IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER

IT(TP)A Nos.296/Bang/2015
Assessment Year: 2010-11

ACIT, Circle-1, LTU Bangalore	**Vs.**	M/s. Tejas Networks Ltd. Plot No.25, 5th Floor JP Software Park Electronic City, Phase I Bangalore 560 100 **PAN No: AABCT1670M**
APPELLANT		**RESPONDENT**

IT(TP)A Nos.468/Bang/2015
Assessment Year: 2010-11

M/s. Tejas Networks Ltd. Bangalore 560 100	**Vs.**	ACIT, Circle-1, LTU Bangalore
APPELLANT		**RESPONDENT**

IT(TP)A Nos.1119/Bang/2015 & IT(TP)A No.621/Bang/2016
Assessment Year: 2010-11 & 2011-12

DCIT, Circle-1, LTU Bangalore	**Vs.**	M/s. Tejas Networks Ltd. Bangalore 560 100
APPELLANT		**RESPONDENT**

IT(TP)A Nos.694/Bang/2016 & IT(TP)A No.582/Bang/2021
Assessment Year: 2011-12 & 2010-11

M/s. Tejas Networks Ltd. Bangalore 560 100	**Vs.**	DCIT, Circle-1, LTU Bangalore
APPELLANT		**RESPONDENT**

IT(TP)A Nos.1674/Bang/2018
Assessment Year: 2011-12

M/s. Tejas Networks Ltd. Bangalore 560 100	**Vs.**	Principal CIT, Central, Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Jairam Raipura, D.R.
Respondent by	:	Shri Annamalli & Shri Narendra Sharma, A.Rs

Date of Hearing	:	29.12.2021
Date of Pronouncement	:	09.02.2022

O R D E R

PER BENCH:

These are appeals filed by the revenue and the cross appeals filed by the assessee against different orders of the Ld. DRP-2 & Principal CIT (Central), Bangalore for the assessment years 2010-11 & 2011-12.

IT(TP)A No.582/2021 (A.Y. 2010-11):

2. There was a delay of 1694 days in filing the appeal before this Tribunal. The Ld. A.R. filed a petition stating reasons for delay that the assessee came in appeal with regard to two adjustments made in the order. The assessee in exercising abundant option is filing the present appeal against the order giving effect to DRP's direction passed u/s 154 of the Income-tax Act,1961 ['the Act' for short] dated 22.6.2015.

3. The assessee submits that the assessee was under the bonafide belief that the assessee raised the grounds in the main appeal filed against the final assessment order and there was no requirement to file another appeal. However due to change in the counsel, the present counsel examined and advised the assessee on 02.11.2021 to file the appeal against the order giving effect to the DRP's direction in order u/s 154 of the Act dated 22.06.2015 by abundant caution. Immediately after obtaining proper professional advice from the present counsel, the Assessee within a reasonable time has made all the efforts to file this present appeal challenging the order giving effect to the DRP's direction in order u/s 154 of the Act before this Hon'ble Tribunal. The assessee humbly prays that the Tribunal considering the facts of the present case may take a lenient and compassionate view and condone the delay of about 1694 days in filing the present appeal against the order giving effect to the DRP's direction in order u/s 154 of the Act dated 22.06.2015. The assessee submits that the total number of days delay in filing the appeal from due date- of filing the appeal i.e., 27.08.2015 to 03.11.2021 is 2258 days. As per the Hon'ble Supreme Court order in the case of Miscellaneous application No.665 of 2021 in SMW(C) No. 3 of 2020 In Re: Cognizance for extension of limitation dated 23.09.2021 the Hon'ble Court observed that "In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded". The total number of days from 15.03.2020 to 02.10.2021 works out to 564 days. The assessee reduced this 564 days from 2258 days and arrived the total delay of 1694 days in filing the appeal. Assessee submitted that if this application for condonation of delay in filing the appeal is not allowed, the assessee would be put to great

hardship and irreparable injury per contra no hardship or injury would be caused to the Respondent if this application of Condonation of delay is allowed. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471 and also in the case of Concord of India Insurance Co. Ltd., Vs Smt. Nirmala Devi and Others 118 ITR 507. Further, the assessee relies on another decision of the Hon'ble Apex Court in the case of Radha Krishna Rai Vs. Allahabad Bank Et Others [2000] 9 Supreme Court Cases 733 and Commissioner of Income-tax Vs. West Bengal Infrastructure Development Finance Corporation limited (2011) 334 ITR 269 (SC). The assessee placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT Et Another Vs. ISRO Satellite Center, in ITA No. 532 of 2008 and other batch of appeal The assessee placed reliance on the decision of this Hon'ble Tribunal in the case of Smt. Shakuntala Hegde, Legal Heir of Mr. Ramakrishna Hegde Vs. ACIT, in ITA No. 2785/Bang/2004 order dated 25/04/2006 wherein the Tribunal has condoned the delay of 1,331 days i.e. 3 Years, 8 Months and 22 days in filing the appeal by the assessee. The assessee placed reliance on the decision of the Hon'ble High Court of Madras in the case of Commissioner of Income-tax Vs. K.S.P. Shanmugavel Nadar (1987) 30 Taxmann 133 (Madras). The assessee further placed reliance on the decision of the Hon'ble Tribunal in the case of M/s. Midas Polymer Compounds Pvt Ltd Vs. ACIT in ITA No.288/Coch/2017 dated 25.06.2018. The assessee craves leave of the Tribunal to file additional submission at the time of hearing of this appeal. Assessee finally prayed that this Tribunal may take a lenient and compassionate view and condone the delay of 1694 days in filing the present appeal against the order of the learned Assessing officer giving effect to the directions of the learned Dispute Resolution Panel

under section 154 of the Act dated 22.06.2015 before this Tribunal and hear the same on merits for the advancement of substantial cause of justice.

3. The Ld. D.R. strongly opposed the admission of appeal as there was inordinate delay in filing this appeal and submitted that appeal shall not be admitted. In this case, the assessee filed appeal against the order passed u/s 154 r.w.s. 144C of the Act dated 22.6.2015 passed by Deputy Commissioner of Income-tax (LTU) Circle-1, Bangalore. The said order was received by the assessee on 29.6.2015 and the appeal was filed by the assessee on 3.11.2021. Thus, there was delay of 1694 days in filing the appeal before this Tribunal. The assessee attributed the delay on the reason of misunderstanding of the facts of the case only on change of counsel. The new counsel advised the assessee to file the appeal on 2.11.2021. Accordingly, appeal was filed by the assessee on 3.11.2021 and prayed for condonation of appeal. In the present case, the assessee has been pursuing the remedy against the final assessment order before this Tribunal and thought that no necessity of filing appeal against the order passed u/s 154 of the Act. It was pleaded that on account of bonafide mistake, assessee has not filed the appeal. In our opinion, delay could be condoned only for sufficient and good reason supported by the cogent and proper evidence. In the present case, there is an inordinate delay of 1694 days. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the formal case, consideration of prejudice to the other side will be a relevant factor. So the case calls for a more cautious approach but in the later case, no such consideration may arise and such a case deserves a liberal approach. The court has to exercise the distinction on the facts of each case keeping in mind that in considering the expression “sufficient cause”,

the principles of advancing substantial justice is of prime importance. The delay cannot be condoned simply because the assessee's case calls for sympathy or merely out of benevolence to the party seeking relief. In condoning the delay, the assessee shall show that he was diligent and was not guilty of negligence of whatsoever. In the present case, there was inordinate delay of 1694 days and according to the assessee, it was because of wrong understanding of the assessee's case and only on advice of new counsel, assessee opted to file this appeal. In our opinion, there is no good and sufficient reason to condone the delay. Had the assessee exercised due care and diligence, the delay could have been very well avoided. The delay in this case was due to the negligence and inaction on the part of the assessee, which cannot be condoned. In the present case, assessee wants indulgence of the Tribunal u/s 5 of the Limitation Act, wherein assessee required to show utmost good faith and must make a full disclosure of all relevant facts. It is needless to say that it is the duty of the assessee to explain the delay for every day that elapses beyond the period allowed by the Act for filing an appeal. In the absence of sufficient cause, the Tribunal has no power to extend the time. The time allowed to file appeal before this Tribunal is 60 days from the date of receipt of first appellate order. Here in this case assessee filed the appeal with inordinate delay of 1694 days and the assessee failed to discharge the onus to explain the delay and the law of limitation is not statute to condone this kind of delay. It is a statute of repose. In our opinion, there is no good and sufficient reason to condone this inordinate delay of 1694 days and the appeal is dismissed unadmitted. Accordingly, we decline to admit the appeal and dismiss the appeal in limine.

ITA No.468/Bang/2015 (A.Y. 2010-11) (Assessee's appeal):-

4. Grounds urged by the assessee in this appeal are as under:

Transfer Pricing

1.1. The learned Additional Commissioner of Income-tax, LTU, Circle — 1, Bangalore ("learned AO"), learned Additional Commissioner of Income Tax (Transfer Pricing — III), Bangalore ("Transfer Pricing Officer" or the "learned TPO") and the Hon'ble Dispute Resolution Panel ("DRP") have erred in determining the Arm's Length Price (`ALP') of the following international transactions of the Appellant:

- *Interest on loan advanced;*
- *Interest on the outstanding balance from the Associated Enterprise ("AE"); and*
- *Adjustment in 'respect to the corporate guarantees provided to AE.*

1.2. The learned AO / learned TPO / Hon'ble DRP, while arriving at the transfer pricing adjustment have grossly erred:

1.2.1 in ignoring the fact that the Appellant had charged 6.10% interest on loan advanced to its AE for the financial year 2009-10 which is at fixed equivalent of a Libor plus credit margin and hence no adjustment is called for.

1.2.2 in erroneously estimating the arm's length interest rate without testing the financial characteristics of the borrower as well as the economic environment within which the borrower operates

1.2.3 in ignoring the currency in which the loan is denominated and interest paid.

1.2.4 in not appreciating that the loan is in foreign currency and is a cross border transaction and hence a domestic bond yield rate of India cannot be construed as an appropriate benchmark.

1.2.5 in rejecting a spread of Libor plus 150 basis points as considered by the Appellant in the Transfer Pricing Documentation and arriving at a spread of Libor plus 500 basis points to compute the arm's length price.

1.3 The Hon'ble DRP has erred in not adjudicating the contention with regard to imputing interest on the outstanding balance from the AEs.

1.4 The learned AO / learned TPO erred in imputing interest on the outstanding balance from the AE ignoring the fact that the appellant followed the same policy of not charging interest on the outstanding balance from the non AEs as well.

1.5 The learned AO/learned TPO erred in imputing interest on the outstanding balances from the AEs on an ad-hoc basis considering prime lending rate and arbitrary mark up of 14.74% towards various risks.

1.6 The learned AO/TPO ought to have appreciated the fact that no interest was charged to the appellant on the balance payables (creditors) which indicates that the appellant had benefitted by not charging any interest on receivables t the same time not paying any interest towards its payables to AEs.

1.7 The Hon'ble DRP has erred in not adjudicating the contention with regard to imputing guarantee commission with respect to the corporate guarantees provided by the appellant to the AEs.

1.8 The learned AO/learned TPO have erred in arbitrarily arriving at the arm's length commission rate at 3% while computing the transfer pricing adjustment.

1.9 The learned AO/learned TPO have ignored the fact that Guarantee in the instant case is not in the nature of service and therefore not an international transaction.

2. Corporate Tax
3. Disallowance of deduction claimed under section 35(2AB) of the Act

3.1 The learned AO erred in disallowing the weighted deduction Rs.53,72,75,727 claimed by the appellant under section 35(2AB) of the Act in relation to approved units located at JP Nagar Bangalore JNR Bangalore

3.2 The learned AO erred in contending that the activity of "product development" carried out by the approved units does not constitute "scientific research" as defined under section 43(4) of the Act by holding that it results in acquisition of intellectual property rights in, or arising out of, scientific research since the assessee is registering various patents and acquiring know-how.

3.3 The appellant was satisfied all the relevant conditions prescribed under section 35(2AB) read with rule 6 of the Income Tax Rules, 1962 which include obtaining approval from prescribed authority.

3.4 The learned AO erred in contending that approval/recognition granted by DSIR under section 35(2AB) of the Act is pre-requisite but not the only condition for claiming deduction under section 35(2AB) of the Act. The learned AO erred in not referring the question on whether the activities amount to scientific research to the Board who in turn has to refer the matter to the DSIR to arrive at a final decision.

3.5 The learned AO erred in contending that the reference made in section 35(3) of the Act is in relation to section 35(1)(ii) and 35(1)(iii) of the Act and not to section 35(1)(i), section 35(1)(iv) or section 35(2AB) of the Act.

3.6 The learned AO erred in disallowing the weighted deduction claimed under section 35(2AB) of the Act on Rs. 77,64,291 debited to profit and loss account as product development expenses contending that the expenditure represents expenditure incurred on in-complete projects and hence the same is in the nature of Capital Work In Progress ("CWIP") and hence not revenue in nature.

3.7 The learned AO erred in disallowing the weighted deduction claimed under section 35(2AB) of the Act on Rs. 32,21,39,357 which was transferred to CWIP in the books of accounts on the contention that the expenditure represents expenditure incurred on in-complete projects and hence the same is in the nature of CWIP and hence not revenue in nature.

3.8 The learned AO erred in disallowing the weighted deduction claimed under section 35(2AB) of the Act on Rs. 3,39,36,528 which was capitalised in the books of accounts under the head fixed assets on the contention that the expenditure represents know-how / technology ready for use contributing to increase in revenue and giving enduring benefit.

3.9 The learned AO thereby erred in disallowing Rs. 53,72,75,727 under section
35(2AB) of the Act.

4. Deduction under section 35(1)(iv) of the Act

4.1The learned AO erred in not allowing the claim for deduction amounting to Rs. 1,91,05,549 under section 35(1)(iv) of the Act in respect of the expenditure incurred by the appellant at the units located at JNR and Noida units.

4.1 Disallowance under Rule 8D read with Section 14A

5.1The learned AO erred in making an additional disallowance under section 14A read with Rule 8D(2)(ii) amounting to Rs. 98,99,166 on the contention that the appellant has earned exempt income in the nature of dividend without appreciating the fact that the dividend income earned did not bear any nex with the interest expenditure incurred for the relevant assessment year.

5.2The learned AO erred in contending that the loans raised by the appellant were on account of diversion of business funds to the investments and hence interest on such funds is partially attributable to such investments which are disallowable under section 14A of the Act.

5.3 the learned AO erred in not appreciating the fact that the secured loans were borrowed solely for the purpose of meeting working capital requirements which was also evident from the loan agreements.

6. Initiation of Penalty Proceedings

The learned AO has erred in initiating proceedings under section 271(1)(c) of the Act without having regard to the fact that the appellant has fully disclosed all the facts in the return of income and that the appellant has not concealed income.

7. Interest under section 234B of the Act.

The learned AO erred in levying interest under section 234B of the Act. The same is consequential in nature.

5. Ground No.1.1 is general in nature. Ground Nos.1.2 to 1.2.5 the issue is with regard to interest on loan advanced to its Associated Enterprise Tejas Communications Pvt. Ltd., Singapore. After hearing both the parties we are of the opinion that this issue is covered by the order of Tribunal in assessee's own case in IT(TP)A No.237/Bang/2014 Dated 1.10.2019 wherein in para 6 it was held as under:

> *"6. We notice that the coordinate benches of the Tribunal, in the cases cited above, have taken the view that the outbound loan transactions LIBOR rate should be adopted. Hence, the reasoning given by Ld. DRP for rejecting the TPO's methodology of adopting interest rates applicable to loan transactions between Indian parties, in our view, is justified. We notice that the Ld DRP has determined the ALP of interest rate at 12 months Libor + 500 basis points. There is no dispute with regard to the fact that the loan transaction is with its AE and further the interest rate spread noticed by the Ld DRP was between 3% to 8%. Accordingly we are of the view that the ALP may be determined at 12 months LIBOR plus 300 basis points. We modify the directions given by Ld. DRP and direct the AO to adopt 12 months LIBOR plus 300 basis points for determining the interest income om the loan advanced to the AE and asses the same accordingly.*

In view of the above order, this issue is decided in favour of the assessee.

6. With regard to Ground Nos.1.3 to 1.6 the issue is interest on outstanding balance from the Associated Enterprise Tejas Communications Pte. Ltd., Singapore. After haring both the parties we observe that this issue was covered by the decision given by Hon'ble High Court of Bombay in the case of CIT-9 Vs Indo American

Jewellery Ltd. (2014) 44 taxmann.com 310 in para 5. In view of the above order, this issue is decided in favour of the assessee.

7. With regard to Ground Nos.1.7 to 1.9 are on the issue of imputing Guarantee Commission with respect to the corporate guarantee provided by the assessee to its Associated Enterprises. After hearing both the parties, this issue is covered by the orders of the Tribunal in Medrich Limited Vs. ACIT in ITA No.1574/Bang/2019 dated 12.4.2021, in the case of M/s. Manipal Global Education Services Pvt. Ltd. Vs. Deputy Commissioner of Income-tax in ITA No.236/Bang/2015 and in the case of Xchanging Solutions Ltd. Vs. Deputy Commissioner of Income-tax (2017) 78 taxmann.com 54, wherein it was directed to AO/TPO to make TP adjustments in respect of corporate guarantee at 0.50% for the assessment years under consideration. In view of the above order, we decide these issues in favour of the assessee.

8. With regard to ground Nos.3.1 to 3.9 and additional ground No.4, the issue is disallowance of deduction under section 35(2AB) of the Act. After hearing both the parties it has been observed that this issue is covered by this Tribunal in ITA No.1684/Bang/2012 & ITA No.10/Bang/2013 dated 31.12.2014 where in the Tribunal has reversed the findings of the A.O. in his assessment order passed for A.Y. 2008-09 and the appeals were decided in favour of the assessee. Hence, keeping in view of the above order of the Tribunal, these grounds of the assessee are decided in favour of the assessee and hence these grounds of appeal are allowed.

9. Ground No.4 is with regard to the deduction u/s 35(1)(iv) of the Act of a sum of Rs.1,91,05,549/-. After hearing both the parties it has been observed that this issue is covered by the decision rendered

in assessee's own case in ITA No.2848/Bang/2018 and ITA No.3191/Bang/2018 dated 8.10.2021 for the A.Y. 2014-15 wherein in para 8 of the order the Tribunal has restored the issue to the file of the AO for examining them in accordance with law afresh. Accordingly, this ground of appeal of the assessee is remitted to AO on similar directions.

10. Ground Nos.5.1 to 5.3 are with regard to the disallowance u/s 14A of the Act read with Rule 8D. After hearing both the parties it has been observed that this issue is covered in assessee's own case for the A.Y. 2014-15 in ITA Nos.2848/Bang/2018 and ITA No.3191/Bang/2018 dated 8.10.2021 wherein the issue was decided in favour of the assessee para no.23 of the order. The relevant portion of the order is as under:-

> *"23. We heard the parties and perused the record. A perusal of balance sheet furnished by the assessee would show that the assessee is having own funds of Rs.334.12 crores while the investments made by the assessee stand at Rs.4.58 crores only. Admittedly, the own funds available with the assessee is in far excess of the investments made by the assessee. Accordingly, as per decision rendered by Hon'ble Karnataka High Court in the case of Micro Labs Ltd. 383 ITR 490, no disallowance out of interest expenditure is called for. Accordingly, we confirm the decision rendered by Ld. CIT(A) in deleting this disallowance for the reasons stated above."*

In view of the above order of the Tribunal, we inclined to remit the issue in dispute to the file of AO for re-examination to see whether investment which yielded exempt income made out of interest free own funds and decide accordingly.

11. With regard to ground No.6 it is preposterous and does not require any adjudication and dismissed.

12. Ground No.7 is consequential in nature.

13. The following additional grounds were raised by the assessee in this appeal which are reproduced as under:-

The additional grounds raised by the assessee in this appeal are as under:-

1. *The appellant claims that it has not claimed a deduction under section 35(1)(i) of the Act amounting to Rs. 3,62,56,000/- in the return of income filed on 06.10.2010 being revenue expenditure incurred on scientific research and the same is allowable under section 35(1)(i) of the Act on the facts and circumstances of the case.*

2. *The authorities below ought to have allowed a sum of Rs.3,62,56,000/-under section 35(1)(i) of the Act on the facts and circumstances of the case.*

3. *Without prejudice a sum of Rs.3,62,56,000/- being incurred as revenue expenditure for scientific research is an allowable expenditure as per the provisions of section 37(1) of the Act on the facts and circumstances of the case.*

4. *Without prejudice the appellant is entitled for claim weighted deduction under section 35(2AB) of the Act in respect of the amount of R 8s D expenditure quantified as per Form 3 CL issued by the DSIR by following the decision of the Hon'ble Jurisdictional High Court in the appellant's own case in W.P.No. 7004 of 2014 dated 24.04.2015 for the assessment year 2009-10 as per the issue of jurisdiction in quantifying the amount for deduction under section 35(2AB) of the Act on the facts and circumstances of the case.*

5. *Without prejudice the learned Assessing officer has erred in considering the average value of investment in tax free instruments at Rs.48,26,49,269/- as against the correct amount a sum of Rs.39,47,41,359/- for the purpose of quantification of disallowance under section 14A read with Rule 8D(ii) of the Act on the facts and circumstances of the case.*

6. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*

7. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*

13.1 We admit the additional ground Nos.1 to 7. We have heard both the parties and perused the materials available on record. With regard to admission of additional grounds these additional grounds are emanated from the order of the lower authorities and there is no question of investigation of any fresh material otherwise on record. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383, we admit the additional grounds for adjudication.

14. The additional ground nos.1 & 2 are with regard to claim of deduction u/s 35(1)(i) of the Act amounting to Rs.3,62,56,000/-. In this regard it is observed that the assessee has raised this ground for the first time before this Tribunal. The assessee places reliance on the decision of this Tribunal in the assessee's own case for the A.Y. 2014-15 and Hon'ble jurisdictional High Court decision in the case of Principal CIT Vs. Karnataka State Co operative Federation Ltd. (2021) 128 taxmann.com 1 (Karn) and in the case of CIT Vs. Pruthvi Brokers & Share Holders (2012) 349 ITR 336 (Bom). Hence, this issue is remitted back to the file of the A.O. for fresh adjudication.

15. In the additional ground No.3 the assessee states that without prejudice a sum of Rs.3,62,56,000/- being incurred as revenue expenditure for scientific research is allowable expenditure as per section 37(1) of the Act. In this regard it is observed that the assessee has raised this ground for the first time before this Tribunal. Hence, this issue is remitted back to the file of the A.O. for fresh adjudication.

16. The additional ground No.4 above, the assessee claims that without prejudice the assessee is entitled for claim weighted deduction u/s 35(2AB) of the Act in respect of the amount of R&D expenditure quantified as per form 3CL issued by the DSIR. In this regard it is observed that the assessee has raised this ground for the first time before this Tribunal. This additional ground no.4 is infructuous in view of our findings in ground Nos.3.1 to 3.9. Dismissed accordingly.

17. In the additional ground No.5, the assessee claims that without prejudice the Learned AO erred in considering the average value of the investment for quantification of disallowance u/s 14A read with Rule 8D(ii). In this regard it is observed that the assessee has raised this ground for the first time before this Tribunal. This additional ground is infructuous in view of our findings in ground Nos.5.1 & 5.3. Dismissed accordingly.

18. In the result, appeal filed by the assessee in IT(TP)A No.468/Bang/2015 for the A.Y. 2010-11 is partly allowed for statistical purposes.

ITA Nos.1119/Bang/2015 (AY 2010-11) (Revenue's appeal):-

19. Revenue filed this appeal on the ground that DRP erred in directing to charge interest at the rate of LIBOR + 500 points. The loan has been given by the Indian Entity, therefore, the annualized average yield rating of interest rate of 14.74% is to be applied. In this regard, the assessee submits that this ground raised by the revenue is identical to the ground raised by the revenue in ITA No.296/Bang/2015 in which the Tribunal has dismissed the appeal. On perusal of the aforesaid order in respect of appeal of the revenue, the Tribunal has decided the issue to be dismissed. Hence, this

ground of appeal in this appeal by the revenue becomes infructuous and dismissed.

ITA No.296/Bang/2015 (AY 2010-11) (Revenue's appeal):-

20. Revenue filed this appeal on the ground that DRP erred in directing to charge interest at the rate of LIBOR + 500 points. The loan has been given by the Indian Entity, therefore, the annualized average yield rating of interest rate of 14.74% is to be applied. In this regard, the assessee submits that this ground raised by the revenue is identical to the ground raised by the revenue in ITA No.468/Bang/2015 in which the Tribunal has dismissed the appeal. On perusal of the aforesaid order in respect of appeal of the revenue, the Tribunal has decided the issue to be dismissed. Hence, this ground of appeal in this appeal by the revenue becomes infructuous and dismissed.

ITA No.621/Bang/2016 (A.Y. 2011-12): (Revenue's appeal)

21. Revenue filed this appeal on the ground that DRP relying on the Hon'ble Karnataka High Court decision (Writ petition No.7004/2014 (T-IT) in assessee's own case has allowed the assessee's appeal in respect of addition made u/s 35(2AB) of the Act. The revenue has preferred further writ appeal against the Hon'ble High court of Karnataka order. In this regard, the assessee submits that this ground raised by the revenue is identical to the ground raised by the revenue for A.Y. 2014-15 in ITA No.3191/Bang/2018 dated 8.10.2021 in which the Tribunal has dismissed the appeal. On perusal of the aforesaid order in respect of appeal of the revenue, the Tribunal has decided the issue against the revenue. Further, for A.Y. 2010-11, in ITA No.468/Bang/2015 in earlier part of this order, we

decided this issue in favour of assessee. Accordingly, this issue decided against revenue. In the result, the appeal of the revenue is dismissed.

ITA No.694/Bang/2016 (A.Y. 2011-12)

22. The grounds of appeal raised by the assessee are as under:

I Transfer pricing

The grounds mentioned hereinafter are without prejudice to one another.

1. *The learned Assessing Officer ("learned AO"), learned Transfer Pricing Officer ("learned TPO") and the Honourable Dispute Resolution Panel ("Hon'ble DRP") grossly erred in adjusting the transfer price by INR 4,88,31,525 issued by the tax payer on behalf of its Associated Enterprise ("AE") u/s 92CA of the Income-tax Act, 1961 ("the Act").*

2. *The learned AO / learned TPO/ Hon'ble DRP have ignored the fact that Guarantee in the instant case is not an international transaction.*

3. *The learned AO / learned TPO/ Hon'ble DRP erred in not considering that as per the amendment to the Explanation to Section 92B of the Income-tax Act, 1961, a corporate guarantee issued for the benefit of the AEs, does not have any bearing on profits, income, losses or assets of the enterprise and, therefore, it is outside the ambit of international transaction' to which ALP adjustment can be made.*

4. *The learned AO/learned TPO/Hon'ble DRP erred by imputing guarantee commission with respect to the corporate guarantee provided by the appellant to its AEs.*

5. *The learned AO / learned TPO/ Hon'ble DRP have erred in arbitrarily arriving at the arm's length commission rate at 3% while computing the transfer pricing adjustment.*

6. *The learned AO/learned TPO/ Hon'ble DRP erred in not appreciating that the corporate guarantees should be construed as passive support rendered by the Appellant to its AEs in the ordinary course of its business.*

7. The AO/TPO /Hon'ble DRP failed to appreciate that the guarantee provided to AEs is purely based on strategic commercial expediency and business centric decision.

H Corporate Tax

8. *Disallowance of expenditure under section 14A of the Act by applying the provisions of Rule 8D of the Income-tax Rules, 1962 ("the Rules")*

8.1. The learned AO erred in disallowing expenditure amounting to Rs.1,92,74,539 under section 14A of the Act read with Rule 8D(2)(ii) of the Rules, despite the fact that no borrowed funds have been utilized for the purposes of investment in mutual funds, and hence no interest expenditure has been incurred for earning exempt income.

8.2. Not Withstanding and without prejudice to the above, the learned AO made arithmetical error in computing the average value of assets as required under Rule 8D(2)(ii) of the Rules. The learned AO ought to take the opening value of tax assets , as Rs. 6,96,93,19,197 and closing value as Rs. 7,34,16,21,069. Average of these, which should have been adopted by the learned AO, works out to be Rs. 7,15,54,70,133, as against sum of Rs. 3,57,77,35,067 taken by the learned AO.

9. *Deduction under section 35 / 37 of the Act amounting to Rs. 11,72,82,988*

9.1. The • learned AO erred in not considering the allowance of deduction under section 35(1) of the Act, pertaining to amounts not recognized by the Department of Scientific Research and Development ("DSIR") for weighted deduction under section 35(2AB) of the Act. The learned AO erred in not following the order of the Honourable DRP, which has allowed the claim of the Appellant in entirety.

9.2 The learned AO erred in not appreciating the fact that the expenditure incurred by the assessee is for the purposes of scientific research and the same should be allowable under section 35(1)(i) and 35(1)(iv) of the Act, as the case may be.

9.3. Notwithstanding and without prejudice to the above, the learned AO erred in not appreciating the fact that the expenditure incurred by the assessee is for the purposes of its business and hence allowable under section 37(1) of the Act (and capital expenditure under section 32 of the Act).

10. Depreciation

10.1. The learned AO erred in not grating depreciation under section 32 of the Act eligible to the Appellant (pertaining to product development expense disallowed during AY 2010-11 and treated as eligible for depreciation under section 32 of the Act by the learned AO in its order for AY 2010-11) despite the fact that the same

was allowed in draft assessment order. The learned AO arbitrarily withdrew the depreciation in the final assessment order.

10.2. The learned AO ought to have provided depreciation to the assessee, which is consequential to the assessment proceedings of AY 2010-11.

11. Non-grant of foreign tax credit

11.1. The learned AO erred in not granting eligible foreign tax credit to the assessee as claimed in the return of income amounting to Rs. 218,470. The learned AO granted the foreign tax credit in the draft assessment order and has arbitrarily not allowed the same in the final assessment order.

12. Short credit of tax deducted at source

12.1. The learned AO erred in not considering the credit for Tax Deducted at Source ("TDS") amounting to Rs. 1,59,21,739. In the final assessment order, the learned AO erred in granting an incorrect TDS amount of Rs. 1,39,70,950 which has resulted in short credit of TDS amounting to Rs. 19,50,789.

13. Interest under section 244A

***13.1.** The learned AO erred in granting incorrect interest under section 244A of the Act. The grant of interest under section 244A of the Act is consequential in nature.*

14. Interest under section 234D

***14.1.** The learned AO erred in levying interest under section 234D of the Act. The levy of interest under sections 234D of the Act is consequential in nature.*

15. Penalty proceedings under section 271(1)(c) of the Act

***15.1.** The learned AO erred in law and on the facts and circumstance of the case by initiating penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income and concealment of income.*

*15.2. The learned AO ought to have appreciated that penalty under section 271(1)(iii) of the Act for concealment of income or furnishing inaccurate particulars of income is determined based on the "amount of tax sought to be evaded", which would be "Nil" in the present case as the income of the assessee has been finally assessed under the provisions of Minimum Alternate Tax of the Act, whereas adjustments have been made only under normal provisions of the Act. This has been affirmed by the Honourable Delhi High Court in its judgement in **ITA No. 1420 of 2009** in the case of **CIT v. Nalwa Sons Investment Ltd.** [affirmed by Honourable Supreme Court in in **[20121 21 taxmann.com 184 (SC)],** which has been accepted by the Central Board of Direct Taxes vide Circular 25/2015 dated December 31, 2015.*

23. With regard to ground Nos.1 to 7 above is regarding corporate guarantee issue which is covered by the order of this Tribunal in ITA No.1574/Bang/2019 dated 12.4.2021 in the case of Medrich Limited Vs. ACIT and in ITA No.236/Bang/2015 in the case of M/s. Manipal Global Education Services Pvt. Ltd. Vs. Deputy Commissioner of Income-tax, in which the Tribunal has held as under:

> *"8. We have heard the parties on this issue and perused the record. We notice that the Tribunal is consistently holding the transaction of providing Corporate Guarantee as an international transaction. Hence the same is required to be examined under Arms length principles. There should not be any dispute that the provision of Corporate guarantee to its subsidiary in order to enable it to avail loans would bring benefit to the subsidiary, in which case, it is proper to compensate the assessee for those benefits under Arms length principles. We notice that the TPO has made an adjustment of 2%, considering the interest benefit @ 4% and taking the view that half of the same should be attributed to the benefit of the assessee. However, we notice that the Hon'ble Bombay High Court has approved the TP adjustment of 0.50% in respect of Corporate guarantee given in the case of Everest Kento Cylinders Ltd. (supra). Though the Ld. A.R. has pleaded for an adjustment of 0.20% by placing reliance on the decision of Asian Paints Ltd. (supra), yet we notice that the Ld. A.R. did not highlight the parity of facts between the assessee and the case of sian Paints Ltd. Hence, on a conspectus of the matter, we are of the view that the TP adjustment in respect of Corporate Guarantee may be made @ 0.50% as per other decisions of Tribunal and Hon'ble Bombay High Court referred above. Accordingly we set aside the order passed by the AO on this issue and direct the AO/TPO to make TP adjustment in respect of Corporate Guarantee @ 0.50% in all the years under consideration.*
>
> *9. The next common issue urged by the assessee in all the years relate to the disallowance made u/s 14A of the Act. The Ld. A.R. submitted that the AO has mechanically applied provisions of Rule 8D in all the years and accordingly computed the disallowance. He submitted that the interest free funds available with the assessee are more than the value of investments and hence no disallowance out of interest expenditure under rule 8D(2)(ii) is called for. He further submitted that major part of investments consists of investment made by the assessee in its foreign subsidiary and income there from*

is taxable. Accordingly he submitted that the disallowance out of administrative expenses under Rule 8D(2)(iii) should be computed by considering only those investments which have yielded exempt dividend income as per the decision rendered by Special bench of Tribunal in the case of Vireet Investments Pvt Ltd. (165 ITD 27).

11. We heard the parties on this issue and perused the record. The Hon'ble Bombay High Court has held in the case of HDFC Bank Ltd. (366 ITR 505) that no disallowance out of interest expenditure u/s 8D(2)(ii) is called for when own funds available with the assessee is in excess of the value of investments. Accordingly we direct the AO to compare the own funds available with the assessee against the value of investments and accordingly apply the provisions of Rule 8D(2)(ii) by duly following the decision rendered by Hon'ble Bombay High court in the case of HDFC Bank ltd. (supra).

12. In respect of disallowance to be made u/s 8D(2)(iii) out of administrative expenses, the Special bench of Tribunal has held in the case of Vireet Investments Ltd. (supra) that only those investments, which have yielded exempt income should be considered. Accordingly we direct the AO to compute the disallowance u/s 8D(2)(iii) accordingly.

13. The assessee has raised many legal issues. The Ld. A.R. submitted that those legal issues may be kept open, if the assessee gets substantial relief on issues urged on merits. We notice that the ground relating to sec 14A has decided in favour of the assessee as prayed for and the assessee has got substantial relief on the issue relating to TP adjustment on Corporate Guarantee. Accordingly, we are of the view that the legal issues urged by the assessee would be rendered academic in nature. Accordingly we decline to adjudicate the same.

14. In the result, all the appeals of the assessee are treated as partly allowed.

Keeping in view of the above, the issues raised in these grounds are decided in favour of the assessee.

24. Ground Nos.8.1 to 8.2 are regarding disallowance of expenditure u/s 14A read with Rule 8D, which is covered by the order of this Tribunal in assessee's own case for the A.Y. 2014-15 in ITA

No.2848/Bang/2018 & ITA No.3191/Bang/2018 dated 8.10.2021. Keeping in view of the above, the issues raised in these grounds are decided in favour of the assessee.

25. Ground Nos.9.1 to 9.3 are regarding deduction u/s 35 & 37 of the Act. These issues came for consideration before this Tribunal for the first time. However, assessee claims that these issues were covered by the order of this Tribunal in assessee's own case for the A.Y. 2014-15 in ITA No.3191/Bang/2018 dated 8.10.2021 in which it was held as under:-

> *8. We heard the parties on this issue and perused the record. Before us, the Ld D.R contended that the assessee could make fresh claims only by filing revised return of income by placing reliance on the decision of Goetz India Ltd.(284 ITR 323). However, the Hon'ble Supreme Court, in the above said case, has specifically held that its decision will not impinge upon the powers of the Tribunal to admit additional claims. The Hon'ble Karnataka High Court has held in the case of Karnataka State Co-operative Federation Ltd (supra) that the assessee could raised fresh claim before appellate authorities. In the instant case, we notice that the assessee has raised claim for deduction of above said amounts before the A.O. by filing a revised computation of income and also before Ld. CIT(A) by raising specific grounds. As noticed earlier, both the tax authorities did not consider them. Accordingly, we are of the view that the claim of the assessee deserves admission. Accordingly, we admit both the claims of the assessee and restore the same to the file of the A.O. for examining them in accordance with law.*
>
> *9. The next issue urged by the assessee relates to disallowance of provision for commission expenses. The A.O. noticed that the assessee has claimed a sum of Rs.56,97,530/- as commission amount payable to Mr. Md. Ziaul Hassan Khan. The A.O. has observed that the assessee has not furnished the details of computation of commission amount and also purpose of payment. Accordingly, the A.O. disallowed provision for commission expenses of Rs.56,97,530/-.*
>
> *10. Before Ld. CIT(A), the assessee furnished copy of agreement entered by it with Md. Ziaul Hassan Khan with regard to payment of commission. It was submitted that the provision for commission relates to commission payable to the above said agent for procuring*

sales orders in this year. The Ld. CIT(A) examined the agreement more particularly paragraph 3.3 of the agreement, which reads as under:

3.3 Subject to this Article 3, TEJAS shall pay Service fee to the Service Provider after the sales made pursuant to this Agreement are closed. ***Service fee shall become due to the Service Provider within thirty (30) days after TEJAS receives for immediate value from or on behalf of the Customer*** *the Price where the relevant PO provides for payment of the Price by shall become due to the Service Provider as soon as such instalments are received for immediate value by TEJAS, that proportion being, equivalent to the proportion which such instalments bear to the total Price.*

The Ld. CIT(A), on a reading of highlighted portion of paragraph 3.3 of the agreement, took the view that service fee (commission) shall become due to the agent within 30 days after the assessee receives payment from its customers. The Ld CIT(A) noticed that, during the year under consideration, the assessee has not received payment from the customers. Accordingly, the Ld. CIT(A) took the view that the commission amount has not become payable in this year. Accordingly, he confirmed the disallowance made by the A.O.

11. The Ld. A.R. submitted that the assessee is following mercantile system of account and hence the assessee is required to provide for all known expenses. Since the above said agent has procured the orders, the commission expenses has accrued in this year itself. He submitted that, as per the agreement entered by the assessee with the above said agent, the payment of commission is postponed, i.e., it shall become payable only after receipt of payments against sales, i.e., only payment of commission amount is postponed. Accordingly, the Ld A.R submitted that the Ld CIT(A) was not correct in interpreting that the commission amount itself will accrue only when the payment is received by the assessee. The Ld. A.R. placed his reliance on the decision rendered by Hon'ble A.P. High Court in the case of CIT(A) Vs. KCP Ltd. (2018) 94 Taxman.com 46, wherein it was held that the mere postponement of the payment of commission will not disentitle the assessee from claiming the deduction when it accrued. It was further held that the liability to pay commission accrued when orders were secured by agents and not when supplies were effected by the assessee.

12. The Ld. D.R., on the contrary, submitted that the terms of agreement entered by the assessee with Md. Ziaul Hassan Khan clearly shows that the commission shall become due only after receipt of money from the customers. Accordingly, she submitted

that the Ld. CIT(A) was justified in confirming the disallowance of commission payments.

13. We heard the parties on this issue and perused the record. A careful perusal of first line of clause No.3.3 of the agreement entered by the assessee with Md. Ziaul Hassan Khan, which is extracted above, would show that "the assessee shall pay service fee (commission) to the agent after the sales made pursuant to this agreement are closed", i.e., the commission shall accrue after the sales is finalized. However, the same shall become due for payment only after receipt of money from the customer. On a reading of whole of clause 3.3 of the agreement, we are of the view that the commission expenditure shall accrue as and when the sales is finalized. Hence, we are of the view that the Ld. CIT(A) was not justified in taking the view that the commission expenditure shall become due only when the payment is received from the customers. In the case of KCP Ltd. (supra), the Hon'ble A.P. High Court has upheld the view of the Tribunal in holding that the liability to pay commission accrues when orders were secured by agents and not when supplies were effected by the assessee.

14. There is one more angle with regard to the claim of the assessee. Under "revenue cost matching principle", all expenses incurred in generating the revenue should be provided for in the books of account and also under the "Principle Prudence", all known liabilities have to be provided for in the books of account. In the instant case, the assessee is aware that it would be liable to pay commission amount to Md. Ziaul Hassan Khan when the sales is finalized and this commission expenditure is related to the revenue generated during the year under consider. Hence it is also a known liability for this year. Hence, as per accounting principles discussed above, the said commission expenditure should be provided for in the books of accounts when the relevant sales are accounted. On this count also, the claim of the assessee is admissible. Accordingly, we are of the view that the commission expenditure claimed by the assessee is allowable in the year under consideration. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to allow the commission expenditure claimed by the assessee.

15. The assessee has raised an alternative ground that if the commission expenditure is not allowed in this year, then A.O. should be directed to allow it in the year of payment. In view of the decision rendered by us in the preceding paragraph, this additional ground shall become infructuous.

16. The other issues urged by the assessee related to non setting off of brought forward losses and unabsorbed depreciation and also non-granting of refund. Both the issues require verification at the end of the A.O. Accordingly, we restore this issue to his file for examining the claim of the assessee.

17. We shall now take up the appeal filed by the revenue. The first issue relates to disallowance of deduction claimed u/s 35(2AB) of the Act.

18. The assessee claimed a sum of Rs.103,88,54,734/- as deduction u/s 35(2AB) of the Act @ 200% of the expenditure of Rs.51,94,27,366/- incurred on Research and development. The A.O. noticed that the R & D expenditure is related to "product development expenditure". He further noticed that the Form No.3CL issued by DSIR mentioned a sum of Rs.102,15,31,716/-. Accordingly, the excess amount of Rs.1,73,23,016/- was disallowed by the A.O.

19. In addition to the above, the A.O. took the view that the "product development expenditure" would not fall under the category of research & development expenses eligible for weighted deduction u/s 35(2AB) of the Act, even though the expenditure has been certified by DSIR in Form 3CL a R & D expenditure. Accordingly he took the view that the weighted deduction amount in respect of "Product development Expenditure" is not allowable. It is pertinent to note that the AO had made identical disallowance in an earlier year and when the matter reached Hon'ble Karnataka High Court, it has expressed the view that the A.O. has no jurisdiction to sit in the judgement over the report submitted by DSIR in form No.3CL. The appeal filed by the revenue before Hon'ble Supreme Court against the decision rendered by Hon'ble High Court has also been dismissed. In the instant year, the AO has noted the judicial ruling referred above. However, the A.O. chose to disallow weighted deduction amount of Rs.51,94,27,366/-(50% of Rs.103,88,54,734/) in order to maintain consistency.

20. The Ld. CIT(A), deleted the disallowance of Rs.51,94,27,366/- by following the decision rendered by Hon'ble High Court of Karnataka in the assessee's own case in writ petition No.7004/2014. The revenue is aggrieved by the decision of Ld. CIT(A).

21. We heard the parties on this issue and perused the record. The decision rendered by Hon'ble jurisdictional High Court is binding on all authorities below it. Since the Ld. CIT(A) has followed the decision rendered by jurisdictional High Court, we do

not find any reason to interfere with the decision rendered by Ld. CIT(A) on this issue. Accordingly, we confirm his order passed on this issue.

22. The next issue urged by the revenue relates to disallowance made u/s 14A of the Act. The assessee had disallowed a sum of Rs.3,96,417/- by applying Rule 8D(2)(iii) of the I.T. Rules. The A.O. took the view that the assessee should have disallowed part of interest expenditure by applying Rule 8D(2)(ii). Accordingly, disallowed a sum of Rs.34,798/- out of interest expenses under Rule 8D((2)(ii). The Ld. CIT(A) deleted the same by observing that the A.O. has not given suitable reason for making this addition.

23. We heard the parties and perused the record. A perusal of balance sheet furnished by the assessee would show that the assessee is having own funds of Rs.334.12 crores while the investments made by the assessee stand at Rs.4.58 crores only. Admittedly, the own funds available with the assessee is in far excess of the investments made by the assessee. Accordingly, as per decision rendered by Hon'ble Karnataka High Court in the case of Micro Labs Ltd. 383 ITR 490, no disallowance out of interest expenditure is called for. Accordingly, we confirm the decision rendered by Ld. CIT(A) in deleting this disallowance for the reasons stated above.

24. In the result, the appeal filed by the assessee is treated as allowed and the appeal of the revenue is dismissed.

Hence, these issues are remitted back to the file of the A.O. for fresh consideration to decide in the light of the above order of the Tribunal.

26. Ground No.10.1 of the appeal is regarding depreciation. This ground is also remitted back to the file of the A.O. for fresh adjudication.

26.1 Facts are that assessee claimed depreciation in respect of capital expenditure on fixed assets since the A.O. disallowed the same on the reason that this expenditure is allowed as revenue

expenditure on the direction of the Ld. DRP. Now the alternative contention of the Ld. A.R. is that if the assessee not succeeds on issue of deduction u/s 35(2AB) of the Act, then the said capital expenditure is eligible for depreciation u/s 32 of the Act. Further, it was submitted that the depreciation was allowed in draft assessment order, however, the same has been removed in final order. In our opinion, the claim of deduction u/s 35(2AB) of the Act has been allowed to the assessee. Now this ground has become infructuous and dismissed accordingly.

27. Ground Nos.11.1 & 12.1 are regarding non granting of foreign tax credit and short credit of tax deducted at source. In this regard, the A.O. is directed to give corresponding TDS credit to the assessee.

28. ground Nos.13 & 14 are consequential in nature and does not require adjudication.

29. Ground No.15 does not require adjudication.

30. The additional grounds raised by the assessee in this appeal are as under:

1. *The learned Assessing Officer erred in not allowing a sum of Rs.2,84,32,055/- reduction in book profit calculation under section 115JB of the Act on the facts and circumstances of the case.*

2. *The Learned Assessing Officer is erred in not allowing a sum of Rs.2,84,32,055/- being reversal of provision for doubtful debts in computing the book profit under section 115JB of the Act when the same was allowed by the learned Assessing Officer in the normal computation on the facts and circumstances of the case.*

3. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*

30.1 We have heard the rival submissions and perused the materials available on record. With regard to admission of additional ground, in our opinion, the facts relating to this issue are already on record and there is no necessity of investigation of fresh facts. Accordingly, this additional ground is admitted by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383.

31. The contention of the Ld. A.R. is that A.O. not allowed the above amount as reduction in book profit u/s 115JB of the Act when the same was allowed under normal computation of income. We have heard the rival submissions and perused the materials available on record. This ground was raised by the assessee for the first time before this Tribunal. Accordingly, this issue is remitted to the A.O. for reconsideration while passing fresh order.

32. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

ITA No.1674/Bang/2018 (A.Y. 2011-12): (Assesse's appeal):-

33. This appeal filed by the assessee is directed against the order of the Ld. CIT(A) passed u/s 263 of the Act dated 12.12.2018. the Ld. CIT after examination of the assessment records noticed that A.O. had failed to make necessary verification before computation of book profit and with regard to the excess provision withdrawn from book profit. Accordingly, after giving due opportunity of hearing to the assessee, he gave direction to the A.O. that an amount of Rs.96,37,269/-, which is added to the income under normal provision should be added back to the book profit as per the provisions of section 115JB of the Act with regard to the expenditure

incurred in earning exempted income u/s 14A of the Act. Further, he observed that while computing the book profit, an excess amount of Rs.1,95,17,376/- was reduced as withdrawn from reserve or provisions which has resulted in excess claim of allowances from book profit amounting to Rs.1,74,73,989/-. Hence, according to the Ld. CIT, A.O. failed to examine the above issue and he observed that order of A.O. is erroneous in so far as prejudicial to the interest of the revenue. Accordingly, he remitted the issue to the A.O. to examine the claim of the assessee by making necessary enquiry and verification of relevant record available and redo the assessment after giving opportunity of hearing to the assessee. Against this, the assessee is in appeal before us. At the outset, the Ld. A.R. strongly opposed the exercising of jurisdiction u/s 263 of the Act by Ld. CIT is bad in law since the issue dealt by him with regard to the disallowance made u/s 14A of the Act cannot be added for the purpose of computation of book profit u/s 115JB of the Act and there were judgements in the case of assessee, which are available with the following judgements in favour of the assessee are available at the time of passing of assessment order on 28.1.2016.

1. Apollo Tyres Vs. CIT 255 ITR 275
2. ACIT Vs. Spray Engineering Devices Ltd. (2012) 23 Taxmann.com 267 (Chd)
3. Beach Minerals Company Vs. ACIT (2015) 64 Taxmann.com218 (Chennai)

Further, he submitted that the order passed by A.O. is not erroneous so far as it is prejudicial to the interest of revenue so as to invoke jurisdiction u/s 263 of the Act. He relied on the following judgements:-

1. Malabar Industrial Company Ltd. Vs. CIT 243 ITR 83,
2. CIT Vs. Max India Ltd. 295 ITR 282,
3. CIT Vs. Kelvinator of India Ltd. 332 ITR 231,

4. CIT Vs. Arvinda Jewellers 259 ITR 502
5. CIT Vs. Saluja Exim Ltd. 329 ITR 603

34. Further, he submitted that the Principal CIT cannot substitute his own views on the issues whether AO has taken conscious decision after due verification of the books of accounts as such exercising of jurisdiction u/s 263 of the Act is bad in law. Further, he submitted that the A.O. passed the assessment order after considering the due application filed by assessee in response to the various questions raised by him and after being satisfied with the said explanation chose not to make any further enquiry. Endless enquiry is not possible and it is for the A.O. to decide when to end the enquiry. According to the Ld. A.R., the Principal CIT cannot transgress jurisdiction u/s 263 of the Act by mentioning that no proper enquiry was made by the A.O. Therefore, he prayed that the impugned order passed u/s 263 of the Act has to be set aside.

35. On the other hand, Ld. D.R. submitted that enquiry conducted by the A.O. is not sufficient to come to the correct conclusion that there is no addition warranted on the issues raised by the Principal CIT. As such, the very reason to invoke the provisions of section 263 of the Act that there was no proper enquiry on the issues dealt by the Ld. CIT. As such, he supported the order of the Ld. CIT.

36. We have heard the rival submissions and perused the materials available on record. We have considered the rival submissions on the legal issue with regard to invoking the provisions of section 263 of the Act by the Principal CIT. The Principal CIT can exercise revision proceedings u/s 263 if he is satisfied that the order of the AO sought to be revised is erroneous and prejudicial to the interests of the revenue. Section 263 empower the Principal CIT to initiate section 263 proceedings where the AO either takes a wrong

decision without considering the material on record or he takes a decision without making proper enquiry and that such enquiry was prima facie warranted. If the Principal CIT was of the opinion that there was no proper enquiry by the AO and the AO accepted the various claims of the assessee mentioned in his order without conducting further enquiry with regard to the genuineness of the claim of the assessee and it is incumbent on the part of the AO to come to an independent conclusion that various expenditure claimed by the assessee were laid out wholly and exclusively for the purpose of business of the assessee.

37. In the present case, as seen from the assessment order, the AO closed his eyes on the issues raised by the Principal CIT for the reasons best known to him and accepted the deduction claimed by the assessee in his return of income. Though AO is required to make necessary enquiries himself regarding the various claims of the assessee, he failed to do so. Therefore, the issues dealt by the Principal CIT were within his powers to invoke the provisions of the section 263 of the Act where such enquiry was prima facie warranted. In view of the above, we are of the opinion that the Ld. Principal CIT was justified in invoking the provisions of section 263 of the Act.

37.1 Regarding the merit of the issue dealt by the Principal CIT, the Ld. A.R. submitted that regarding ground Nos.05-09 relating to disallowance made under section 14A read with Rule 8D a sum of Rs.1,92,74,539/- in the normal computation cannot be added back while computing book profits under section 115JB of the Act the assessee submits that the amount of calculation is not correct. The correct amount is mentioned in the order passed under section 263 of the Act a sum of Rs.96,37,269/-. The assessee submits that addition made under section 14A of the Act should not be added to book profit of the assessee under section 115JB of the Act. The

decision relied by the learned Commissioner of Income-tax in the case of Shoba developers Ltd is reversed by the Hon'ble High Court of Karnataka in the case of Sobha Developers Ltd Vs. DCIT (2021) 125. The assessee places reliance on the following decisions:

1. CIT Vs. Gokaldas Images (2020) 429 ITR 526 (Kar)
2. Karnataka State Industrial and Infrastructure Development Corpn Ltd Vs.
3. DCIT (2021) 281 taxman 312.

38. Regarding ground Nos.10 to 13 i.e. grounds relating to reversal of provision for doubtful debts the assessee inadvertently claimed the lower amount of Rs.1,95,17,376/-as against the correct amount to be claimed a sum of Rs.4,79,49,431/-. The assessee in the normal computation of income correctly claimed a sum of Rs.4,79,49,431/- and the same was not disturbed by the lower authorities. The amount of benefit given under normal computation has to be extended to the calculation of book profit under section 115JB of the Act. Without prejudice the assessee submits that the accounting treatment and presentation in financial statements of transactions should be covered by a substance and not merely legal form. The assessee places reliance on the decision in the case of CIT Vs. IBM India Ltd (2015) 55 taxmann.com 515 (Karn). The assessee places reliance on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Shoorji Vallabhadas & Co (1962) 46 ITR 144 (SC).

39. Ld. D.R. relied on the order of the Ld. Principal CIT.

40. We have heard the rival submissions and perused the materials available on record. In this case, Ld. Principal CIT given a direction to reconsider the above two issues afresh after giving an opportunity of hearing to the assessee. He has not suggested any addition on this count. Being so, we do not find any infirmity in the

findings of Ld. Principal CIT. Further we make it clear that the A.O. shall not be influenced by any observations made by Principal CIT in his order. The A.O. should carry out the enquiry independently and pass fresh assessment order after giving opportunity of hearing to the assessee. Hence, the appeal filed by the assessee is dismissed.

41. In the result, the appeals filed by the revenue in IT(TP)A No.296/Bang/2015 for the A.Y. 2010-11, IT(TP)A No.1119/Bang/2015 for the A.Y. 2010-11 & IT(TP)A No.621/Bang/2016 for the A.Y. 2011-12 are dismissed. Appeals filed by the assessee in IT(TP)A No.468/Bang/2015 for the A.Y. 2010-11 and IT(TP)A No.694/Bang/2016 for the A.Y. 2011-12 are partly allowed for statistical purposes. Appeals filed by the assessee in IT(TP)A No.582/Bang/2021 for the A.Y. 2010-11 and IT(TP)A No.1674/Bang/2018 for the A.Y. 2011-12 are dismissed.

Order pronounced in the open court on 9th Feb, 2022

Sd/-	**Sd/-**
(George George K.)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 9th Feb, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.