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

BEFORE SHRI S.RIFAUR RAHMAN (ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)

I.T.A No. 6418/Mum/2016
(Assessment year : 2010-11)

TATA SONS LIMITED 24, Bombay House, Homi Modi Street, Fort, Mumbai-400 001 PAN : AAACT4060A	vs	Dy.Commissioner of Income-tax Cir.2(3)(1), Mumbai
APPELLANT		**RESPONDENT**

I.T.A No. 6402/Mum/2016
(Assessment year : 2010-11)

ACIT, Circle 2(3)(1), Mumbai	vs	TATA SONS LIMITED 24, Bombay House, Homi Modi Street, Fort, Mumbai-400 001 PAN : AAACT4060A
APPELLANT		**RESPONDENT**

Assessee represented by	Smt. Aarti Vissanji
Revenue represented by	Shri Jayant Jhaveri (DR)

Date of hearing	27-10-2021
Date of pronouncement	21-01-2022

O R D E R

Per S. Rifaur Rahman (AM)

These are cross appeals filed by the assessee and the revenue. They pertain to assessment year 2010-11 and arise out of order of the Commissioner of Income-tax (Appeals)-58, Mumbai.

I.T.A No. 6418/Mum/2016 (Assessee's appeal)

2. The following are the grounds raised by the assessee:

1) Transfer Pricing Adjustment - Guarantee Fees:
i) The CIT(A) erred in not accepting that the guarantee given by the appellant on behalf of a wholly owned subsidiary, Tata Ltd. UK, is not an international transaction, as there is no cost and no bearing on profits, income, losses or assets of the Appellant.
ii) The CIT(A) erred in not accepting the fact that providing corporate guarantee is a shareholder activity and therefore it is not an international transaction.
iii) Without prejudice, the CIT(A) erred in confirming the guarantee fee at 0.822% p.a. instead of 0.25% p.a. without appreciating the facts and submissions made by the appellant.
iv) Without prejudice, the CIT(A) further erred in splitting the benefit of interest saved methodology in the ratio of 60:40 in favour of the appellant (i.e. guarantor), instead of the ratio of 50:50 as considered by the appellant.
v) Without prejudice, the CIT(A) erred in not restricting the guarantee commission fee rate in the range of 0.20% to 0.50% as per the recent jurisdictional decisions.
2) Income from House Property:
The CIT(A) erred in not allowing deduction of the expenses incurred towards salaries, security charges and electricity, which were specifically incurred by the appellant towards it's obligations as the landlord, for the benefit / enjoyment by the tenants/users of the house property.
3) Interest on Income Tax Refunds:
The CIT(A) erred in not allowing the set-off of interest charged on Income Tax demands against interest granted on Income Tax refunds, during the same year.
4) Disallowance of Interest & Other Expenses U/S. 14A & Sec.37 & 115JB:
i) The CIT(A) erred whilst computing the disallowance under Rule 8D(2)(ii) and failing to restrict the disallowance of interest, by not considering average value of only those investments, in respect of which exempt dividend income is received during the year.

ii) The CIT(A) erred whilst computing the disallowance under Rule 8D(2)(iii) and failing to restrict the disallowance of expenditure, by not considering average value of only those investments, in respect of which exempt dividend income is received during the year.
\ iii) The CIT(A) further erred in not allocating the interest expense incurred on borrowings, deployed for earning interest income and further erred thereafter in not allocating the said net interest between dividend income and Brand income.
iv) The CIT(A) further erred in not allowing capitalization of the amount of interest and other expenses disallowed and to enhance the cost of investments."

3. The facts in brief are, assessee is the Principal holding company and promoter of several Tata group companies which operate in diverse business sectors ranging from Steel to Information Technology. The controlling stakes in these promoted companies are held as Long Term Investments. The assessee filed its return of income electronically on 14-10-2010 declaring current year income at NIL under normal provisions and Rs.394,13,71,567/- under section 115JB of the Income-tax Act, 1961 which was processed u/s 143(1) of the Income-tax Act, 1961. As the assessee, during the year entered into international transactions, the assessing officer referred the matter to the TPO under section 92CA(1) of the Act. On receipt of the order u/s 92CA(3) from the Transfer Pricing Officer, a draft assessment order us 144C(1) was passed by the assessing officer. In response, assessee, vide letter dated 25/04/2013 has submitted that it preferred to file appeal before CIT(A) and has requested to pass final order. Accordingly, the assessing officer passed order u/s 143(3) r.w.s. 144C(3) of the Act on 13/05/2013 determining total income of the assessee at Rs.470,87,72,511/- under the normal provisions and book profit at Rs.678,98,71,567/-.

4. Grounds 1(i) & 1(ii) pertain to the claim that the Corporate guarantee is not an international transaction. These grounds have not been pressed at the bar; hence, dismissed.

5. Grounds 1(iii), 1(iv) & 1(v) pertain to provision of guarantee given by the assessee to its AE. The brief facts are that the assessee entered into international transaction with its AE, Tata Limited, UK, which is a wholly owned subsidiary, with reference to refinancing arrangement of an existing USD 100 million facility dated 1" October, 2008. As per the form 3CEB submitted, the assessee has charged guarantee fee of 0.25% on the guaranteed amount. In its TP study, the assessee has computed average of USS yield curves for BBB-, BB+ and BB rated bonds with a tenor of I year which was 5.87%. It arrived at a cost to company by adding average 3 month Libor to the cost of funds to the company which was found to be 5.75%. The difference of 11.57 bps or 0.1157% was treated as benefit availed, on account of the guarantee given by the assessee. Since the assessee had charged 0.25% as guarantee fee, the transaction was treated as being at arm's length. The AO / TPO rejected the working made by the assessee u/s 92C(3) of the Act as being inaccurate. He proceeded to attribute a credit rating of AAA to the guarantor, a rating of AA to the guaranteed, adopted interest rate for 5 year unsecured bonds as basis for computing benefit to the guaranteed amount and arrived at a differential of 7.33% which had accrued to the AE. He allowed both the parties to share this benefit in the ratio of 80:20 and accordingly attributed a fee of 5.80% liable to be charged on the guarantee provided by the assessee, thus recommending an adjustment of Rs. 27,83,07,446/-. The assessee made detailed submissions with reference to its claim that the transaction does not represent an international transaction, specially pointing out the judgment In the case of Micro Inks Limited, 1TA 2873/Ahd/2010 wherein it has been held that in respect of guarantees to subsidiaries, the risk is entrepreneurial and it is not possible to decide the arm's length price of a transaction which cannot take place in arm's

length situation and that the guarantee by banks and by holding companies cannot be said to belong to the same economic genus. It has claimed that subsidiaries are often formed in overseas market to expand its own business geographically. Hence, for the purpose of developing its international activities, TSL had provided corporate guarantee to Tata Ltd UK, a company incorporated a hundred years ago. The assessing officer referred the matter to the Transfer Pricing Officer (hereafter, TPO). The transfer pricing officer proposed an adjustment of Rs.27.83 crores. On appeal, the Ld.CIT(A), held the rate of 0.822% as reasonable guarantee fee.

6. Aggrieved, the assessee filed further appeal before the Tribunal. The learned counsel for the assessee submitted that the issue stands in favour of the assessee by the decision of the Tribunal in assessee's own case for assessment year 2009-10 wherein the Tribunal following the judgment of Hon'ble jurisdictional High Court in a number of cases restricted the arm's length price (ALP) at 0.5%. The learned departmental representative also fairly agreed with the submission.

7. Considered the submissions of the parties. We find that for the assessment year 2009-10, the Tribunal, on finding that the jurisdictional High Court in a number of occasions has held the Guarantee Fee to be at 0.5%, directed the assessing officer to adopt the rate of 0.5% as guarantee fee. Consistent with the earlier decision of the Tribunal in ITA No.4630 & 4637/Mum/2016, vide order dated 07/08/2020, we direct the assessing officer to follow the earlier decision of the Tribunal in assessee's own case for assessment year 2009-10. This ground is partly allowed.

8. Ground 2 pertains to computation of income from house property. The case of the assessee is that expenditure incurred towards additional obligations in respect of which service charges are collected to be allowed as deduction.

9. We have heard the rival submissions and perused the materials available on record. We find that the assessee, while computing income from house property, had reduced Rs.32,78,795/-from the annual value in addition to the other statutory deduction including 30% deduction allowed towards repairs u/s 10. The assessee submitted that these expenditures represent maintenance facilities like salaries, security and electricity of house property. According to the Assessing Officer, the assessee is entitled only for deduction for municipal tax paid and flat deduction @30% for repairs under the head "Income from house property" and no other deduction shall be permissible under the Act. The assessee had received Rs.1,43,92,620/- towards amenities and service charges which were duly offered to tax as rent under the head "Income from house property" against which, this expenditure of Rs.32,68,795/- was deducted by the assessee under the head "Income from house property". It is not in dispute that assessee had duly offered rental income as well as amounts received towards amenities and service charges under the head "Income from house property". We find that this issue stands covered in favour of the assessee by the decision of the Tribunal in assessee's own case for assessment year 2009-10 in ITA No.4630/Mum/2016 (order dated 07/08/2020) wherein the Tribunal following the decision of the Tribunal in group company's case in Ewart Investments Ltd vs DCIT in ITA No.3623/Mum/2017 dated 28/02/2019 for A.Y. 2012-13, restored the issue to the file of the Assessing Officer and directed him to decide the issue on the same lines as directed by the Tribunal in Ewart Investments Ltd vs DCIT in ITA

No.3623/Mum/2017 dated 28/02/2019. Consistent with the earlier decision for A.Y.2009-10, we direct the assessing officer to decide the issue afresh in line with the directions of the Tribunal in Ewart Investments Ltd vs DCIT in ITA No.3623/Mum/2017 dated 28/02/2019. Accordingly, this ground is allowed, for statistical purpose.

11. Ground 3 pertains to set off of interest charged on income-tax against interest granted on refunds, during the year.

12. Upon consideration of the rival submissions, we find that the issue stands covered in favour of the assessee by the decision of the Tribunal for A.Y. 2009-10. We notice that the Tribunal, by following the decision for assessment year 2008-09 in assessee's own case in ITA No.3191/Mum/2013 dated 06/11/2019 has decided the issue in favour of the assessee. For assessment year 2008-09, the Tribunal decided the issue in the following manner:-

> "4.1.We have heard rival submissions and perused the materials available on record. This issue is already covered positively in favour the assessee by the order of this tribunal in assessee's own case for A.Y.2008-09 in ITA No.3192/Mum/2013 dated 06/11/2019 wherein it was held as under:-
>
> ***"2. Set off of Interest on Income Tax Refund with Interest charged on income tax demands***
>
> ***Ground No.1 of Assessee Appeal***
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> *The brief facts of this issue is that the assessee received interest from income tax department to the tune of Rs 43.81 crores and also paid interest to income tax department on its tax demands to the tune of Rs 6.57 crores. The assessee sought to set off the interest paid on income tax demands with the interest received from income tax department in the return of income. The ld AO disallowed the interest paid on income tax demands to the tune of Rs 6.57 crores as the same is not allowable in terms of section 40(a)(ii) of the Act and accordingly taxed the gross interest received from income tax department of Rs 43.81 crores under*

the head income from other sources. The ld CITA by placing reliance on the order passed by his predecessor for the Asst Years 2007-08 and 2005-06 in assessee's own case upheld the action of the ld AO. The ld CITA further directed the ld AO to verify the assessment records of Asst Year 1990-91, 2003-04 and 2005-06 in order to ensure that there is no double addition. Aggrieved, the assessee is in appeal before us.

2.1. We have heard the rival submissions and perused the materials available on record including the judicial pronouncements relied upon by both the sides at the time of hearing. We find that the ld AR placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of DIT (International Taxation) vs Bank of America NT and SA in Income Tax Appeal No. 177 of 2012 dated 3.7.2014 wherein the Hon'ble High Court approved the action of this tribunal had held as under:-

"3 Even with regard to the question No.2 we do not find that it is a substantial question of law. The Tribunal found that the Assessee Bank received interest on refund of taxes paid. It also paid interest on the taxes which were payable. The Assessee sought to set off the interest paid against the interest received and offered the net interest received to tax. We do not see that such findings of the Tribunal are vitiated in law. All that the Tribunal has done earlier and now is that in the case of this Assessee simply because the exercise carried out by it does not result in loss of revenue and there could not be any prohibition for the same, allowed it. That is how the Assessing Officer's order is set aside. We do not see how any larger controversy or question arises for our consideration.

Mr.Pinto would refer to Section 57 of the Income Tax Act, 1961 in that regard and submit that this course would be adopted by other Assessees as well and in that event the order passed by this Court would come in the way of the Revenue in investigating and probing such exercise by other Assessees.

4 We do not see how this order can be cited _as .precedent inasmuch as the Assessee before the Tribunal and before us paid interest to the Income Tax Department amounting to Rs.10,26,906/-. The Assessee claimed that this was business expenditure and this should have been allowed. The

Assessee has received the interest of Rs.1,07,57,930/-. It was submitted that the amount of interest paid by the Assessee should have been allowed to be set off against the interest deposited with the Department and taxed in the hands of the Assessee. The argument was that the interest paid to and received from is the same party i.e. Government of India and therefore, both transactions should be taken together.

5. We do not find that the Tribunal has, in permitting this exercise, in any way violated any of the provisions of the Income Tax Act, 1961. It was a peculiar situation between the Assessee and the Department. The Tribunal has followed the similar exercise in the case of very Assessee on the prior occasion as well. In such circumstances we are of the opinion that the second question also does not raise any substantial question of law."

2.2. Respectfully following the said decision, the ground no. 1 raised by the assessee is allowed."

4.2.Respectfully following the said decision, the ground No.3 raised by the assessee is allowed."

Consistent with the earlier decision of the Tribunal, we allow the ground raised by the assessee.

13. Grounds 4(i) & 4(ii) pertain to disallowance of interest and other expenses u/s 14A & 115JB. The case of the assessee is that disallowance under rule 8D(2)(ii) should be computed by considering the average value of those investments on which exempt dividend income is receive during the year.

14. It has been brought to our notice that the issue was decided in favour of the assessee by the Tribunal for assessment year 2009-10. The Tribunal, while deciding the issue has followed the decision for assessment year 2008-09 in ITA No.3192/Mum/2013 dated 06/11/2019. Therefore, consistent with the earlier decisions of the Tribunal the issue is decided in favour of the assessee. The assessing officer is directed to compute the disallowance under rule 8D(2)(i),

8D(2)(ii) and 8D2)(iii) by considering those investments which had actually yielded exempt income to the assessee.

15. Ground 4(iii) pertains to whether the disallowance of interest made in the second limb of Rule 8D(2) of the rules is to be computed with relation to net interest or gross interest? The assessee claims that the interest expense incurred on borrowing deployed for earning interest income, should be allocated.

16. Upon hearing the parties we find that this issue is already decided in favour of the assessee in its own case by this Tribunal in ITA No.4630 & 4637/Mum/2016 for assessment year 2009-10. The Tribunal, following the order of the Tribunal for assessment year 2008-09 in ITA No.3192/Mum/2013 order dated 06/11/2019, has decided the issue in favour of the assessee. Consistent with the earlier orders of the Tribunal, this issue is decided in favour of the assessee and ground allowed.

17. The other part of ground 4(iii) pertains to not allocating the net interest between dividend income and Brand income. This ground is not pressed before us; hence, rejected as not pressed.

18. Ground 4(v) pertains to disallowance under rule 8D be treated as cost of investment. This ground is also not pressed before us; hence, dismissed.

19. Assessee's appeal is partly allowed.

ITA No.6402/M/2016 (Revenuie's appeal)

20. Ground 1 in this appeal pertains to arm's length price of corporate guarantee . The revenue is aggrieved by the decision of the Ld.CIT(A) in restricting the adjustment in respect of corporate guarantee at 0.822% as against 5.80%.

21. Considered the rival submissions. We find that vide grounds 1(ii),(1(iv) & 1(v), the assessee also filed appeal, which has been decided elsewhere in this

order. We have, by following the decision of the Tribunal for assessment year 2009-10, already decided that the ALP adjustment on account of corporate guarantee should be restricted at 0.5%. Accordingly, this ground of the revenue is dismissed.

22. Ground 2 of revenue's appeal pertains to whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that interest on investments is allowable to the assessee under section 36(1)(iii), subject to the provisions of Section 14A without appreciating that loans have been taken for the purpose of earning income under the head 'Capital Gains' and hence, cannot be stated to be taken for the purposes of business and this fact has been confirmed by the Ld.CIT(A) in the order dated 15/05/2012 for the A.Y. 2006-07 in assessee's own case.

23. We have considered the rival submissions. Both the parties before us agreed that the issue stands decided by the Tribunal in favour of the assessee vide order dated 07/08/2020 in ITA No.4630 & 4637/Mum/2016 by observing as under:-

5.4. We find that the Id. CIT(A) had further observed that borrowed funds utilised in making investments which had yielded tax free income to the assessee would be governed by the provisions of Section 14A of the Act and not Section 36(l)(iii) of the Act. Accordingly, the Id. CIT(A) held that interest on borrowed capital utilised for making investments would be eligible for deduction u/s.36(l)(iii) subject to the provisions of Section 14A of the Act. Against this observation, we find that revenue is in appeal before us. We find that assessee is a promoter investment holding company and exercise controlling interest in various Tata companies. Out of these investments, the assessee receives income by way of dividends, interest on investments, royalty income from brand, capital gains etc., Out of this only dividend income is exempt. All other receipts thereon are taxable receipts. Even otherwise, there is absolutely no bar for allowability of interest u/s.36(l)(iii) of the Act if the borrowed funds were utilised for making investments which are meant for the purpose of business of the assessee. There is absolutely no dispute that assessee is a promoter investment holding company thereby, it

had to exercise controlling interest in various Tata group companies. For the purpose of making these investments if the assessee had to use the borrowed funds, if any, then the interest paid on such borrowings would be governed by the provisions of Section 36(i)(iii) of the Act and would be squarely allowable as deduction. The findings recorded by the Id. CIT(A) that borrowed funds utilised for investment in shares of Tata group companies for acquiring the controlling stake in those companies would be treated as / capital in nature is to be looked into from this perspective. We hold that the business and commercial expediency of assessee making investments in these Tata group companies either with or without the use of borrowed funds have been proved beyond doubt in the instant case. The assessee company had earned both taxable income as well as tax free income out of these investments as detailed supra. Hence, there is absolutely no question of disallowance of interest u/s.36(l)(iii) of the Act. If the borrowed funds have been used for making investment for shares which inturn had yielded exempt income to the assessee, then, the allowability of interest need to be looked into from the angle of Section 14A of the Act r.w.r. 8D(2)(ii) of the Rules. This fact has been correctly dealt, in our considered opinion, by the Id. CIT(A) in his order. We also find that this issue is also covered in favour of the assessee's group company case by the order of this Tribunal in the case of Tata Industries Ltd., vs. ITO in ITA No.4894/Mum/2008 dated 20/07/2016 wherein this Tribunal by placing reliance on various decisions of the Hon'ble High Courts including the Hon'ble Jurisdictional High Court in the case of CIT vs. Phil Corporation Ltd., reported in 202 Taxman 368 had decided the issue in favour of the assessee with regard to allowability of interest. Hence, we do not find any infirmity in the observation made by the Id. CIT(A) that the interest on borrowed funds used for making investments would be allowable u/s.36(l)(ii) of the Act subject to the provisions of Section 14A of the Act. This observation made by the Id. CIT(A) is correct in the facts and circumstances of the instant case, which in our considered opinion, does not require any interference. Accordingly, ground No.2 raised by the revenue is dismissed."

24. Consistent with the view taken by the taken, we dismiss the ground raised by the revenue.

25. Ground 3 pertains to consultancy fee paid to M/s Vishnav Corporate Communication Pvt Ltd. This issue has been exhaustively considered by the Tribunal for the assessment year 2009-10. The "J" Bench of the Tribunal in its order dated 07/08/2020 in ITA No.4630/Mum/2016 and other considered and decided the issue in favour of the assessee by observing as under:-

"7.1.The facts as recorded in the assessment order with regard to this trader are that the assessee has shown an expenditure of Rs.12.66 Crores as payment given to M/s. Vaishnavi Corporate Communications Pvt. Ltd., (VCCPL) owned by Ms. Nira Radia towards consultancy fees. The assessee was asked to submit the details of services obtained for which consultancy fees was paid. The assessee through its letter dated 26/03/2013 submitted that the payments made to VCCPL were on account of fees for media relations, strategic planning and public affairs services. It was also submitted that the said payment includes creating resources bank, creating media universe, drafting dissemination of press releases, interacting with company Senior Executives and Directors, Media familiarization, gathering information and media coverage, creating communication plans and competitive analysis, facilitating the interaction between company and public officials and agencies. The ld. AO further observed that assessee had invested Rs.1700 Crores in Tata Realty Investment and Infrastructure Ltd., which was utilised for buying lands from Unitech group by Tata Realty Investment and Infrastructure Ltd. It was noticed by the ld. AO that the Unitech Group in turn had utilised the funds for acquiring the 2G mobile telephone spectrum license. The ld. AO observed that as per the report dated 23/06/2011 sent by DIT (Investigation), New Delhi, Unitech Group during the course of investigation had admitted that Ms. Nira Radia was rendering various consultancy services to Unitech Group and Tata Realty Investment and Infrastructure Ltd., However, it was claimed by both Unitech group and Tata Realty Investment and Infrastructure Ltd., that no payments were made to VCCPL. Based on this, the ld. AO concluded that the payments made by the assessee company to VCCPL were in respect of land transactions and acquisition of 2G licenses. The ld. AO further concluded that both these transactions are not meant for the purpose of assessee's business and since, assessee had not produced the details of specific services rendered by VCCPL for which the alleged media relation fees was paid, he proceeded to disallow this sum of Rs.12,66,38,000/- as expenditure incurred not for the purpose of business of the assessee in the assessment.

7.2.Before the ld. CIT(A), the assessee submitted that similar payments were made to VCCPL for media relation services rendered under the agreement entered into with them on 21/11/2006 and the same were being allowed from A.Y.2007-08 onwards u/s.143(3) proceedings by the ld. AO. The assessee further submitted before the ld. CIT(A) that the ld. AO erroneously treated the said payment towards purchase of land and for

acquisition of 2G licenses and thereby concluding that the same are not meant for purpose of business of the assessee company. It was specifically submitted before the ld. CIT(A) that broad purpose of the services delivered by the VCCPL was to create a unified media focus for the company, pro-active strategic planning for image building, branding initiatives, market related public relation and training. The assessee submitted the details of services provided by VCCPL as under:-

i. Media Relations (including Television, Print and the Internet)- This includes creating resource bank comprising of Corporate backgrounders, fact sheets, profile, etc; Drafting and dissemination of press releases, receiving and answering queries from the media; handling of all interaction involving the companies and the media; gathering information on media coverage, etc.

ii. Strategic Planning (this includes putting together short term and long term media engagement plans), creating backgrounders and research material on various industry segment, putting together communication material for different branding events, measuring and analyzing media coverage of companies competitors of industry segment.

7.3.The ld. CIT(A) observed that before him the assessee had filed a copy of the media relations, strategic planning and public affairs services agreement entered into by the assessee with VCCPL on 21/11/2006 which clearly describes the various services to be rendered by VCCPL to the assessee. The ld. CIT(A) further observed that VCCPL is in the area of corporate communications and has been rendering services to the assessee company in earlier years also. The ld. CIT(A) further observed that assessee being a holding company on number of occasions has an agreement with these corporates for rendering such services and receives payments from these companies for the same. It is also seen that the name of the Tata Realty Investment and Infrastructure Ltd., does not appear in the list of Tata entities covered by the agreement. The ld. CIT(A) observed that in the light of the fact that services have been rendered by VCCPL with respect to the transaction noted by the ld. AO, no consideration has been passed on either by Tata Realty Investment and Infrastructure Ltd., or by Unitech group and the fact that none of the other parties have any agreement with VCCPL for rendering of services, it is clear that VCCPL was appointed by the assessee to carryout these

activities. This is actually the observation made by the ld. AO in his assessment order. But the ld. CIT(A) had observed that however, it could not be stated that the entire payment represents payment for services rendered by VCCPL towards Tata Realty Investment and Infrastructure Ltd., and Unitech group. He summarises the entire transaction as under:-

- Two facts are admittedly clear that VCCPL rendered certain services to Tata Realty Investment and Infrastructure Ltd., and Unitech Group that received investment of Rs.1700/- Crores in Tata Realty Investment and Infrastructure Ltd., and after use of these funds for obtaining 2G licenses and that both these companies did not make any payment to VCCPL. The ld. CIT(A) concluded that it is clear that VCCPL rendered the above services at the instance of the assessee company. The assessee, being the only company having functional control over the activities of the VCCPL with respect to services to be rendered to Tata group, he observed that these services did not relate to the normal functional profile or mandate given to VCCPL and that since, the payment for these services was included in the overall payment of Rs.12.66 Crores made by VCCPL, only a portion of these payment relates to these services. Accordingly, he proceeded to contribute 50% of the amount paid to VCCPL as being for an activity which was not related to assessee company. The ld. CIT(A) finally concluded that 50% of the amount is to be held not for the purpose of the business of the assessee and also clarified that this is not a routine disallowance and the amount has been held to be disallowable only because of the financial services having been rendered by VCCPL in respect of other persons during that year, for which payment was received from the assessee. He categorically mentioned in his order that this disallowance should not be taken on a year on year basis.

7.4.Aggrieved by this observation, both assessee as well as the revenue are in appeal before us.

7.5.We have heard rival submissions and perused the materials available on record. We find that the following documents were duly placed on record before the lower authorities:-

(a) Copy of media relations, strategic planning and public affairs services agreement entered into between assessee and VCCPL dated 21/11/2006 together with Annexure-A containing list of Tata companies that are part of this agreement;

(b) Annexure-B defining various services to be rendered by the parties concerned;
(c) Annexure-C defining the data code of conduct;
(d) Annexure-D defining the data code of conduct for prevention of insider trading and code of corporate disclosure practices (enclosed in pages 20-63 of the paper book).

7.6. We have already gone through the agreement entered by the assessee company with VCCPL dated 21/11/2006 referred to supra wherein in Annexure-A, the following are the list of companies that are listed out as belonging to Tata Group of companies which are covered within the ambit of this agreement:-

- Tata companies
- The Tata companies are substantively those that have signed the TATA Brand Equity and Business promotion agreement with TSL.
- Key companies {including their operating divisions and subsidiaries) are:
- Tata Sons Limited and the Tata Trusts
- Tata Industries Limited
- The Tata iron and Steel Co. Ltd.
- Tata Motors Ltd.
- The Tata Power Co. Ltd.
- Tata Chemicals Ltd.
- The Indian Hotels Co. Ltd. .
- Tata Tea Limited
- Tata Consultancy Services Ltd.
- Tata Teleservices Limited including Tata Teleservices (Maharashtra) Ltd.,
- Videsh Sanchar Nigam Limited
- Rallis India Limited
- Tata Elxsi Limited .
- Voltas Ltd. .
- Tata Coffee Ltd.
- Trent Ltd. . .
- Titan Industries Ltd.
- CMC Limited „
- Tata International Limited
- Tata Autocomp Systems Ltd.

7.7. From the aforesaid list, admittedly, it could be seen that Tata Realty Investment and Infrastructure Ltd., does not figure in the said list. From

the aforesaid agreement dated 21/11/2006, it could also be seen that Ms. Nira Radia is a media relations professional and VCCPL was a company promoted by her as a private limited company on 01/11/2001 and the said company has been in the business of public relation management and communication strategies and has rendered services in those areas to the assessee company and other Tata companies since 01/11/2001. These facts are not disputed by the revenue before us. We find that primarily the assessee herein has made investments of Rs.1700/- Crores in its subsidiary company Tata Realty Investment and Infrastructure Ltd. The said subsidiary company had utilised the said funds to buy lands from Unitech Group and it was Unitech group which had ultimately acquired 2G telephone spectrum licenses from Department of Telecommunications, Government of India which are governed by Telecom Regulatory Authority of India (TRAI) regulations. Hence, the primary transactions of amounts invested by the assessee in Tata Realty Investment and Infrastructure Ltd., and its consequential funding to Unitech group and Unitech group's consequential utilisation for acquiring 2G licenses cannot be linked with payments made by the assessee to VCCPL. What is to be seen here is the purpose of payments by the assessee company to VCCPL. For this purpose what is relevant is the copy of media relations, strategic planning and public affairs services agreement entered between assessee company and VCCPL dated 21/11/2006 which are part of the records before the lower authorities as stated supra. We find that this agreement clearly defines the scope of services to be rendered by VCCPL to the assessee which has got absolutely nothing to do with Tata Realty Investment and Infrastructure Ltd., or Unitech group. That is why, rightly the name of Tata Realty Investment and Infrastructure Ltd., had not figured in the list of companies enclosed in Annexure-A of the aforesaid agreement dated 21/11/2006. The various services to be rendered by VCCPL have already been listed above. We find that the ld. CIT(A) had also partially agreed that services were indeed rendered by VCCPL to the assessee company. Since, the assessee having made investments in various group companies would certainly like to have a unified media focus for the entire Tata group and since VCCPL is a company which has got the necessary expertise of providing such services, the assessee had entered into the agreement dated 21/11/2006 with them and has made payments of Rs.12.66 Cores towards media relation agency fees. We also find that similar services were rendered by VCCPL to the assessee in earlier years as well as in subsequent years which were duly allowed as deduction by the Revenue as under:-

Fees Paid (excluding service tax)

Year	Amount (Rs Crores)
AY 2004-05	8.07
AY 2005-06	9.12
AY 2006-07	9.12
AY 2007-08	10.45
AY 2008-09	12.31
AY 2009-10	12.31
AY 2010-11	12.31
AY 2011-1 2	12.31
AY 2012-13 (upto 31st Oct. 2011)	7.18

7.8.Hence, in view of the aforesaid observations and applying the principle of consistency as has been held by the Hon'ble Supreme Court in the case of Radhasaomi Satsang reported in 193 ITR 321 (SC), in allowing such claim to the assessee in earlier as well as in subsequent years, we hold that there is absolutely no case made out by the revenue for disallowing this sum of Rs.12.66 Crores during the year under appeal. Hence, the ground No.5 raised by the assessee is allowed and ground No.3 raised by the revenue is dismissed."

26. Consistent with the above order of the Tribunal, we decide the issue in favour of the assessee and dismiss the ground raised by the revenue.

27. Ground 4 of revenue's appeal is akin to ground 4(iii) of assessee's appeal. There we have already decided the issue in favour of the assessee by following the earlier decisions of the Tribunal. Therefore, this ground of the revenue's appeal is dismissed.

28. Revenue's appeal is dismissed.

29. In the result, assessee's appeal is partly allowed and revenue's appeal is dismissed.

Order pronounced on 21/01/2022.

Sd/- sd/-

(PAVAN KUMAR GADALE)	(S. RIFAUR RAHMAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 21/01/2022
Pavanan
Copy to :

1. Applicant
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