compensation, the DRP applied a terminal value even though the agreement was for a finite period of two years. Thus, he submitted, determination of terminal value is legally accepted. He submitted, another mistake committed by TPO is, he has compared the projected profitability with the actual profitability. He submitted, the TPO went on to compare the two sets of numbers and arrived at a variation of 38% and thereafter erroneously concluded that valuation for the bundle of rights is overloaded to the extent of 38%. The learned counsel submitted, the TPO has also erred in

comparing incorrect numbers and failing to normalize for a onetime unforeseen termination cost incurred by the assessee in financial year 2015-16.

15. He submitted, the assessee terminated the contract for Champions' League T20 purely commercial reasons, for which, assessee had to pay onetime termination fee of USD 363 million and in the original projection the independent valuer has spread it across years. He submitted, for an appropriate comparison of projections versus the actuals, termination fee needs to be spread over the remaining life of the rights. He submitted, if done so, the variation between the projected number and the actual number would be merely 4% and will not exceed 20% as noted by the TPO. In this context, he drew our attention to a table showing comparison of margin between the actual and projected figures. The learned counsel submitted, one of the experts, Duff & Phelps has pointed out that at the time of the transaction OECD guidelines of 2013 was applicable, whereas, the TPO has erroneously applied OECD transfer pricing guidelines, 2017 which was in draft form at that time and not in existence in 2013. Therefore, the comparison done by the TPO and consequent actualization is not supported by law. In this context, he relied upon the following decisions:-

16. He submitted, in addition to the original valuation report, the assessee had also obtained a valuation report from another independent valuer to support the reasonableness of the value determined as per the original valuation. He submitted, in the second valuation report, though the valuer has adopted the market approach method; however, the value determined by the second valuer, viz. Duff & Phelps, LLC for the bundle of sports rights would be in the range of USD 1142 million to 1223 million. Thus, he submitted, the value determined by the second valuer also matches the ALP computed by the assessee by applying

CUP as also the value determined by the original independent valuer applying DCF method. He submitted, in the second valuation report, the valuer has clearly stated that the economic attributes of a bundle of sports rights are very different from that of the individual rights and hence, valuing in aggregate would yield a different value from that of valuing them individually and thereafter aggregating. He submitted, the TPO as well as the DRP has rejected the second valuation report with unsound reasoning that the original valuer has rejected the market approach method. He submitted, the second valuation report furnished by the assessee is only an additional analysis based on market approach to demonstrate that the price paid by the assessee is at arm's length. Thus, the second valuation report is only for corroborating the reasonableness of the value determined in the original valuation report. He submitted, in the original valuation report, the independent valuer had never said that market approach method is wrong. Rather, he has also discussed the suitability of the market approach to value bundle of sports rights. He submitted, in fact, the original valuer has undertaken valuation on the basis of each individual right under the market approach. However, since the assessee was granted access to a bundle of rights which would yield greater benefit on account of its economic attribute, he has simply stated that valuing the bundle of rights in aggregate would yield a higher value from that of valuing them individually. He submitted, there is no fundamental error in the original valuation report as the TPO has tried to make out.

17. He submitted, the independent valuer has arrived at absolute value of the bundle of rights both from ESS's as well as assessee's perspective and has thereafter determined the value following the widely accepted principle of game theory which suggests that in respect of third party willing buyer and willing

seller, the finally negotiated transaction would set around a mid-point of the two price points. Therefore, the independent valuer has adopted a widely accepted mechanism to arrive at a price, which may be considered to be the arm's length price, since it factors in the price from the perspective of a willing buyer as well as a willing seller. He submitted, though the TPO has not disputed the game theory approach under which ESS would not part with the bundle of rights at a price below USD 1166 million, still he has upheld the value erroneously at USD 411 million. He submitted, when ESS is required to pay third parties USD 1338 million, it will never part with the right at USD 411 million as determined by the TPO. He submitted, no prudent businessman would accept such a huge loss while selling the bundle of rights. He submitted, while the valuation of the bundle of rights done by the assessee through independent valuer was not a mere formal exercise, but a properly conducted procedure for arriving at the value of rights, the TPO has grossly erred in challenging the independence of the independent value and alleging that the valuation report was a mere formal exercise having no relation with the value of bundle of sports rights. He submitted, the observation of the TPO that while entering into master rights agreement with ESS on 3-10-2013, the assessee did not know the value of bundle of rights as the original valuation report is dated 05-11-2013.

18. The learned counsel submitted, both the assessee and ESS had appointed the valuer so that the value for the bundle of sports rights could be determined based on recognized valuation principle. He submitted, even the master rights agreement also says that the consideration may be determined by a valuation to be undertaken by an independent valuer. He submitted, the assessee had appointed the independent valuer in April, 2013 and between the period from

April to October, 2013; there were various interactions between the assessee and the independent valuer. He submitted, in fact the independent valuer furnished a summary of valuation report determining the value at USD 1211 million which is identical to the final valuation. Thus, the value of the bundle of rights to be purchased was known to the assessee before signing the MRA. The learned counsel submitted, since the TPO had enough opportunity to examine various aspects of the valuation reports submitted by the assessee as well as other evidences furnished, there is no need for restoration of the issue to the AO thereby granting a second innings to the revenue. In this context, he relied upon the following decisions:-

1. Coca-Cola India Private Limited vs Assistant Registrar (Bomby High Court)(2014) 368 ITR 48 (Bom)
2. Jabil Circuit India Private Limited (ITA No.2200 of 017 & 867 of 2018)
3. M/s CLSA India Private Limited vs DCIT (2019) 101 taxmann.com 388
4. Kodak India Private Limited vs. CIT (2016) 288 CTR 46(Bom)

19. Without prejudice, the learned counsel submitted, the agreement between the ISB and ESS/ assessee were tax protected contracts from the perspective of withholding tax cost of the ISB to be borne by the assessee. He submitted, the amount of USD 1211 million determined by the original valuer is net off withholding taxes. Therefore, adjustment, if any, should be undertaken only on the amount payable to ISB / ESS by the assessee excluding withholding of taxes. In support of such contention he relied upon Magarpatta Township & Construction Co. Ltd vs Commissioner of Central Excise, Appeal No. ST/322/2012-MUM. Thus, he submitted, the adjustment should be deleted. To support all his contentions, learned Counsel relied upon various other decisions as referred to in the written submissions and filed before us by way of a compilation.

20. Strongly relying upon the observations of the transfer pricing officer and learned DRP, the learned Departmental Representative submitted, the TPO has clearly established that the original valuation report was post facto justification exercise of the transaction entered into by the assessee with its AE. He submitted, it is very much clear that the valuer has relied upon the profit estimated by the management of the two companies and he has not carried out profit risk evaluation and estimation. Therefore, he had over-valued the rights. He submitted, the TPO considered the nature of intangibles transferred, i.e. a bundle of sports rights which had a finite period, maximum being for a period of 7 years. Drawing our attention to the original valuation report and the observations of the TPO, the learned departmental representative submitted that there are a number of deficiencies in the valuation report as pointed out by the TPO. He submitted, as per the valuation report the projected revenue exceeded the actual revenue by 38%. He submitted, since payment for rights are made on year on year basis; therefore, after acquisition, rights would be amortized. Therefore, the absolute value needs to be calculated from the value of rights. He submitted, applying the ratio of absolute value to present value as computed by the independent valuer at 1.40 the assessee and the AE were sure that as per their own valuation, the bundle of rights was not only going to lead to losses in the present foreseeable period, but in perpetuity both from assessee's perspective as well as AE's perspective.

21. He submitted, in step 3 of the original valuation report, the valuer has sought to find out minimum amount that ESS would be willing to settle for in the transaction. He submitted, the present value of the rights is derived at USD 955 million after employing the present value factor. However, the valuer has added

DCF value of right as calculated from AE, ESS perspective at USD 123 million. He submitted, the method applied by the valuer is inherently ploughed which it attempted to demonstrate from a chart showing the valuation from AE's perspective and assessee's perspective to which he has applied the ratio of absolute to present value of 1.4 and has derived the revised value of USD 833 million. He submitted, various fundamental errors in the valuation report have been pointed out by the TPO while rejecting the valuation report. He submitted, though the revenue agrees that the value has to be determined by adopting DCF method, which is most suitable to value intangible assets and rights in intangible assets; however, a number of fundamental errors were found in the valuation report which can be summarized as under:-

> "2.2.13 In the present case, the Department has agreed with the methodology of valuation adopted by the valuer, i.e. DCF Valuation under income Approach, as this methodology is best suited to the valuation of intangible assets and rights in intangible assets. The Department has, however, found the following fundamental errors with the Valuation which have been discussed above:
>
> (i) The revenue projections made by the Valuer @ 18% CAGR were highly unrealistic in the facts of the assessee's case;
>
> (ii) Considering that the bundle of rights was for a limited period and considering that during the pendency of the period of bundle of rights, it was expected to lead to huge losses, terminal value and synergy value could not have been ascribed to it;
>
> (iii) Considering that these rights were for sports media, which carries event based viewer loyalty rather than channel or platform based loyalty, terminal value and synergy value could not have been ascribed to it;
>
> (iv) Considering that the AE was incurring huge losses since acquiring these bundle of rights, the value of rights should have been suitably revised downwards, or the rights should not have been acquired, as would have happened in an uncontrolled transaction;
>
> (v) While the MRA for acquisition of bundle of rights was signed on 31.10.2013, the final valuation report is dt. 5.11.2013, which shows that the valuation report was a post facto justification exercise for a transaction which had already taken place between two related parties. This shows that the transaction was not executed as per valuation, but the valuation was carried out to somehow justify the transaction. This defeats the very purpose of valuation and clearly shows the controlled nature of the transaction, as in an uncontrolled transaction, such a thing would have never come to pass.
> (vi) The same value valued the transaction from the side of the assessee as well as AE, which again would have hardly happened in an uncontrolled transaction.

> For the reasons, inter alia, which show that the Valuation Report was fundamentally erroneous, the TPO assailed the Valuation Report, and suitably modified it to arrive at an arm's length price."

22. As regards the rejection of terminal value determined by the independent valuer, the learned DR submitted that out of the total value of USD 1211 million paid for acquiring the bundle of rights, the valuer has ascribed USD 548 million towards terminal value. He submitted, the TPO has found that the bundle of sports rights acquired by the assessee from AE were for finite period, whereas, the terminal value has been attributed to this right. He submitted, the TPO has noted that even during the finite period, the present value for explicit period shows negative cash flow of USD 615 million from assessee's perspective, whereas, USD 499 million from AEs perspective. These negative figures continue to remain negative even after introduction of terminal value and the net present value was in USD 27 million from assessee's perspective and USD 123 million from AEs perspective. Therefore, finding the valuation report to be deficient in various aspects in the context of observations made in Prof. Aswath Damodaran's book and and guidelines contained in international valuation standards, the Transfer Pricing Officer has determined the terminal value at Nil. He submitted, after acquiring the bundle of rights in financial year 2013-14 assessee's profit before tax reduced by 85%. Whereas, in the subsequent years till financial year 2016-17, the sports broadcasting segment continued to bring huge losses for the assessee. However, only due to profit earned by general entertainment channels, the assessee ended up with an overall profit of 1749 crores. However, after setting up of brought forward losses and unabsorbed depreciation, it reported nil income for the year. Therefore, the contention of the assessee that as a result of acquisition the bundle of sports rights, the department is able to get more tax is absolutely hollow. He submitted, the only motive of doing any business is to earn profit.

Whereas, the acquisition of sports broadcasting rights has resulted in huge losses to the assessee during the period of the rights. That being the case, the argument of the assessee that even though the rights failed to earn profit during the period for which they were granted, such rights would help it to earn profit after their expiry is absurd. He submitted, the guidelines of international valuation standard referred to by the TPO clearly speaks of the gains of the economic life of an intangible asset in the valuation of the assessee. Therefore, the nature of intangible asset and the facts and circumstances of a case has to be considered while evaluating the economic life of an intangible asset. He submitted, in case of the assessee, the rights granted by way of bundle of rights exists for a maximum period of seven years. He submitted, as per international valuation standard, the economic life of the bundle of rights in a particular case may extend to the period of right. In some cases, it may be lesser than the period of right and in a third category of cases may extend beyond the period of right. Therefore, in the first two eventualities, the terminal value of the asset would be Nil. He submitted, in case of the assessee, the rights are in the form of sports broadcasting rights, whereas, in case of general entertainment channel viewer loyalty is built to channel so that new serials have more TRP on channels with higher following than on channels with lower following. In contrast, in case of sports channels the viewer loyalty is to the event rather than the channel. By way of illustration, he submitted, an India–Australia cricket match would have huge viewership whether it is on star sports or in any other channel. If the rights to such a match are transferred from one channel to the other, along with the transfer of rights, viewership also gets transferred. Therefore, the sports broadcasting rights do not confer any enduring advantage and in absence of any enduring advantage

terminal value cannot be applied. That being the case, the terminal value determined by the valuer would be Nil.

23. In rejoinder, the learned counsel for the assessee submitted, the revenue has not disputed the DCF method of valuation adopted by the valuer. He submitted, he revenue has found fault in some of the steps performed by the valuer. He submitted, the expert opinion obtained by the assessee in support of the valuation made by the independent valuer has not been countered by the revenue with valid reasoning. Strongly objecting to the submissions of learned departmental representative to the effect that the present transaction is a case of base erosion and loss swapping, being another manifestation of base erosion and profit shifting (BEPS), the learned counsel submitted, there is no such concept of BELS under any law in force. Further, he submitted, the TPO has never made any analysis for BEPS nor has re-characterized the transaction as loss swapping. Therefore, learned departmental representative, at this stage, cannot introduce a new angle to the dispute. In this context, he relied upon a decision of the ITAT in case of Maersk Global Service Centre (India) Pvt Ltd (2011) 16 taxmann.com 47 (Mum).

24. Insofar as the other submissions of learned departmental representative are concerned, learned counsel for the assessee, in sum and substance, reiterated the submissions made earlier.

25. We have carefully considered the detailed submissions made by the parties, both orally as well as in writing with the assistance of the factual paper book submitted by the assessee. We have also applied our mind to the decisions cited before us in the form of case law compilations. The dispute between the parties, undoubtedly, is with regard to the determination of ALP of the payment

made towards acquisition of the bundle of sports rights from ESS, the AE of the assessee. It is evident, the assessee has benchmarked the subject transaction by applying CUP method. It is the case of the assessee that though ESS had obtained the bundle of rights from ISB at USD 1338 million, however, the assessee has bought the bundle of right from ESS at USD 1255 million with a discount of 9.5%. To demonstrate that the amount paid by the assessee to acquire the bundle of sports rights is at arm's length, the assessee has furnished a valuation report of an independent valuer, viz. D H Consultants Pvt Ltd based at DCF method determining the value at USD 1211 million. Undisputedly, the aforesaid valuation report was also furnished before the TPO. However, though, the TPO did not have much quarrel with adoption of DCF method for valuation purpose, however, he did not agree with the value determined by the independent valuer.

26. The major arena of dispute between the TPO and the valuation report of the independent valuer is with regard to the determination of terminal value for the bundle of sports rights and comparison of actual profit & loss / revenue with the projected value. The TPO has, apparently, rejected the terminal value of USD 548 million. Further, the TPO has also found fault with the spread over of cost incurred on termination of Champions League T20 tournament over a period of time instead of considering it in the year, wherein, the cost was incurred. It is evident, to support the value determined by the independent valuer, in course of proceedings before learned DRP assessee has furnished two more expert opinions, one issued by Prof. Israel Shaked and the other by Duff & Phelps, LLC. In these expert opinions, various deficiencies/flaws in the reasoning of the TPO in rejecting the terminal value has been pointed out. Further, in one of the expert 's opinion, it has been stated that even as per market approach method, the

payment made by the assessee to ESS for acquiring the bundle of sports rights is much lesser; hence, has to be considered to be at arm's length.

27. It is a fact on record that the valuation report of the independent valuer as well as expert opinions furnished by the assessee were available before the departmental authorities. However, no effort was made by the departmental authorities to find out the deficiencies/flaws, if any, in assessee's valuation with a counter valuation being made by another expert. On the contrary, the TPO on the one hand has selectively used certain observations of independent valuer to demonstrate contradictions between the observations of the independent valuer and the expert's opinion and on the other hand, has selectively and out of context referred to certain observations made in International Valuation Standards and book authored by Prof. Aswath Damodaran. The TPO has also referred to certain material available in a website. Further, certain allegations made by the TPO that the valuation report is a post facto justification exercise to authenticate the amount paid, in our view, is a vague and generalized observation.

28. As could be seen, the bone of contention between the assessee and revenue is the determination of terminal value. The case of the revenue is, when the rights are for finite period and would be expiring after certain time limit, how can the valuer determine the terminal value for infinite period. More so, when there is no certainty that the sports rights would be renewed in favour of the assessee. There can be some truth in the aforesaid objection raised by the revenue. Further, it is a fact that for terminating the contract for Champions Trophy T20 league the assessee has paid compension of USD 366 million. In the valuation report of the independent valuer, this cost has been distributed over the life of the event. This is also a grey area which requires examination. At this

stage, we are not in a position to either accept or reject the objections of the revenue.

29. Though, detailed submissions have been made from both sides in favour and against the value determined by the independent valuer, however, it has to be stated that valuation of an asset is a highly technical job, which requires expertise in technical knowledge and skill on the subject. Undoubtedly, the assessee has furnished independent valuer's report and expert opinion to support the value of the bundle of sports rights for which payment has been made to ESS. Whereas, no such exercise has been undertaken by the revenue to counter assessee's valuation. Instead of entrusting the job of finding out the correctness in assessee's valuation as per the independent valuer's report, the departmental authorities have taken up the task themselves in pointing out various deficiencies in the valuation report. In the process, the TPO has referred to certain materials available in the some valuation book and had used them selectively to reject the valuation of the assessee. In our view, this is a thoroughly incorrect approach. Since, the subject of valuation is highly technical, and can only be done by a person having expertise over the subject, a person having no technical knowledge/expertise cannot be in a position to decide whether the value determined by the independent valuer and the expert's opinion in support, are incorrect. Thus, if the valuation report of the assessee is not acceptable to the revenue, the better course would have been to get the valuation of the transaction done through an expert. Therefore, in our considered opinion, the revenue must ascertain the correctness in assessee's valuation reports by getting the valuation done through its own expert.

30. We must observe, in course of hearing learned Counsel for the assessee had opposed restoration of the issue for valuation purpose. However, we are unable to accept the objections of the assessee. As we have discussed earlier, valuation is a highly technical subject and can be done by a person having expertise on the subject. If we undertake the exercise of either accepting or rejecting the valuation report of the assessee, we would be committing the same error as was committed by the departmental authorities by assuming the role of a valuer. It is further to be noted, various contentions of the assesse that in subsequent assessment years, the independent value was summoned by the assessing officer / TPO and examined on the issue of valuation needs to be examined. Further, the contention of the assessee that in assessee's own case in assessment year 2009-10, the revenue itself has determined the terminal value, has to be examined. One more issue, which also requires consideration, is the alternative contention of the assessee to exclude the withholding of tax from the amount payable to ISB / ESS by the assessee for making ALP adjustment.

31. Thus, upon overall consideration of facts and circumstances of the case, we are of the opinion that the issue has to be restored back to the assessing officer for fresh adjudication in the light of observations made by us hereinabove. Needless to mention, the assessee must be provided reasonable opportunity of being heard before deciding the issue. Since, we have restored the issue to the assessing officer for the reasons stated above, it is not necessary for us to deal with the various judicial precedents cited before us. With the aforesaid observations, grounds are allowed for statistical purpose.

32. In grounds 13, the assessee has challenged the adjustment made to the ALP of payment made towards availing of transitional services.

33. Briefly the facts are, as discussed earlier, assessee was desirous of starting its own sports channel, hence, entered into an agreement with ESS for acquiring bundle of sports rights with effect from 04-11-2013. Thus, the assessee expanded its broadcasting operation by setting up, operating and managing a 24x7 sports channel in addition to its existing business. For the purpose of its expanded broadcasting activities, the assessee applied to the Ministry of Information & Broadcasting for permission to uplink and downlink sports channels on 09-01-2013. However, the permission of uplinking and downlinking was granted only on 28-08-2014. Further, the assessee was yet to establish suitable facilities in India for the operation of its sports channel business. Therefore, for the purpose of obtaining these facilities in the transitional period, the assessee requested ESS to provide certain services and facilities for a specific period, which was provided by ESS for a consideration. Considering the transaction and functional and risk profile of the entities, the assessee selected transactional net margin method (TNMM) as the most appropriate method to benchmark the transaction with ESS as the tested party. Whereas, the net profit based on cost was the profit level indicator. Since the net profit based on cost of ESS at 5% was lower than the arithmetic mean of the net profit based on cost of the comparable companies worked out at 7.13%, the transaction for availing transitional services was claimed to be at arm's length. The Transfer Pricing Officer (TPO), however, rejected the benchmarking of the assessee. Alleging that no evidence was furnished by the assessee to substantiate the receipt of services, basis of determination of transitional fee and the benefit received, the TPO determined the arm's length price at Nil. In course of proceedings before learned DRP, assessee furnished certain additional evidences, which was referred to the TPO. Based on the report of the TPO,

learned DRP allowed an amount of Rs.14,53,75,166/-, being expenses actually incurred on back to back basis. However, the balance amount paid being allocation based third party expenditure of Rs.5,92,24,239/- and others Rs.24,74,85,937/- where disallowed on the allegation that except furnishing auditor's certificate, the assessee failed to furnish any other evidence to demonstrate that the payment made was commensurate with the services received and has resulted in benefit to the assessee. Further, the mark up of 5% on the total cost paid to the AE was also disallowed.

34. Before us, learned counsel for the assessee submitted that the transitional fee comprises of technical cost, programming and production cost, marketing cost and selling, general and administration. He submitted, for availing these services, the assessee had entered into an agreement with ESS, since, the AE is already into the business of sports broadcasting including in India and had necessary infrastructure in place for the services required by the assessee. The assessee had progressively developed facilities, such as, studios where production of sports events are done and other related facilities for enabling broadcast of sports channel effectively. Hence, the extent of transitional services availed from ESS reduced gradually. He submitted, to substantiate the availing of services and payment made to ESS, the assessee has furnished a certificate from a Singapore based auditor, which is not found to be incorrect. Thus, he submitted, merely applying the benefit test, a part of the payment made cannot be rejected / disallowed. In support of such contention, he relied upon the following decisions:-

1. Jabil Circuit India Pvt Ltd ITA No.2200 of 2017 & 867 of 2018
2. NLC Nalco India Ltd ITA No.1256 /Kol/2009 & 529/Kol/2008

35. Without prejudice, he submitted, income received on account of rendering of transitional services has already been offered to tax by ESS. He submitted, ESS has undertaken due compliance including transfer pricing compliance in India and there is no transfer pricing adjustment at the hands of ESS. In this context, he drew our attention to order passed under section 92CA(3) of the Act in case of ESS.

36. We have considered rival submissions and perused materials on record. As could be seen, for setting up its sports business in India, the assessee had applied to Government authorities for permission to uplink and downlink sports channel. However, since there was delay in getting permission and the assessee was newly setting up its sports business, it availed certain technical as well as administrative services from its A.E., ESS on payment of cost with a mark up of 5%. Though, the TPO had determined the ALP of the transitional fee at Nil, however, learned DRP partly accepting the claim of the assessee has allowed the actual cost incurred by the assessee on back to back basis, whereas, certain other third party cost and other cost have not been allowed, in addition to mark up of 5%. The very fact that a part of the cost incurred has been accepted goes to prove that the assessee has availed services from ESS and derived benefit. In fact, to substantiate its claim, the assessee had furnished certain evidences including a Singapore based auditor's certificate. Therefore, the allegation of the departmental authorities that the assessee could not substantiate that the payment made is commensurate with the services availed, thereby, failing the benefit test, in our view, is baseless and not borne out from record. In any case of the matter, the payment received by ESS towards transitional services has been offered to tax in India. Even, in case of ESS the TPO has accepted the transaction to be at arm's

length. That being the factual position, no adjustment is required to be made. Accordingly, we delete the addition. This ground is allowed.

37. In grounds 14 and 15, the assessee has challenged determination of ALP of payment made for brand licence fee at Nil.

38. Briefly the facts are, in financial year 2010-11, relevant to assessment year 2011-12, the assessee, for leveraging the STAR mark, sought a licence from Star Television Asia Region Ltd for use of brand name and design of the channel picturing the STAR mark and STAR Corporate mark. For obtaining the brand licence, the assessee had entered into an agreement and paid a lump sum amount of USD 36.02 million. While examining the arm's length nature of transaction in assessment year 2011-12, the TPO determined the ALP at Nil. As a result, assessee's claim of depreciation on the cost incurred towards brand licence fee was consistently disallowed in assessment year 2011-12, 2012-13 and 2013-14. While deciding assessee's appeal for assessment year 2011-12, the Tribunal deleted the transfer pricing adjustment made by the TPO. Based on the aforesaid decision of the Tribunal, assessee's claim of depreciation on cost incurred towards brand licence fee was allowed while deciding the appeal in assessment year 2012-13 vide order dated 01-08-2019 passed in ITA No.1048/Mum/2017.

39. The aforesaid factual position remains uncontroverted before us. Thus, keeping in view the decision of the co-ordinate bench in assessee's own case for assessment year 2011-12 and 2012-13 as referred to above, we allow assessee's claim of depreciation. Grounds are allowed.

40. In ground 16, the assessee has contested the disallowance of deduction claimed towards reimbursement of property tax amounting to Rs.28,97,568/-.

41. Briefly the facts are, in course of assessment proceedings, the assessing officer noticed that the assessee has claimed deduction of an amount of Rs.28,97,568/- towards reimbursement of property tax paid by Precision Components Pvt Ltd (PCPL). Noticing that similar deduction claimed by the assessee in the preceding assessment years were disallowed which was upheld by learned DRP, the assessing officer proceeded to disallow the deduction claimed by the assessee. Learned DRP also sustained the disallowance relying upon their decision in assessee's own case for assessment year 2013-14.

42. The learned counsel for the assessee submitted, while deciding identical issue in assessee's own case in assessment year 2006-07, the Tribunal has restored the issue back to the assessing officer. Thus, he submitted, similar decision has to be taken in the impugned assessment year.

43. The learned departmental representative agreed with the aforesaid submission of learned counsel for the assessee.

44. Having considered rival submissions, we find, while dealing with identical issue in assessee's own case in assessment year 2006-07, the Tribunal in ITA No.4818/Mum/2010 dated 01-04-2016 has restored the issue to the assessing officer with the following observations:-

> *"7. According, to this issue the matter of controversy is that whether, the learned CIT(A) has erred in upholding the disallowance of Rs.30,63,248/- represented the expenditure incurred by the Appellant in respect of reimbursement of property taxes to Precision Component(P) Ltd.(PCPL). It is argued by the assessee that in accordance with the letter dated 01.04.2001 to the PCPL, the assessee company was under obligation to pay that property tax and the said tax was paid. Therefore, the expenditure to the tune of Rs.30,63,2487- is required to be allowed. The learned A.O. recorded the findings that in view of the clause 4 of the agreement dated 01.04.2001 the liability was with the licensor i.e. PCPL and PCPL was under obligation to pay the tax. Therefore, this expenditure was not found to be justified and disallowed the same. There should not be any dispute that the issue relating to payment of rent is normally decided between the fund ford and tenant. Though the agreement has fastened the liability*

about payment of property tax upon the land lord, yet the fact remains that the assessee has reimbursed its property tax which was contrary to the term of license agreement. Under normal circumstances, such kind of violation of agreement does not happen. However, the assessee has drawn support from a letter claimed to have been signed by the assessee and the land lord, which states that the assessee here in should reimburse the property tax.

We notice that the monthly rent paid by the assessee was Rs.1,16,000/-. However, the property tax reimbursed by the assessee works out to Rs.30,63,248/-, which works out to about 26 months of rent. This proportion appears to be highly disproportionate and beyond human conduct and probabilities. A tenant, under normal circumstances would not agree to bear such a high cost. Hence there appears to be merit in view taken by tax authorities. However, we notice that they have taken adverse view without conducting any enquiry.

The learned A,R. contended the reimbursement of property tax partakes the character of rent only. There is merit in its said contention also. Hence, what is required to be seen is as to whether to aggregate amount of rent plus reimbursements compares well with the earlier years payment. If it does not compare well, then it is the duty of the assessee to justify the payment.

In view of the above, this issue required fresh examination at the end of Assessing Officer. Accordingly we set aside the order of learned CIT(A) on this issue and restore this issue to the file of Assessing Officer for fresh examination."

45. Facts being identical, respectfully following the aforesaid decision of the co-ordinate bench, we restore the issue to the assessing officer with similar direction. This ground is allowed, for statistical purpose.

46. In grounds 17 and 18, the assessee has challenged the disallowance of marketing and publicity expenses.

47. Briefly the facts are, in course of assessment proceedings, the assessing officer noticed that the assessee had claimed deduction of expenses incurred towards marketing and publicity. Noticing that similar deduction claimed by the assessee in assessment year 2013-14 was partly disallowed, the assessing officer proceeded to follow the same and disallowed an amount of Rs.2,91,62,406/-,

being 25% of the total expenditure claimed on account of marketing and publicity. The learned DRP also upheld the disallowance relying upon their earlier decision in assessee's own case.

48. The learned counsel for the assessee submitted, similar disallowance made in preceding assessment years has been allowed not only by the Tribunal, but also by the jurisdictional High Court. In this context, he drew our attention to the relevant orders of the Hon'ble High Court and Tribunal.

49. The learned departmental representative, though, agreed that the issue has been decided in favour of the assessee in the earlier assessment years; however, he relied upon the observations of learned DRP and assessing officer.

50. Having considered rival submission, we find that identical dispute was there between the assessee and the revenue in the preceding assessment years as well. In fact, both, the assessing officer and learned DRP have observed that this is a recurring issue which arose in case of Star Entertainment Media Pvt Ltd, now merged with the assessee company. As we find, in the latest order passed in case of Star Entertainment Media Pvt Ltd, for the assessment year 2013-14, the Tribunal in ITA No.5387/Mum/2017 dated 13-03-02019, following its earlier order in assessment year 2010-11, has allowed assessee's claim of marketing and publicity expenses in full. In fact, we have also noticed that in assessment years 1997-98, 1998-99, 19999-2000 and 2010-11, the Hon'ble High Court has also upheld assessee's claim of marketing and publicity expenses. For better clarity, we reproduce hereunder, the observations of the Tribunal while deciding revenue's appeal for assessment year 2013-14 in ITA No.5387/Mum/2017:-

> *"5. On appraisal of the above said finding, we noticed that the CIT(A) has deleted the addition on the basis of the decision of Hon'ble ITAT*

in the assessee's own case for the A.Y. 2010.11 in ITA o.1686/M/201 dated 29.04.2016. The relevant finding is hereby reproduced as under:-

"5.1 The brief facts in this regard as noted by the AO are that the assessee had incurred expenditure of Rs. 9,75 crores by way of marketing and publicity expenses and claimed them as deduction u/s 37(1) of the Act for promoting its channels viz. regional channels such as Star Pravah and Star Mazha. However, this promotion as per the AO inter alia resulted also into promotion of the slat brand which is owned by M/s. Star Ltd. to whom the assessee had paid brand royalty for using the star brand where as the royalty agreement did not required the assessee to incur such marketing and publicly expenditure which also benefited M/s. Star Ltd. Under these circumstances, the AO allowed only 75% of the said expenses holding that portion as relating to the assessee's business only was allowable, thereby disallowing the balance 25% of such expenses amounting to Rs.2,48 crores. In this connection, the AO placed reliance on the ruling of the Hon'ble Special Bench in the case of CIT Vs. LG Electrolics Pvt. Ltd. (1TA. No. 5140/Del/2011). The assessee on the other hand, relied on the Third Member decision of the Hon 'ble Mumbai Tribunal in the cases of ACIT Vs. Star India Pvt. Ltd. and ACIT Vs. NGC India Ltd. In these cases, subsequently, Hon 'ble Bombay High Court had dismissed the Revenue appeals.

5.2 Being aggrieved, the assessee filed objection before the DRP, where the disallowance made by the AO was directed to deleted with following observations: -

"The sole issue here is whether a partial disallowance of marketing and publicity expenditure is possible, since another party too is seen to benefit from such expenditure, with similarly of facts are now available. The AO has in fact discussed and acknowledged in his order the decisions in these two cases relied on by the assessee. He has stated that in the case of CIT v star India Pvt. Ltd. the hon'ble Bombay High Court had approved the Third Member decision of the Hon'ble Mumbai Tribunal vide its order in ITA. No. 165 of 2009 dated 24.03.2009 a copy of which has been placed on file the issue being before the Hon 'ble SC similarly in the case ACIT v NGC Network p. Ltd., the third Member decision 635/M/20IO copy placed on file of the Hon'ble Mumbai Tribunal had decision the matter in favour of the assessee. The revenue having filed an appeal being before the Hon'ble Bombay High Court. Incidentally, the Hon'ble Jurisdictional High Court has recently ruled in favour of the assessee in the then pending case of CTT v NGC Net work (India) p. Ltd. then pending 538 of 2012 dated 13.10.2014 copy pieced on record by invalidating the AO action of granting only a third of the advertisement expenditure as it had also benefited the principals of M/s. NGC Network (IndiaO P. Ltd. viz NGC Asia and Fox. In these circumstances, respectfully to following the decision of both the Star India and NGC Network the marketing and publicity expenditure is wholly allowed, notwithstanding the fact that it may have resulted in some benefit to M/s. Star Ltd. as well.

5.3 Before us, Ld.Department representative relied upon the order of the AO whereas Ld. Counsel of the assessee submitted that this issue has already been decided by the jurisdictional High Court in the favour of the assessee and therefore, the order of the Hon'ble High Court should be followed.

5.4 We have gone through the facts of the case and judgement relied upon by the DRP while deciding this issue. NO contrary judgment has been brought to ournotice by the other side Admittedly as per AO also the assessee had incurred impugned expenses primarily for the purpose of its business. If these expenses incidentally provided some benefits to some other entity also, then that itself would not make the said expenses as not related to business of the assesseeor not having been incurred during the course of or for the purpose expenses is that it should be incurred during the course of and for the purpose of business of the assessee, which is duly passed here, and beyond that nothing more is to be examined. If any expenses is to be examined strictly from this point of view as has been done by the AO, then we are afi-ais that many more expenses would become disallowable which is neither the intention nor the requirement of the law. It is noted by u.5 that Hon 'hie Bombay High Court in the case of NGC Networks in its order dated 13.10.2014 in ITA. No. 538 of 2012 has extensively discussed this issue and held that this kind of disallowance in not permissible under the law. Similarly view has been taken by Hon 'ble Bombay HighCourt in its other judgment in the case of CITvStar India ITA. No. 165, 282, 283 of 2009. Thus keeping in view facts of this case and respectfully following these judgments, we find that order of the DRP is in accordance with law and facts and is interference is called for therein and therefore, same is upheld. Ground raised by the revenue is dismissed."

On appraisal of the finding of the Hon'ble 1TAT we noticed that Hon'ble ITAT has also relied upon the decision of Bombay High Court in the case ***of CIT Vs. Star India P. Ltd. in ITA.*** *No.* ***165, 282 and 283 of 2009.*** *Since the CIT(A) has passed the order on the basis of the decision of the Hon'ble ITAT in the assessee's own case as well as on the basis of the decision of the Bombay High Court, therefore, we found no illegality and infirmity in the order passed by the CIT(A) in question, specifically, in the circumstances, when there is no distinguishable material on record and no law contrary to the law relied by the Ld. Representative of the assessee has been produced before us. Accordingly, we affirm the finding of the CIT(A) on this issue and dismissed the appeal of the revenue."*

51. Respectfully following the consistent view of the Hon'ble jurisdictional High Court and the Tribunal, we delete the disallowance. These grounds are allowed.

52. In ground 19 assessee has challenged part disallowance of software expenses.

53. Briefly the facts are, in course of assessment proceedings, the assessing officer noticed that the assessee has claimed software expenses of Rs.13,81,16,551/-. After calling for necessary details and seeking explanation of the assessee as to why such expenditure should not be held as capital expenditure, the assessing officer, following the decision of learned DRP in assessment year 2013-14 held, expenditure of Rs. 64,46,422/- out of the total expenditure claimed to be of capital nature and accordingly, allowed depreciation @60% while framing the draft assessment order. Against the draft assessment order, assessee raised objection before learned DRP. Following its decision in assessment year 2013-14, learned DRP upheld the decision of the assessing officer. However, the assessing officer was directed to verify the relevant facts and rectify the quantum of disallowance. Accordingly, in the final assessment order, the assessing officer restricted the disallowance to Rs.7,20,436/-.

54. The learned counsel for the assessee submitted, if the software expenditure is held as capital in nature like the earlier assessment year, the assessee would be eligible for depreciation. Thus, he sought a direction to the assessing officer.

55. The learned departmental representative relied upon the observations of the assessing officer and learned DRP.

56. We have considered rival submissions and perused materials on record. The simple claim of the assessee is for allowance of depreciation on the software expenses held as capital expenditure. In our view, if certain expenditure claimed by the assessee on account of purchase of software is held to be of capital nature,

depreciation at the appropriate rate has to be allowed. Accordingly, we direct the assessing officer to verify the relevant facts vis-à-vis assessee's claim and allow depreciation as per law. This ground is allowed subject to factual verification.

57. In grounds 20 and 21, assessee has raised the issue of short grant of TDS and advance-tax.

58. Having considered rival submissions, we direct the assessing officer to verify assessee's claim qua the facts on record and allow credit of TDS and advance-tax as per law.

59. In ground 22, the assessee has raised the issue of non grant of foreign tax credit.

60. After considering the submissions of the parties, we direct the assessing officer to verify assessee's claim in the context of facts and materials brought on record and allow foreign tax credit, if permissible in law.

61. In ground 23, the assessee has raised the issue of short grant of MAT credit.

62. Having considered rival submissions, we direct the assessing officer to verify assessee's claim factually and allow proper MAT credit.

63. Ground 24 being consequential and ground 25 being premature; do not require adjudication at this stage.

64. In the result, appeal is partly allowed.

Order pronounced on 25/11/2021.

Sd/- sd/-

(RAJESH KUMAR)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dt : 25/11/2021

Pavanan

Copy to :

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

/True copy/ By Order

Asstt. Registrar, ITAT, Mumbai