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

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

(Hearing through Video Conferencing Mode)

आयकर अपील सं/ I.T.A. No.7035/Mum/2016
(**निर्धारण वर्ष** / Assessment Year: 2008-09)

ACIT-5(3)(2) Room No.573, Aayakar Bhavan, 5th Floor, M. K. Road, Mumbai-400020.	**बनाम**/ Vs.	M/s. Tolani Shipping Co. Ltd. 10-A, Bakhtawar, Nariman Point, Mumbai-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACT4127C		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Revenue by:	Shri Rajesh Mishra (DR)
Assessee by:	Shri Satya Prakash

सुनवाई की तारीख / Date of Hearing: 18/02/2022
घोषणा की तारीख /Date of Pronouncement: 22/02/2022

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 22.08.2016 passed by the Commissioner of Income Tax (Appeals) -58 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2008-09.

2. The revenue has raised the following grounds: -

> *"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the addition of Rs.30,96,52,860/- made by the AO/TPO to Rs.12,00,43,750/- on account of profit split method, ignoring that the TPO rejected*

the CUP method after giving detailed reasons in the order passed u/s 92CA(3).

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.8,85,609/- made by the AO/TPO on account of technical management fees without appreciating that the TPO on account of technical management fees without appreciating that the TPO made the adjustment not on the sufficiency of the mark up but on the inclusion of the increase in operating cost which was taken into account by the assessee."

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting interest from loans to employees amounting to Rs.4,96,480/-, sundry balances written back of Rs.59,877/- and interest income of Rs.1,26,59,058/- without considering the fact that the assessee has not filed a revised return of income claiming the same.

5. The appellant prays that the order of the Ld. CIT(A) be set aside and the order of the AO be restored.

6. The appellant craves leave to amend or alter any ground or add another grounds which may be necessary."

3. The brief facts of the case are that the assessee filed its return of income on 29.09.2008 declaring a total income to the tune of Rs.51,61,93,577/- for the A.Y.2008-09. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny under CASS. Notices u/s 143(2) of the Act was issued and served upon the assessee.

Subsequently, notice u/s 142(1) of the Act dated 19.08.2011 was also issued and served upon the assessee. In this case, a reference u/s 92CA(A) of the I. T. Act was also referred to the TPO. The draft assessment order u/s 143(3) r.w.s. 144C(1) of the I. T. Act was passed on 30.12.2011 in which the total income of the assessee was assessed at Rs.1,07,08,29,430/- and Rs.3,26,35,18,820/- u/s 115JB of the Act. The assessee proposed to file an appeal before CIT(A) as against the forum of Dispute Resolution Panel (DRP) against the said assessment order. Thereafter, the assessment u/s 143(3) r.w.s. 144C(3) of the I. T. Act was completed. The assessee is engaged in the business of shipping business. The case was referred to the TPO who passed the order dated 16.03.2011 u/s 92CA(3) of the I. T. Act 1961 and made the adjustment in sum of Rs.31,05,38,469/-. The following adjustments were made:-

(i) Technical Management Fees	Rs.8,85,609/-
(ii) Inchartering of Vessels	Rs.30,96,52,860/-
Total	Rs.31,05,58,469/-

4. The same amount was also included in the book profit u/s 115JB of the Act. On verification, it was found that the assessee did not include the Short Term Capital Gain in sum of Rs.209,45,51,797/- for the purpose of computing the book profit claiming that the profit on sale of depreciable assets was not taxable as per the provisions of Section 50 of the I. T. Act, 1961. The claim of the assessee was not found correct, therefore, the same was added to the income of the assessee. It was found that the assessee credited foreign exchange fluctuation gain of Rs.18,11,74,394/- (net) to

profit and loss account and also claimed that the said foreign exchange gain was its tonnage tax income. The contention of the assessee was not found correct, therefore, the same was also added to the income of the assessee. The assessee also received the exempt income and made investment to receive the dividend income. The assessee did not offer any disallowance u/s 14A r.w. Rule 8D. Thereafter, the AO calculated the expenditure to earn the exempt income in view of the provisions u/s 14A r.w. Rule 8D which is mentioned below:-

CALCULATION OF DISALLOWANCE U/S 14A				
A	Interest debited in P & L Account (referred as 'A'			203,431,298
		As on 01-04.2007	As on 31-03-2008	Average Value
B	Value of Investment, income from which is exempt (as referred as 'B'	1,325,333,524	1,748,571,348	1,536,952,436
C	Average of total Assets (as referred as 'C'	7,014,337,469	13,915,202,358	10,464,769,914
(i)	Direct expenses	-	-	
(ii)	Apportioned interest	A X B/C	29,877,793	
(iii)	0.5% of B	7,684,762	7,684,762	
Total disallowance u/s 14A read with rule 8D= (I+II+III)=				37,562,555

5. Accordingly, the same of Rs.37,562,555/- was disallowed and added to the income of the assessee. It was also observed that the assessee has made set off and adjusted long term capital loss on sale of equity oriented mutual funds of Rs.97,21,229/- against the other taxable long term capital gain. The contention of the assessee is that the exemption u/s 10(38) was not claimed on profit on sale of units of equity oriented mutual funds,

hence, is entitled to set off the said loss against taxable long term capital gains but the same was not found allowable, hence, the same was added to the income of the assessee. It was also noticed that the assessee has claimed the short term capital gain on mutual fund to the extent of Rs.1,56,39,204/- which was covered in view of provisions u/s 94(7) of the Act. The assessee failed to compute the said income, therefore, the same was disallowed and added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.1,07,08,29,430/- and as per MAT u/s 115JB profit was assessed to the tune of Rs.3,26,35,18,820/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) and the CIT(A) partly allowed the claim of the assessee but the revenue was not satisfied, therefore, filed the present appeal before us.

ISSUE No.1

6. Under this issue the revenue has challenged the restriction of the addition of Rs.30,96,52,860/- made by AO/TPO to Rs.12,00,43,750/- on account of profit split method, ignoring the fact that TPO has rejected the cup method after giving detailed reasons in the order passed u/s 92CA(3) of the Act.. At the very outset, the Ld. Representative of the assessee has argued that the issue has duly been covered by the decision of the Hon'ble ITAT in the assessee's own case for the A.Y.2003-04 to 2010-11specically Bearing ITA. No. 7087/Mum/2016 decided on 28.02.2019. However, on the other hand, the Ld. Representative of the revenue has refuted the said contention. The ground no.1 has been referred in para no. 27 of the page no.58 of the decision which is reproduced as under:-

> *"27. The Ground Nos. a to d in AY 2005-06, ground no. 1 for AY 2007-08 and 2008-09, ground no. (ii) in AY 2009-10 all revenue appeals are identical to one as decide by us in ground no. 1 in AY 2006-07 in revenue appeal which has been dismissed by us. Therefore our decision on ground no. 1 in AY 2006-07 would, mutatis mutandis, apply to these grounds as well. Resultantly the grounds in the respective assessment years are dismissed."*

7. It speaks that the finding given on ground no. 1 in the decision for the assessment year A.Y.2006-07 would be applicable as mutatis mutandis. The finding which has been given in ITA. No.8051/Mum/2011 (Revenue Appeal) is hereby given as under:-

> *"10. This appeal is filed by the Revenue. In this appeal, Revenue has raised the following grounds:*
>
> *"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition/adjustment of Rs. 9,69,74,059/- made by the Assessing Officer/Transfer Pricing Officer on account of profit split method, ignoring that the Transfer Pricing Officer rejected the CUP method after giving detailed reasons in the order passed u/s. 92CA(3) of the I.T. Act, 1961.*
>
> *2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the adjustment/addition of Rs. 16,46,859/- made by the Transfer Pricing Officer/Assessing Officer on account of Technical Management fees without appreciating that the Transfer Pricing Officer made the adjustment not on the sufficiency of the mark up but on the inclusion of the*

increase in operating cost which was not taken into account by the assessee.

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the disallowance of Rs. 45,24,204/- made by the Assessing Officer u/s. 14A/Rule 8D to Rs. 18,24,946/- and further holding that the provisions of Rule 8D are applicable only for and from A.Y. 2008-09 onwards.

4. The appellant prays that the order of the Ld. CIT(A) be set aside and the order of the AO be restored.

5. The appellant craves leave to amend or alter any ground or add any other ground which may be necessary".

11. The issue raised in first ground of appeal is against deleting the addition/adjustment of Rs. 9,69,74,059/- by the CIT(A) as made by the AO/TPO by applying profit split method, ignoring the fact that TPO has rejected the CUP method after giving detailed reasons in the order passed u/s. 92CA(3) of the Act.

11.1. The facts in brief are that assessee has entered into a contract with a Government undertaking for transporting cargo from Queensland, Australian ports to Indian ports at freight rate Per Metric Tonne as and when cargo is available. At the time Government undertaking asks the assessee to make available the ships, if assessee does not have own ships available due to preoccupation and pre-engaged with existing commitments, then the assessee makes arrangement to incharter vessel of similar capacity from associate concerns/third party in order to provide the same to the said Government undertakings so that assessee does not suffer any losses

on account of non honouring the contractual obligation/commitments. In that event, assessee availed the vessels from the associate concern in Singapore. For that purpose, assessee has to obtain permission from DG Shipping, a regulator for Indian Shipping Companies and prove with evidence that similar Indian ships are not available for lower freight at which the Singapore subsidiary offers vessel. In order to meet such an eventuality, the assessee entered into an agreement with the associate concern at Singapore to make available the ships to the Govt Undertaking when assessee's ships are not available. Accordingly to AO such transactions during the year needed to be bench marked and he accordingly referred the matter to the TPO after obtaining requisite approvals u/s. 92 of the Act. The TPO passed order u/s. 92CA(3) on 27- 10-2009, making the following adjustment:

Adjustment	*Amount (Rs.)*
1. Technical Management Fees	*16,46,859/-*
2. Interest on loan advanced to Associated Enterprises	*10,23,204/-*
3. Inchartering of vessels	*9,43,03,996/-*
Total	*9,69,74,059/-*

11.2. The AO , accordingly, issued show cause notice to the assessee as to why the said addition should not be made to the income of the assessee which was replied by assessee vide letter dt. 06-10-2009, giving detailed objections to such adjustment and the said letter has been reproduced by the AO from Pg. 2 to 16 of the assessment order.

Finally, the AO rejecting the contentions of assessee, made additions to the income of assessee of the aforesaid three additions.

11.3. In the appellate proceedings, Ld. CIT(A) allowed the appeal of assessee, deleting the addition of Rs. 9,69,74,059/- after considering the contentions and submissions of assessee, which has been reproduced by the CIT(A) in para 5.3 of the appellate order by observing and holding as under:

"5.4. I have considered the facts of the case and submissions of the appellant as against the observation/findings of the APO/TPO in their orders. The contentions raised by the appellant as against their grounds of appeal are being discussed and decided as under:

i. It is observed that the appellant had carried out transportation of cargo through its own ships. Out of the voyages that the appellant company carried out in respect of transportation of cargo, it is seen that only in case of 7 voyages, the AE's ship were engaged. This was because the ships of the appellant company were not available at the specific time when the Charterers called for transport of cargo from specific port. It is obvious that if the appellant company was not able to present the ship at the nominated time and place, it would have to suffer for non performance of contract with the government undertaking and would have to incur financial loss including the payment of damages. ii. Conclusion regarding comparability in Transfer Pricing are subject to analysis of four factors determining comparability. They are:

a) Characteristics of property or services

b) Functional Analysis

c) Contractual Terms

d) Economic Circumstances

The TPO has specially ignored the contractual terms which had made the appellant liable to make available ships as per contract, as and when it required. Thus hiring of AE ships for 7 voyages was a business compulsion and not an exercise for assisting the AE in getting business. The rate at which the appellant has paid to the AE compares favourably with the prevailing market rate as concluded by the Trans Chart, New Delhi, which is a chartering wing of Ministry of Surface Transport, Govt. of India. The market fixtures determined by the Transfer Chart are based on actual data of charges and often referred by the brokers in India who are in its panel. Thus the date provided by the Trans Chart is widely and routinely used in the ordinary course in the industry to negotiate prices for uncontrolled sources.

iii. The action of the TPO in resorting of Profit Split method is not a justified method. There is nothing on record to suggest that the operations of the related party are highly integrated so as to make the evaluation on individual basis difficult. Nor it can be said that both the party own valuable non-intangible assets for which no comparable data is available. It is also seen that the CIT(A) on the same facts and circumstances for the earlier years had come to the conclusion that no adjustment was required to be made. The same decision stands for the current year also.

iv. To sum up, the CUP method (external) is the best method for comparability of the transaction. The rate of Trans Chart are quite

favourable/higher as compared to the rates charged by the appellant to it's AE [point (h) of para 5.3 above]. The hire of the 7 voyages from A.E. ships, was to fulfil the contractual terms and not a poly to boost the business of the A.e. Thus taking into account all the facts and circumstances, including the decision taken in the earlier year, the addition of Rs. 9,69,74,059/- is deleted".

11.4. At the outset, we would like to mention that addition on account of interest charged from AE on the loan advanced was adjudicated by us herein above vide para No.3.7 upholding the CUP method for banking transactions and also upholding LIBOR+100 basis points. Therefore, the addition of Rs. 10,23,204/- is covered by the said decision on this issue. We accordingly dismiss this limb of the ground no. 1 of the Revenue.

11.4.i. So far as the addition of Rs. 16,46,859/- on account of Technical Management Services and Rs. 9,43,03,996/- for inchartering of vessels by assessee belonging to the AE are concerned , the same have been dealt with by the CIT(A) in a very comprehensive manner, giving detailed findings and reasons for deleting the addition.

11.5. We find that similar addition was made in the earlier years and deleted by the appellate authority. The Ld. CIT(A) followed the earlier years' orders allowed the ground in favour of the assessee. After perusing the facts on record and order of the Ld. CIT(A), we do not find any reason to deviate therefrom the conclusion drawn by the First Appellate Authority. Accordingly the ground of the revenue is dismissed."

8. Since the issue has duly been covered by the above mentioned decisions, therefore, we are of the view that the finding of the CIT(A) is quite correct which is not liable to the interfered with at this appellate stage. The finding has not been varied or changed in any of the appeal or till the adjudication of this issue. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO.2

9. Under this issue the Ld. Representative of the assessee has argued that the ground no.2 has also duly been covered by the decision of the Hon'ble ITAT in the assessee's own case bearing ITA. No. 7087/Mum/2016 decided on 28.02.2019. The relevant finding has been given in para no.28 which is hereby reproduced as under.:-

> *"**28** The ground no.2 for AY 2007-08 and 2008-09, ground no. (i) in AY 2009-10 & 2010-11 all revenue appeals are identical to one as decide by us in ground no.2 in AY 2006-07 in revenue appeal which has been dismissed by us. Therefore our decision on ground no.2 in AY 2006-07 would, mutatis mutandis apply to these grounds as well. Resultantly the grounds in the respective assessment years are dismissed."*

10. However, the finding given by the Hon'ble ITAT while deciding the issue no. 2 in the A.Y. 2006-7 in the revenue appeal is hereby as under: -

> *"11. The issue raised in first ground of appeal is against deleting the addition/adjustment of Rs. 9,69,74,059/- by the CIT(A) as made by the AO/TPO by applying profit split method, ignoring the fact that TPO has*

rejected the CUP method after giving detailed reasons in the order passed u/s. 92CA(3) of the Act.

11.1. The facts in brief are that assessee has entered into a contract with a Government undertaking for transporting cargo from Queensland, Australian ports to Indian ports at freight rate Per Metric Tonne as and when cargo is available. At the time Government undertaking asks the assessee to make available the ships, if assessee does not have own ships available due to preoccupation and pre-engaged with existing commitments, then the assessee makes arrangement to incharter vessel of similar capacity from associate concerns/third party in order to provide the same to the said Government undertakings so that assessee does not suffer any losses on account of non honouring the contractual obligation/commitments. In that event, assessee availed the vessels from the associate concern in Singapore. For that purpose, assessee has to obtain permission from DG Shipping, a regulator for Indian Shipping Companies and prove with evidence that similar Indian ships are not available for lower freight at which the Singapore subsidiary offers vessel. In order to meet such an eventuality, the assessee entered into an agreement with the associate concern at Singapore to make available the ships to the Govt Undertaking when assessee's ships are not available. Accordingly to AO such transactions during the year needed to be bench marked and he accordingly referred the matter to the TPO after obtaining requisite approvals u/s. 92 of the Act. The TPO passed order u/s. 92CA(3) on 27-10-2009, making the following adjustment:

Adjustment	*Amount (Rs.)*

1. Technical Management Fees	*16,46,859*
2. Interest on loan advanced to Associated Enterprises	*10,23,204/-*
3. Inchartering of vessels	*9,69,74,059/-*
Total	*9,69,74,059/-*

11.2. The AO , accordingly, issued show cause notice to the assessee as to why the said addition should not be made to the income of the assessee which was replied by assessee vide letter dt. 06-10-2009, giving detailed objections to such adjustment and the said letter has been reproduced by the AO from Pg. 2 to 16 of the assessment order. Finally, the AO rejecting the contentions of assessee, made additions to the income of assessee of the aforesaid three additions.

11.3. In the appellate proceedings, Ld. CIT(A) allowed the appeal of assessee, deleting the addition of Rs. 9,69,74,059/- after considering the contentions and submissions of assessee, which has been reproduced by the CIT(A) in para 5.3 of the appellate order by observing and holding as under:

"5.4. I have considered the facts of the case and submissions of the appellant as against the observation/findings of the APO/TPO in their orders. The contentions raised by the appellant as against their grounds of appeal are being discussed and decided as under:

i. It is observed that the appellant had carried out transportation of cargo through its own ships. Out of the voyages that the appellant

company carried out in respect of transportation of cargo, it is seen that only in case of 7 voyages, the AE's ship were engaged. This was because the ships of the appellant company were not available at the specific time when the Charterers called for transport of cargo from specific port. It is obvious that if the appellant company was not able to present the ship at the nominated time and place, it would have to suffer for non performance of contract with the government undertaking and would have to incur financial loss including the payment of damages.

ii. Conclusion regarding comparability in Transfer Pricing are subject to analysis of four factors determining comparability. They are: a) Characteristics of property or services

b) Functional Analysis

c) Contractual Terms

d) Economic Circumstances The TPO has specially ignored the contractual terms which had made the appellant liable to make available ships as per contract, as and when it required. Thus hiring of AE ships for 7 voyages was a business compulsion and not an exercise for assisting the AE in getting business. The rate at which the appellant has paid to the AE compares favourably with the prevailing market rate as concluded by the Trans Chart, New Delhi, which is a chartering wing of Ministry of Surface Transport, Govt. of India. The market fixtures determined by the Transfer Chart are based on actual data of charges and often referred by the brokers in India who are in its panel. Thus the date provided by the Trans Chart is widely and routinely used in the ordinary course in the industry to negotiate prices for

uncontrolled sources. iii. The action of the TPO in resorting of Profit Split method is not a justified method. There is nothing on record to suggest that the operations of the related party are highly integrated so as to make the evaluation on individual basis difficult. Nor it can be said that both the party own valuable non-intangible assets for which no comparable data is available. It is also seen that the CIT(A) on the same facts and circumstances for the earlier years had come to the conclusion that no adjustment was required to be made. The same decision stands for the current year also.

iv. To sum up, the CUP method (external) is the best method for comparability of the transaction. The rate of Trans Chart are quite favourable/higher as compared to the rates charged by the appellant to it's AE [point (h) of para 5.3 above]. The hire of the 7 voyages from A.E. ships, was to fulfil the contractual terms and not a poly to boost the business of the A.e. Thus taking into account all the facts and circumstances, including the decision taken in the earlier year, the addition of Rs. 9,69,74,059/- is deleted".

11.4. At the outset, we would like to mention that addition on account of interest charged from AE on the loan advanced was adjudicated by us herein above vide para No.3.7 upholding the CUP method for banking transactions and also upholding LIBOR+100 basis points. Therefore, the addition of Rs. 10,23,204/- is covered by the said decision on this issue. We accordingly dismiss this limb of the ground no. 1 of the Revenue.

11.4.i. So far as the addition of Rs. 16,46,859/- on account of Technical Management Services and Rs. 9,43,03,996/- for inchartering of vessels by assessee belonging to the AE are concerned , the same

have been dealt with by the CIT(A) in a very comprehensive manner, giving detailed findings and reasons for deleting the addition.

11.5. We find that similar addition was made in the earlier years and deleted by the appellate authority. The Ld. CIT(A) followed the earlier years' orders allowed the ground in favour of the assessee. After perusing the facts on record and order of the Ld. CIT(A), we do not find any reason to deviate therefrom the conclusion drawn by the First Appellate Authority. Accordinly the ground of the revenue is dimissed.

12. The issue raised in Ground No. 2 has already been decided by us while deciding Ground No. 1, hereinabove and requires no separate adjudication. Ground is dismissed.

11. Since the issue has duly been covered by the above mentioned decisions, therefore, we are of the view that the finding of the CIT(A) is quite correct which is not liable to the interfered with at this appellate stage. The finding has not been varied or changed in any of the appeal or till the adjudication of this issue. Facts are not distinguishable at this stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO.3

12. So far as issue no.3 is concerned, the Ld. Representative of the assessee has argued that the ground no. 3 has duly been covered by the decision of the Hon'ble ITAT in the assessee's own case bearing ITA. No. 7087/Mum/2016 decided on 12.12.2018. The relevant finding has been given in para no.30 which is hereby reproduced as under.:-

"30 The ground no. 3 in revenue appeal is against the order of CIT(A) deletion the addition as income from the other sources on account of interest from loans given to employees, sundry balances written back and interest income on short term deposits.

30.1. The facts in brief are that the assessee treated the interst on loan to employees Rs.496480/-, sundry balances written off Rs.59877/- and interest income of Rs.1,26,59,058/- as income from business. The AO came to the conclusion that the said income are not connected to the core business of the assessee and hence assessed the same as income from other source.

30.2. The Ld. CIT(A) allowed the appeal of the assessee after considering the contention of the assessee by observing and holding as under:

6.2 The appellant submitted that housing loans and vehicles given to employees and the interest received thereon is income from core activity and therefore the same is business income as held by the Hon'ble Mumbai ITAT in the case of Shipping Corporation of India vs. ACIT 133 ITD 290.

6.3 The appellant further submitted that addition of interest on loans to employee was deleted by DRP for A.Y. 2010-11. Since the facts of the case remains the same, addition of interest of income of Rs.496480/- to income from other sources is deleted.

6.4 With regard to the addition of sundry balances written back amounting to Rs.59877/-, the appellant submitted that sundry balances written back is income from core activities and interest

derived from such activity is taxable under the head Income from business and it can not be taxed separately.

6.5 the appellant relied on the Hon'ble Mumbai Tribunal in the case of Shipping Corporation of India vs. ACIT 133 ITD 290 wherein similar addition of write back of sundry credit balances was deleted by Hon'ble ITAT. Since the facts of the case remain same, addition of sundry balances written back of Rs.59877/- to income from other sources is deleted. ………………… ………………….

6.10 I have considered the above judgments submitted by the appellant and the contention by the appellant. The submission made by the appellant that these deposits were short term deposits made temporarily when funds were lying idle for a short tenure is found tenable. The appellant has substantial borrowing and has paid interest of over Rs.20 cr. The interest has been earned on short term deposits only, in respect of funds which were to be used for business purpose by the appellant. In Varun Shipping Co. Ltd. 334 ITR 263 Bom. the company was to buy a new ship for which it had borrowed funds and had obtained RBI approval and it earned interest on the unutilized portion of this amount. AO brought this amount to tax as income from other sources. However, ITAT held that this activity was a part of appellant's business and hence interest earned was liable to be treated as business income. The finding of ITAT was upheld by Bombay High Court in the above decision. I find that case of the appellant is covered by the Bombay High Court in the case of Varun Shipping as quoted above. Respectfully following the judgment, addition of interest income of Rs.1,26,59,058/- as income from other sources is deleted."

30.3. We have heard the rival arguments and perused the material on records including the decision of the ld CIT(A) and the decisions relied by the ld AR. We find the ld CIT(A) has passed a very reasoned and speaking order and there is no reason to deviate from the findings of the ld CIT(A). Accordingly the ground raised by the revenue is dismissed.

31. The issue in ground No. (ii) and (iii) in AY 2010-11 in revenue appeal is similar to the one as decided by us in ground no. 3 in AY 2008-09 in revenue's appeal and therefore our decision on ground No. 3 in AY 2008-09 would, mutatis mutandi, apply to these grounds also. Accordingly, the ground no. (ii) and (iii) are dismissed."

13. Since the issue has duly been covered by the above mentioned decisions, therefore, we are of the view that the finding of the CIT(A) is quite correct which is not liable to the interfered with at this appellate stage. The finding has not been varied or changed in any of the appeal or till the adjudication of this issue. Facts are not distinguishable at this stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

<u>ISSUE NO.4</u>

14. The Ld. Representative of the assessee has argued that the ground no. 4 has also duly been covered by the decision of the Hon'ble ITAT in the assessee's own case bearing ITA. No. 7087/Mum/2016 decided on 12.12.2018. The relevant finding has been given in para no.29 which is hereby reproduced as under.:-

> ***"29.*** *The ground no. 3 for AY 2007-08, ground no. 4 for AY 2008-09 both revenue appeals are identical to one as decide by us in ground no.3 in AY 2006-07 in revenue appeal which has been dismissed by us. Therefore our decision on ground n.3 in AY 2006-07 would, mutatis mutandis, apply to these grounds as well. Resultantly, the grounds in both assessment years are dismissed"*

15. However, the finding given by the Hon'ble ITAT while deciding the issue no. 3 in the A.Y. 2006-7 in the revenue appeal is hereby as under: -

> *13. The issue raised in Ground No. 3 is against the reduction in disallowance by CIT(A) as made by the AO u/s. 14A r.w. Rule 8D to Rs. 18,24,946/- as against Rs. 45,24,204/-by the AO. 13.1. We have already decided the issue of disallowance u/s. 14A r.w. Rule 8D are not applicable to the assessee in the assessee's appeal in para no.4.6 by holding that provisions of section 14A r.w.r 8D not applicable as the income of assessee is assessed to tax under Tonnage Tax Scheme. Therefore, this ground of the Revenue is accordingly dismissed.*

16. Since the issue has duly been covered by the above mentioned decisions, therefore, we are of the view that the finding of the CIT(A) is quite correct which is not liable to the interfered with at this appellate stage. The finding has not been varied or changed in any of the appeal or till the adjudication of this issue. Facts are not distinguishable at this stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

<u>ISSUE NOs.5 & 6</u>

17. Issue nos. 5 & 6 are formal in nature which nowhere required to be adjudicated.

18. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 22/02/2022

Sd/-	Sd/-
(SHAMIM YAHYA)	**(AMARJIT SINGH)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 22/02/2022
Vijay Pal Singh (Sr. P.S.)

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**