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

BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.948/Mum/2020 (A.Y: 2011-12)

ACIT, Circle -16(1) Room No. 439, 4th Floor, Aayakar Bhavan, MK Road, Mumbai – 400020.	Vs.	M/s. UTV Software Communications Ltd., 1st Floor, Bldg-14, Solitaire Corporate Park, Guru hargovind Marg, Chakala Andheri (E), Mumbai – 400 093
PAN/GIR No. : AAACE4122G		
Appellant	..	Respondent

CO. No.127/Mum/2021 (A.Y: 2011-12)
(in ITA No. 948/Mum/2020)

M/s. UTV Software Communications Ltd., 1st Floor, Bldg-14, Solitaire Corporate Park, Guru hargovind Marg, Chakala Andheri (E), Mumbai – 400093	Vs.	ACIT, Circle -16(1) Room No. 439, 4th Floor, Aayakar Bhavan, MK Road, Mumbai – 400020.
Respondent		Appellant

Appellant/Respondent by :	Shri Sambit Mishra. DR
Respondent/Appellant by :	Shri Ajit Jain & Shri Siddesh Chaugule . AR

Date of Hearing	02.11.2021
Date of Pronouncement	15.11.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The Revenue has filed the appeal against the order of the CIT(A)-58, Mumbai, passed u/s 143(3) r.w.s 144C(3) of the Income Tax Act, 1961 and the assessee has filed the cross objections.

For the sake of convenience, we shall take up revenue appeal in ITA No. 948/Mum/2020 for A.Y.2011-12 as lead case and the facts narrated therein. The revenue has raised the following grounds of appeal:

1. On the issue of disallowance u/s 14A r.w. Rule 8D of Rs. 6,42,82,422/-

1 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A of the I.T. Act, 1961 without considering the CBDT Circular No. 5 of 2014 dated 11.02.2014 wherein it was clearly stated that the legislative intention is to allow only that expenditure which is relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance irrespective of the fact whether such income has been earned during the financial-year or not?

1.2 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A of the I.T. Act, 1961 by ignoring the fact that once a particular income itself is not to be included in the total income is exempted from tax, there is no reasonable basis for giving benefit of deduction of expenditure incurred towards earning such income?

1.3 Whether on the facts and circumstances of the case and in

law, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A of the I.T. Act, 1961 and thereby not appreciating that Section 14A does not use the word "income of the year" but "income under the Act" which clearly indicates that for invoking provisions of Section 14A, it is not necessary that the assessee should have earned exempt income during the financial year under consideration ?

1.4 Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A of the I.T. Act, 1961 without considering that in cases involving deduction u/s. 57(iii) of the I.T. Act, it was held by the Courts that actual earning of the income is not sine qua non for deciding the deduction of expenditure laid out or expended wholly or exclusively for the purpose of earning the income. Thus, taking the same logic forward, where investment has been made in shares, which did not yield any dividend in the year under consideration, the expenditure incurred for earning the income is deductible notwithstanding the fact that no such income has been earned?.

1.5 Whether the Tribunal is correct in law in holding that disallowance under section 14A of the Income Tax Act 1961 cannot be imported into the provisions of Section 1 15JB of the said Act in view of clause (f) to Explanation (1) to the said Section.

2. The appellant prays that the order of Ld. CIT(A) on the above grounds be set-aside and that of the AO be restored.
3. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.

2. The Brief facts of the case are that, the assessee company is engaged in the business of production of

television programs and movies, Air time sales and production and distribution of films. The assesse has filed the return of income for the A.Y.2011-12 disclosing a total income of Rs.17,40,16,163/- and the Book profit computed u/s 115JB of the Act of Rs. 1,34,44,97,086/-.The return of income was accompanied with the Tax Audit report u/s 44AB of the Act in form No. 3CA and 3CD and the financial statements. The return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and the notice u/sec143 (2) and 142(1) of the Act are issued. In compliance the Ld.AR of the assessee appeared from time to time and furnished the details. On perusal of the financial statements, the A.O. found that the assessee has disclosed loss from business and income from short term capital gains. The assessee company has made investments in shares and shall receive exempt income. The A.O. is of the opinion that the disallowance u/s 14A r.w.r 8D shall be attracted.

3. Whereas the assessee has filed the explanations on 28.01.2015 mentioning that the assessee has own

funds to the extent of Rs.1,128,034/- crores and the investments made by the company are Rs.638.24 crores and no expenses are incurred in respect of investment portfolio. The investments in the foreign company do not yield or earn any income which is taxable. Similarly in respect of other investments, no exempt income is earned and the provisions of Sec14A r.w.r 8D of I T Rules are not applicable and also no expenditure is incurred or debited in the profit & loss account The Assessing Officer (A.O.) dealt on the provisions of Sec. 14A and Rule 8D(2) and observed that the assessee has a mixed funding for investments and the assessee could not trace out the exact flow of funds. The A.O applied the provisions of Sec14A r.w.r 8D(2)(ii) and (iii) and worked out the disallowance of Rs. 6,42,82,422/-.

4. The A.O. found that the assessee company has international transactions exceeding Rs.15 Crores as per Form.no.3CEB flied by the assessee u/s 92CE of the Act. The case was referred to the Transfer Pricing Officer (TPO) for determination of Arms Length Price (ALP). The TPO has passed an order u/s 92CA(3) of

the Act on 07.01.2014 with the Transfer Pricing Adjustment of Rs.16,62,89,208/-. The A.O. on other issues (i) the assessee has made short deduction of TDS/non deduction of TDS on various expenses and has not complied with the provisions of chapter XVIIB of the Act. The assessee has filed the explanations on short deduction of TDS in respect of 4 parties. But the A.O. has observed that the provisions of Section 40(a)(ia) of the Act are attracted. (ii) the A.O made disallowance of expenses which are made in cash. The assessee has submitted the details of various cash expenses and the vouchers.

5. The A.O considering the facts of consistency maintained in the earlier years has restricted the disallowance @ 10% on total expenses which worked out to Rs.7,53,441/-.(iii) the A.O. find that an amount of Rs. 2,18,67,378/- in respect of inventory written off disallowed as premature claim for A.Y 2002-03.The assessee has explained the reasons vide letter dated 28.01.2015 referred at Para 9.2 of the assessment order. The A.O dealt on the provisions of Sec.145 of the Act and observed that it is not a allowable

business expenditure and made addition to total income.(iv) the A.O. found the discrepancy in the actual receipts and the disclosure in form.no.26AS with respect to the 4 parties and the assessee could not be reconcile the difference, therefore the A.O. has made an addition of Rs.1,08,40,280/-. Finally the A.O. has assessed the total income of Rs.Nil after setting off of the brought forward loss of earlier years. The A.O. has determined the Book profit u/s 115JB of Act with disallowance u/sec14A of the Act and provision for Doubtful Debts which worked out to Rs. 1,40,87,79,507/- and passed the final assessment order u/s 143(3) r.w.s 144C(3) of the Act on 29.04.2015.

6. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings, the CIT(A) considered the grounds of appeal, findings of the A.O and the submissions of the assessee. The CIT(A) has dealt on the facts & law in respect of disallowance made u/s 14A r.w.r 8D(2) of I T rules, the provisions of section 115JB of the Act and the transfer pricing issue. On the disputed issue with

respect to disallowance u/s 14A r.w.r 8D(2)(ii) and 8D(2)(iii), the CIT(A) find that the assessee company has no exempt income earned during year from the investments and no disallowance will be attracted. Accordingly, the CIT(A) relied on the Hon'ble High Court decisions and Coordinate Bench of the Tribunal decisions and observed that the assessee company has made investments, on which it is eligible to earn exempt income but on reference to the schedule 16 of the annual report there is no dividend income from the investments earned but the assessee has earned profit on sale of investments. The CIT(A) relied on the decision of jurisdictional Hon'ble High Court in the case of CIT Vs HDFC Bank Ltd (2014) 366 ITR 505 (Bom) and disposed off the ground of appeal.Whereas, in respect of computation of Book profit u/sec 115JB of the Act, the CIT(A) relied on the decision of Special Bench M/s Vireet Investment Pvt Ltd Vs ACIT and directed the A.O. not to make adjustment on disallowance U/sec14A of the Act. Whereas, the CIT(A) in other grounds of appeal has granted partial relief and partly allowed the assessee's appeal. Aggrieved

by the CIT(A) order, the revenue has filed an appeal with the Honble Tribunal.

7. At the time of hearing, the Ld. DR submitted that the CIT(A) erred in directing the A.O. not to apply the provisions of section 14A r.w.r 8D(2) of the I T Rules where there is no exempt income earned and further CIT(A) erred in directing the A.O. to exclude sec14A disallowance in computation of Book Profit u/sec115 JB of the Act. The Ld. DR supported the order of the A.O. on the disputed issue and judicial decisions and prayed for allowing the revenue appeal.

8. Contra, the Ld. AR submitted that the CIT(A) has correctly directed the A.O. on disallowance in respect of no exempt income earned based on the judicial decisions. The CIT(A) has dealt on the provisions of law and the applicability of disallowance u/s 14A r.w.r 8D(2) when there is no dividend income is earned/ received. Further the CIT(A) has directed to A.O. to exclude disallowance u/sec 14A of the Act in determining Book Profit U/sec115JB of the Act relaying on special Bench decision. The Ld.AR supported the CIT(A) order on disputed issues and

substantiated the submissions with paper book and judicial decisions.

9. We heard the rival submissions and perused the material on record. Prima-facie, the Ld .DR contentions are in respect of disallowance u/s 14A r.w.r 8D(2)(ii) & (iii) of the I T Rules were the A.O has computed the disallowance though there is no exempted income received but the CIT(A) has erred in directing the deletion of disallowance and exclusion for computation of Book Profit U/sec115 JB of the Act. The Ld. AR submitted that no exempted income received/earned by the assessee during the year and referred to the financial statements and annual report. The Ld. AR demonstrated the order giving effect (OGE) by CIT(A) at page 30 to 41 of the paper book. The Ld. AR vehemently supported his arguments relying on the decision of the Honble supreme court, Jurisdictional Honble High Court and the coordinate bench of Tribunal decisions in assessee's own case for the A.Y 2009-10 and A.Y. 2010-11. At this juncture, we consider it appropriate to refer to the

observations of the CIT(A) at page 2 Para 6 to 7 of the order as under:

> *"6. In written submission, para 2.1 appellant stated that no exempt income was earned from investment and hence no disallowance can be made. This is a settled view in view of decision in CIT Vs. Chettinad Logistics Pvt ltd (2017) 80 Taxmann.com 221(Mad) on which SLP was dismissed by Hon. Supreme Court. This decision is followed by Hon. ITAT and includes ACIT 9(3)(2), Mumbai Vs. M/s. & Jony in ITA 1892 & 1893/Mum/2017 dated 21.08.2018.*
>
> *7. The assessment order does not deal with absence / presence of exempt income. The opening sentence starts with assessee company has investment on which investment on which it is liable to earn exempt income. Schedule 16 of Annual report reveal that there is no dividend income but there is profit on sale of investment. Since appellant has made an empathetic stance that no exempt income is earned AO is directed to verify the fact and if no exempt income is earned, then delete addition. In case verification turns negative, no disallowance u/r 8D(2)(ii) is to be made following decision in CIT Vs. HDFC Bank Ltd (2014) 366 ITR 505 (Bom) and under rule 8D2(iii), it shall not exceed exempt income, with this direction the ground is disposed of No order prejudicial to assessee should be passed without getting opportunity of being heard. The ground is so decided."*

10. Further, we find that in assessee's own case for the A.Y 2010-11,the Coordinate Bench of the Tribunal

in ITA.no.6292/Mum/2019A.Y2010-11.dtd31-08-2021 has observed at page 4 Para 8 & 9 as under:

> *8. Having considered the rival submissions and having perused the material on record in the light of the decisions relied upon, before us, both the learned Counsel appearing for the parties agreed that this issue is now settled by the decision of the Tribunal, Mumbai Bench, rendered in assessee's own case for the assessment year 2009–10 in UTV Software Communications Ltd. v/s ACIT, ITA no.1258/Mum./ 2015, order dated 11th December 2018, wherein the Tribunal decided the issue in favour of the assessee by observing as follows:–*
>
> *"6. After hearing both the sides, we have gone through the assessment order and noted that the AO has simply invoked the provisions of section 14A of the Act read with Rule 8D(2)(ii). Even there is no whisper that how the administrative expenses are linked to these exempt incomes. We find that this issue is squarely covered in favour of assessee and against the Revenue by the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra), wherein Supreme Court held as under: -*
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> *"41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the AO."*
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> *7. Further, we find that the assessee's own funds are more than the investment as explained above in Para 4 of this*

order. We have gone through the entire facts regarding available of funds and noticed that the presumptions as held by Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom) is in favour of assessee because the Revenue could not establish any nexus with the expenses claimed by assessee vis-àvis exempt income. In the absence of the same, the presumptions in favour of assessee and hence, we delete the addition. We also delete the addition on the issue of satisfaction. Once, the addition is deleted on the issue of satisfaction, nothing will remain even on administrative expenses. This issue of assessee's appeal is allowed."

9. Since the issue for our consideration is covered by the aforesaid decision of the Tribunal in assessee's own case cited supra, consistent with the view taken therein, we do not find any cogent reason to disturb the order of the learned CIT(A) on this issue which is hereby upheld. Grounds no.1 to 1.5, are thus dismissed.

11. We find the Hon'ble Supreme Court in the case of CIT Vs. Chettinad Logistics Pvt ltd, [2018] 95 taxmann.com 250 (SC) has held as under:

"Sec. 14A, of the Act read with rule 8D of the IT Rules – expenditure incurred in relation to income not includible in total income (General Principle) – Assessment Year 2011-12 – High court by impugned order held that Sec 14A can only be triggered, if, assessee seeks to square off expenditure against income which does not form part of total income under Act; rule 8D only provides for a method to determine amount of expenditure incurred in relation to income, which does not form part of total income of assessee and it cannot go beyond what is provides in section 14A – It further held that where no exempt income i.e dividend, was earned in relevant assessment year by

assessee, section 14A could not be invoked – whether SLP against said impugned order was to be dismissed – Held, yes [para 1] [in favour of the assessee]"

12. The Ld.DR could not controvert the findings of the CIT(A) with any new cogent material or information. We find that the CIT(A) has dealt on the provisions of law, judicial decisions and passed a reasoned and logical order in directing the A.O. to delete the addition as there is no dividend income is earned during the year and in respect of computation of Book Profits U/sec115JB of the Act, the CIT(A) has relied on special Bench decision of M/s Vireet Investments Pvt Ltd Vs ACIT (ITA No.502/del/2012) and directed the A.O. to exclude disallowance U/sec14A of the Act in determination of book profit. The Ld.AR substantiated the submissions with the decisions of Hon'ble Supreme Court, Hon'ble High Court and Tribunal decisions. Accordingly, we do not find any infirmity in the order of the CIT(A) on these disputed issues and uphold the same and dismiss the grounds of appeal of the revenue.

13. In the result, the appeal filed by the revenue is dismissed.

Cross Objection No. 127/Mum/2021

14. The assessee has raised the fallowing cross objections:

> *"Cross objection No. 1: Relief on Transfer Pricing adjustment of INR 12,80,91,108 in respect of interest on share application money basis Tribunal order in Respondent's own case for the A.Y 2010-11.*
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> *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) missed to adjudicate on the ground raised by the appellant in respect of erroneous treatment of share application money as temporary funding by the Ld. TPO and the Ld. AO thereby erroneously making an addition of 14% interest on such share application money.*
>
> *The respondent prays that the respondent be provided a relief on transfer pricing adjustment of 14% on share application money by relying on the respondents own case for Assessment Year 2010-11 [ITA No. 6292/Mum/2019].*
>
> *The Respondent craves leave to add to or alter, by deletion, substitution, modification or otherwise or amend or withdraw the cross objections herein and to submit such statements, documents and paper as may be considered necessary either before or during the hearing of the appeal"*

15. At the time of hearing, the Ld.AR submitted that the CIT(A) has not considered/ gave findings on the addition of 14% interest on share application money. The assessee has filed the appeal against the CIT(A) appeal but there was no reference on this issue. The Ld.AR has relied on the Hon'ble Tribunal decision for the A.Y 2010-11 and prayed for the similar directions.

16. Contra, the Ld.DR accepted the facts in respect of addition and the assesses own case for earlier year.

17. At this stage, we consider it appropriate to refer to the observations of the Hon'ble Tribunal on this particular disputed issue in ITA No. 6292/Mum/2019. Dated 31-08-2021 A.Y.2010-11 at page 8 Para 17 to 23 read as under:

> *17. The issue raised in grounds no.3 to 3.8, relates to charging of interest on share application money.*
>
> *18. The Transfer Pricing Officer held that since the shares are not allotted within a reasonable period, the share application money is in the nature of temporary funding till the allotment is made. The Transfer Pricing Officer proposed interest rate @ 14% and calculated the adjustment of ` 3,47,57,513. The Assessing Officer followed the directions of the Transfer Pricing Officer.*
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> *19. The learned CIT(A) held that the transfer pricing adjustment cannot be made on such capital account*

transactions in view of the decision of the Hon'ble Jurisdictional High Court in Vodafone India Services Pvt. Ltd. v/s Union Of India, ITA no.871 of 2014, judgment dated 10th October 2014.

20. The learned Departmental Representative relied upon the order of the Transfer Pricing Officer and the Assessing Officer.

21. The learned Counsel for the assessee while supporting the observations of the learned CIT(A) relied upon the following decisions:–

i) ACIT v/s Reliance Life Science Pvt. Ltd., ITA no.4957 & 6434/ Mum./2018, order dated 16.02.2021;

ii) PCIT v/s Sterling Oil Resources Ltd., ITA no.341 of 2017, order dated 01.07.2019;

iii) M/s. Allcargo Global Logistics Ltd. v/s ACIT, ITA no.4909/ Mum./2012, order dated 11.06.2014;

iv) Voltas Ltd. v/s ACIT, ITA no.6612/Mum./2018, etc., order dated 30.06.2020; and

v) PCIT v/s Concentrix Services India P. Ltd., ITA no.303 of 2016, order dated 04.09.2018.

22. We have considered the rival submissions and perused the material on record in the light of the decisions relied upon. We find that the issue for our adjudication is squarely covered by the decision of the Hon'ble Jurisdictional High Court in Vodafone India Service Pvt. Ltd. (supra), wherein identical issue has been decided in favour of the assessee and against the Revenue. For better appreciation of facts, we reproduced the relevant findings of the Hon'ble Jurisdictional High Court as under:–

"Findings:

43. It was contended by the revenue that income becomes taxable no sooner it accrues or arises or when it is deemed to accrue or arise and not only when it was received. It is submitted that even though the Petitioner did not receive the

ALP value/consideration for the issue of its shares to its holding company, the difference between the ALP and the contract price is an income, as it arises even if not received and the same must be subjected to tax. There can be no dispute with the proposition that income under the Act is taxable when it accrues or arises or is received or when it is deemed to accrue, arise or received. The charge-ability to tax is when right to receive an income becomes vested in the assessee. However, the issue under consideration is different viz: whether the amount said to accrue, arise or receive is at all income. The issue of shares to the holding company is a capital account transaction, therefore, has nothing to do with income. We, thus do not find substance in the above submission.

44. It was also contended that Chapter X of the Act is a complete code by itself and not merely a machinery provision to compute the ALP. It is a hidden benefit of the transaction which is being charged to tax and the charging Section is inherent in Chapter X of the Act. It is well settled position in law that a charge to tax must be found specifically mentioned in the Act. In the absence of there being a charging Section in Chapter X of the Act, it is not possible to read a charging provision into Chapter X of the Act. We can do no better than refer to the following observations of the five Member Bench of the Apex Court in CIT v. Vatika Township (P.) Ltd. [2011] 49 taxmann.com 249:—

'Tax laws are clearly in derogation of personal rights and property interests and are, therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax. In Billings v. U. S, the Supreme Court clearly acknowledged this basic and long-standing rule of statutory construction:

Tax Statutes .... should be construed, and, if any ambiguity be found to exist, it must be resolved in favour of the citizen. Eidman v. Martinez 184 U.S. 578, 583; ... Again in Unites

States v. Merriam, the Supreme Court clearly stated at pages 187-88:

"On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed, rather than with legal forms or expressions. But, in statutes levying taxes, the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favour of the taxpayer. Gould v. Gould 245 U.S. 151, 153." As Lord Cairns said many years ago in Partington v. AttorneyGeneral:

As I understand the principle of all fiscal legislation it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.'

In this case, we are not in the zone of uncertainty referred to above. There is no charge express or implied, in letter or in spirit to tax issue of shares at a premium as income.

45. Chapter X of the Act is a machinery provision to arrive at the ALP of a transaction between AEs. The substantive charging provisions are found in Sections 4, 5, 15 (Salaries), 22 (Income from house property), 28 (Profits and gains of business), 45 (Capital gain) and 56 (Income from other Sources). Even Income arising from International Transaction between A.E. must satisfy the test of Income under the Act and must find its home in one of the above heads i.e. charging provisions. This the revenue has not been able to show.

46. It was next submitted that the machinery Section of the Act cannot be read de-hors charging Section. The Act has to be read as an integrated whole. On the aforesaid submission

also, there can be no dispute. However, as observed by the Supreme Court in CIT v. B.C. Srinivasa Shetti [1981] 128 ITR 294/5 taxmann. com 1, "there is a qualitative difference between the charging provisions and computation provisions and ordinarily the operation of the charging provisions cannot be affected by the construction of computation provisions." In the present case, there is no charging provision to tax capital account transaction in respect of issue of shares at a premium. Computation provisions cannot replace/ substitute the charging provisions. In fact, in B.C. Srinivasa Shetti (supra), there was charging provision but the computation provision failed and in such a case the Court held that the transaction cannot be brought to tax. The present facts are on a higher pedestal as there is no charging provision to tax issue of shares at premium to a non-resident, then the occasion to invoke the computation provisions does not arise. We, therefore, find no substance in the aforesaid submission made on behalf of the Revenue."

23. In view of the above, we are of the opinion that share application money being capital account transaction is outside the purview of section 92 of the Act and the transfer pricing adjustment cannot be made on capital account transactions as per the decision of the Hon'ble Jurisdictional High Court in Vodafone India Service Pvt. Ltd. (supra). Since the issue for our adjudication is squarely covered by the aforesaid decision of the Hon'ble Jurisdictional High Court cited supra, wherein the issue has been decided in favour of the assessee and against the Revenue for the reasons stated therein, respectfully following the same, we do not find any reason much less cogent reason warranting interference in the order of the learned CIT(A) in granting relief to the assessee. Accordingly, upholding the order of the learned CIT(A), grounds no.3 to 3.8, raised by the Revenue is dismissed.

18. We are of the considered view that the disputed matter needs to be adjudicated on merits afresh considering the facts and judicial decisions. Accordingly, to meet the ends of justice, we restore the disputed issue to the file of the CIT(A) to adjudicate fresh on merits. It is nevertheless to mention that the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of appeal. Accordingly, we allow the cross objections for statistical purposes.

19. In the result, the appeal filed by the revenue is dismissed and the cross objections filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 15.11.2021

Sd/-	Sd/-
(S RIFAUR RAHMAN)	(PAVAN KUMAR GADALE)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated 15.11.2021

KRK, PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai