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

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER

IT(TP)A Nos.139 & 2560/Bang/2019
Assessment years : 2014-15 & 2015-16

Onmobile Global Ltd., Tower # 1, 94/1C & 94/2, Veerasandra Village, Attibele Hobli, Anekal Taluk, Electronics City, Phase 1, Bengaluru – 560 100. **PAN: AAACO 3900E**	Vs.	The Asstt./Deputy Commissioner of Income Tax, Circle 5(1)(2), Bengaluru.
ASSESSEE		RESPONDENT

Assessee by	:	Shri T. Suryanarayana, Advocate
Respondent by	:	Dr. Manjunath Karkihalli, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	27.07.2022
Date of Pronouncement	:	10.08.2022

O R D E R

Per Padmavathy S., Accountant Member

These appeals are against the orders of the Assistant Commissioner of Income Tax u/s. 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 [the Act] dated 28.11.2018 and 24.10.2019 for the assessment years 2014-15 and 2015-16 respectively.

ITA No.139/Bang/2019 (AY 2014-15)

2. The assessee is in this appeal is contending the following issues through various grounds raised:-

1. Transfer Pricing adjustment (Ground Nos.1 to 19).
2. Disallowance of depreciation u/s.32 of the Act (Grounds 20 to 20.4)
3. Disallowance made u/s. 14A of the Act (Grounds 21 to 21.4)
4. Incorrect adoption of income from other source (Grounds 22 to 22.2)
5. Disallowance of additional foreign tax credit (Grounds 23 to 23.2)
6. Disallowance of TDS credit (Grounds 24 to 24.2)
7. Interest u/s. 234B (Grounds 25 to 25.2)
8. Non-grant of interest u/s. 244A (Grounds 26 to 26.2)
9. Penalty proceedings (Grounds 27 to 27.1)

3. The assessee has raised additional by way of ground No.28 with regard to deduction in respect of unclaimed Foreign Tax Credit (FTC). The ld AR submitted that the issue of claiming deduction for taxes paid outside India in respect of which no credit is claimed in India was not raised before the AO and the DRP. However, it has come to the knowledge that tax credit can be claimed as a deduction and various judicial precedents have allowed such a claim. The facts are already on record and no fresh enquiry is required. Therefore, admission of additional evidence was prayed for by the ld AR. The ld DR opposed the admission of additional ground. Keeping into consideration the

entire conspectus of the facts and circumstances of the case and the additional ground raised before us we are convinced that its adjudication does not require any fresh investigation of facts and involves substantial question of law. Respectfully following the judgement of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT [(1998) 229 ITR 383 (SC)] we admit this additional ground for disposal on merits

4. The brief facts of the case are that the assessee provides mobile value added services ("MVAS") to telecommunication operators in India and abroad. The services include ring back tones ("RBT"), contests, jokes, cricket alerts etc., which enable subscribers to personalize their mobile phones and thereby enhance user experience. The Assessee enters into contracts with telecom operators in India and abroad, for providing services to customers of telecom operators. Once the contract is signed, the Assessee establishes subsidiaries (Associated enterprises – AEs) in the respective countries for furtherance of its business. While the contract is entered into by the Assessee, the subsidiaries perform routine functions such as installation of equipment, routine and low level technical support and collections from the customers for the Assessee. The subsidiaries operate on a cost plus model for the services rendered. The subsidiaries retain a return on cost for the services provided and transfer the rest of the proceeds to the Assessee. The amount received from the subsidiaries is shown under the head 'Telecom Value Added Services rendered". Since the subsidiaries of the Assessee were the least complex entities to the

transaction, the Assessee benchmarked the transactions entered into with each of the subsidiaries independently, by taking each of the subsidiaries as the tested party. In addition to the above transactions, the Assessee rendered software development services to Voxmobili, USA, (AE) which were benchmarked independently. The income from the software development services is shown under the head 'Business Development Services rendered'. Since the Assessee was the least complex entity to this transaction, the Assessee selected itself as the tested party and benchmarked the transaction. In the transfer pricing study maintained by the Assessee, on selection of certain companies as comparables, the Assessee arrived at the conclusion that all the international transactions entered into by it were at arm's length.

5. The assessee filed the return of income on 28.11.2014 by declaring an income of Rs.9,61,58,280. The case was selected for scrutiny and the notice was served on the assessee. On a reference made by the AO, the TPO passed an order dated 31.10.2017 under Section 92CA of the Act determining a TP adjustment of Rs. 104,95,80,620/-. Initially, a draft assessment order dated 27.12.2017 came to be passed by the AO in which, inter alia, the aforesaid TP adjustment was incorporated. The AO also proposed to (i) make a disallowance of depreciation; (ii) make a disallowance under Section 14A of the Act and (iii) recompute the deduction claimed under Section 10AA of the Act.

6. Aggrieved, the Assessee filed its objections before the DRP which vide its directions dated 28.09.2018, rejected the Assessee's objections to a large extent while granting marginal relief. Pursuant to the directions of the DRP, the AO passed the final assessment order dated 28.11.2018 in which the TP adjustment was reduced to Rs. 95,04,68,087/-. The disallowance of depreciation and disallowance under Section 14A of the Act came to be sustained.

7. Aggrieved by the final assessment order, the Assessee filed the appeal before this Hon'ble Tribunal.

Transfer Pricing adjustment - Ground Nos.1 to 19

8. Though the Assessee raised 19 grounds with regard to the transfer pricing adjustment, during the course of hearing the ld. AR submitted that the TP adjustment was made by the TPO on the misunderstanding of the business model of the assessee and made the entire TP adjustment on that premise. The ld AR therefore submitted that if the ground 4 which is raised pertaining this contention is adjudicated by remanding the issue back to the TPO for de novo consideration, then rest of the grounds would become academic. We therefore first proceed to adjudicate Ground No.4 which reads as under:-

> "4.The learned AO/TPO/DRP erred in not understanding the business model of the Appellant and determining an adjustment to the transfer price."

9. During the AY 2014-15, the Assessee inter alia entered into the following international transactions with its subsidiaries (AEs) for rendering the MVAS to its customers:-

Receipts	Name of the AE	Value
Income from telecom value added services	OnMobile Singapore Pte. Ltd.	Rs. 9,69,42,126/-
	OnMobile Global for Telecommunication Services	Rs. 18,99,78,334/-
	OnMobile De Venezuela C A	Rs. 4,16,33,902/-
	Vox Mobili S.A ("Voxmobili")	Rs. 5,50,61,766/-
	OnMobile Brasil Sistemas de Valor Agregado Para Comunicacoes Moveis Ltda	Rs. 13,55,38,417/-
	OnMobile Global S A, Argentina	Rs. 3,32,48,083/-
	OnMobile Costa Rica OBCR SA	Rs. 24,56,380/-
	OnMobile Telecom Limited	Rs. 53,64,856/-
	OnMobile Zambia Telecom Limited	Rs. 2,58,70,467/-
	OnMobile Global Spain S.A	Rs. 4,44,72,326/-
	OnMobile Bangladesh Pvt. Ltd.	Rs. 40,45,221/-
	OnMobile Madagascar Telecom Limited	Rs. 1,39,994/-
Income from software development services	Voxmobili	Rs.5,50,61,766

10. With regard to the income from 'Telecom value added services', the assessee benchmarked separately the transactions with each of the AEs by taking the AEs as the tested party, since the AEs were the least complex entities to the transaction. The assessee adopted the TNMM as the most appropriate method [MAM] and the profit level indicator [PLI] as Operating Profit/Total Cost [OP/TC]. With respect to rendering of SWD services to Voxmobili, the assessee was selected as the tested party.

11. Details of the services rendered by the AEs, margins realised there under, the methodology adopted for benchmarking the transactions are as under:-

Sl. No.	Name of the AE	Nature of the services rendered	Margin	Database used	Filters applied	Mean margin of the comparables selected
1.	OnMobile Singapore Pte. Ltd.	Sales and marketing activity.	7% (page 2044 PB)	OSIRIS	Companies incorporated in Far-East, Central Asia, OCEANIA and ASEAN-selected; Data available for the period 2012, 2013 or 2014-selected; Companies in the nature of advertising agencies, consulting services, public relations and the like- selected; Companies with direct or total shareholding in subsidiaries >50.01% and for which only unconsolidated accounts are available-rejected; Companies reporting turnover and profit for at least 2 out of 3 years under consideration-selected;	9.81% (of 12 companies)

					Companies reporting negative net worth-rejected; Non-comparable companies-rejected.	
2.	OnMobile Global for Telecommunication Services	Technical support services.	7% (page 2049 PB)	AMADEUS	Companies with direct or total shareholding in subsidiaries >50.01% and for which only unconsolidated accounts are available-rejected; Data available for the period 2011, 2012 and 2013-selected; Companies reporting minimum turnover of EUR 5 million for the latest available year and the two preceding years-selected; Companies reporting consistent operating losses-rejected; Companies in the nature of software publishing, computer programming, consultancy and related activities, data processing and related activities, activities of call centre, etc.,-selected;	7.60% (of 26 companies)

					Companies having average intangible asset >10% of total assets- rejected; Non comparable companies-rejected.	
3.	OnMobile Brasil Sistemas de Valor Agregado Para Comunicacoes Moveis Ltda	Technical support services.	17% (page 2061 PB)	COMPUSTAT	Companies for which financial data was not available for 2 out of 3 previous years-rejected; Companies rendering computer services, computer programming services, computer processing and data preparation and processing services, computer facilities management services, computer maintenance and repairs-selected; Companies that are incurring losses consistently-rejected; Non comparable companies-rejected.	12.74% (of 13 companies)
4.	OnMobile De Venezuela C A	Technical support services.	10% (page 2075 PB)	Same as Sl. No. 3 above		
5.	OnMobile Global S A, Argentina	Technical support services.	10% (page 2075 PB)			
6.	OnMobile Costa Rica OBCR SA	Technical support services.	10% (page 2075 PB)			

7.	OnMobile Global Spain S.A	Sales and marketing activity.	7% (page 2086 PB)	Same as Sl. No.1 above
8.	OnMobile Bangladesh Pvt. Ltd.	Technical support services.	2.13% (page 2095 PB)	Same as Sl. No.1 above
9.	OnMobile Madagascar Telecom Limited	Limited technical support services.	7% (page 2068 PB)	Same as Sl. No. 2 above
10.	OnMobile Telecom Limited	Limited technical support services.	7% (page 2068 PB)	
11.	OnMobile Zambia Telecom Limited	Limited technical support services.	7% (page 2068 PB)	

12. With regard to the software development (SWD) services rendered to Voxmobili the effective margin was 19.36% and based on the 7 comparables chosen, the arithmetic mean computed was 14.09% and therefore the assessee concluded that for SWD services the pricing is within arm's length.

13. The international transactions with the 11 AEs i.e. subsidiaries of the assessee were analysed by the TPO for their arm's length nature. The TPO proceeded under basis that the assessee is a SWD services provider to all its AEs. Under this understanding that the MVA services rendered by the assessee to third parties is in fact SWD services rendered by the AEs, the TPO proceeded to bench mark the transactions. The TPO also made an incorrect understanding that the assessee has rendered services to the AEs whereas the fact is that the

AEs have rendered services to the assessee. The TPO therefore rejected the independent bench marking done by the assessee with each of its AEs on the ground that the same leads to inconsistency in arm's length price determination as different arm's length price has been determined for the same transaction. On classifying the entire international transactions entered into by the assessee as SWD services rendered to AEs, and by treating the transaction with Voxmobili as the base for further analysis, the TPO proceeded to determine the arm's length price. The TPO while recomputing the arm's length price proceeded to take the entire revenue and cost of the assessee without restricting it to the international transaction. The TPO applied new filters to arrive at fresh comparables and made a TP adjustment of Rs.104,95,80,620. The assessee raised objections before the DRP (Objection No.2) stating that the business model of the assessee is misunderstood by the TPO. The DRP rejected the contentions of the assessee and upheld the TP adjustment made by the TPO, which was incorporated in the final assessment order. Against this, the assessee is in appeal before the Tribunal.

14. The ld. AR reiterated the submissions made before the lower authorities and drew our attention to the TP study of the assessee to substantiate the business model of the assessee as to how the arm's length price is computed. The ld AR also filed additional evidence of sample agreements with customers and subsidiaries to support the fact that the assessee renders services to the customers directly and subsidiaries acting as in intermediary provide support to the assessee

for which they are compensated at Cost plus Margin. The ld. AR prayed for admission of additional evidence.

15. The ld. DR relied on the orders of the lower authorities and objected to the admission of additional evidence.

16. We have considered the rival submissions and perused the material on record. The additional evidence in the form of sample agreements with customers and subsidiaries on the services rendered by the assessee goes to the root of the matter for adjudication of the issue and no fresh investigation into facts is required. Therefore, for a proper adjudication of the issue and for substantial cause, the additional evidence is admitted and taken on record.

17. From the perusal of the materials on record, it is noticed that the assessee enters into contracts with telecom operators outside India for rendering MVA services. Once the contract is signed, the assessee establishes a subsidiary for furtherance of its business, including to collect the revenues from the customers, on behalf of the assessee. The subsidiaries of the assessee render low level marketing or technical support services involving routine functions such as installation, invoicing and collections from the customers for the assessee. The subsidiaries retain a return on cost for the services provided and transfer the rest of the proceeds to the assessee. Therefore it is clear that, the AEs of the assessee are rendering the services and not vice versa as understood by the TPO. One of the services rendered by the AEs is collection proceeds from the customers to the assessee which is

accounted under the 'Telecom Value Added services rendered' and the same is considered by the TPO as collection done towards SWD services. Further it is also noticed that out of the 12 transactions selected by the TPO for analysis, 11 transactions pertain to services rendered by the AEs to the Assessee and only one transaction pertains to services rendered by the Assessee to its AE. The TPO / DRP failed to appreciate the above business model of the Assessee and proceeded to treat the Assessee as a software development services provider to all of its AEs. The TPO has considered the MVAS as SWD services on the premise that the same is rendered using a software platform which has been developed by the Assessee which in our view is not correct.

18. As regards the transaction with Voxmobili, it is evident from the TP study that the said transaction is an independent transaction which is completely different from the transactions with the other AEs. The Assessee provides routine software development services for Voxmobili in which is charged with a mark up of 14% on costs(page No. 2021 of the paper book). Therefore in our considered view the said transaction cannot be considered as a base for benchmarking the remaining transactions.

19. The assessee in the TP study has clearly described the services rendered by the AEs and the SWD services by the assessee separately. The TPO in his order while examining the TP documentation stated that –

> "4.1.2 The arm's length price of the international transactions representing software development services provided to the associated enterprises (AE) is determined by applying transactional net margin method (TNMM), stating to be the most appropriate method in the facts and circumstances of the case. The operating profit to total cost ratio is taken as the profit level indicator (PLI) in TNMM analysis. In case of VoxMobili, tax payer has been considered as tested party. However, for other transactions of SWD (MVAS), AEs have been considered as tested party for analysis. It is seen that the tax payer had done analysis using different databases for different territories/countries and concluded that the transactions are at arm's length."

20. The assessee in the TP study has shown the receipts from AE who is acting as intermediaries under the head 'Telecom Value Added Services Rendered'. This the TPO has classified as SWD segment whereas these are reimbursement by AE of collections made from customers on behalf of the assessee. These receipts are not towards any services rendered by the assessee. This is substantiated by the sample agreement entered into by the assessee with its subsidiary Onmobile Nigeria Telecom Ltd., where in Annexure-A to the agreement (page 74 of additional evidence PB), demonstrating the role played by the AEs are mentioned as under:-

> "Onmobile Nigeria performs the functions of deploying the equipment at customer site, providing local operational support to the customers, deploying new products and features developed by OnMobile India, maintenance of equipment, invoicing the customer and collection of dues and other ancillary activities as directed by OnMobile India."

21. From the perusal of above clauses off the agreements submitted by the assessee it is clear that that TPO/DRP have not understood the

business model of the assessee in treating the Assessee as a service provider to all of its AEs is contrary to the facts of the case.

22. In view of the above discussion, it is clear that the TPO/DRP has not appreciated the facts of business model of the assessee properly and proceeded to make the entire TP adjustment on an incorrect premise. We therefore remit the issue back to the TPO for a denovo consideration afresh basis the correct understanding of the business model of the assessee and test the arm's length price accordingly after giving reasonable opportunity of being heard to the assessee. The assessee is directed to cooperate in the proceedings before the TPO and submit all the relevant details. This ground is allowed for statistical purposes.

23. Since the issue of TP adjustment is remitted back to the TPO for *de novo* consideration, the rest of the grounds with respect to TP adjustment have become academic not warranting any specific adjudication.

Disallowance of depreciation - Grounds 20 to 20.4

24. During the year under consideration, the assessee has claimed depreciation @ 60% towards the addition made to the block of assets "Computers". These additions included items like NMS CG/TX cards, switches, etc. The AO following the earlier years orders, allowed depreciation only @ 15% treating the additions as part of telecom

equipment as they relate to functioning of mobile phones. The DRP confirmed the disallowance.

25. The ld. AR submitted that the issue is covered by the decision of coordinate Bench of the Tribunal in assessee's own case for the AY 2008-09 to 2011-12 and the Hon'ble High Court of Karnataka has affirmed the decision of the Tribunal for AY 2008-09.

26. We have considered the rival submissions and perused the material on record. The coordinate Benches of the Tribunal have been consistently holding that CG/TX cards and switches, etc. are part of computers and therefore depreciation is to be allowed @ 60%. The relevant observations of the Tribunal in assessee's own case for AY 2008-09 which is confirmed by the jurisdictional High Court is extracted below:-

> "10.6.1 We have heard both parties and perused and carefully considered the material on record including the judicial decisions cited. The issue for our consideration is whether MRBs are to be classified as 'plant and machinery' or 'computers' for the purposes of depreciation. In this regard, it would be relevant to understand the term 'computer'. While 'computer' has not been defined in the Income Tax Act, 1961, the term 'Computer System' has been defined under Explanation (a) to section 36(1)(xi) of the Act as under :
>
> '(a) "computer system" means a device or collection of devices including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, or more of which contain computer programmes, electronic instructions, input data and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication and control;'

From the above definition, it follows that a computer system would encompass a collection of devices including input and output support devices that perform functions including, but not limited to, logic, arithmetic, data storage and retrieval communication and control.

10.6.2 In the light of the above definition of 'Computer System', the functions of MRBs require to be examined. From the details on record, it appears that the function of MRBs is to support a combination of functions, performed in conjunction with the computer and servers. The MRBs are boards which are connected to computer servers which assist in receiving calls and would function only when attached to the computer. The MRBs increase the working capacity of the computers to the extent the computers receive calls and convert them into digital form. The MRBs work in conjunction with and as a part of the computer servers and cannot, in any way, be called as 'telecom equipment'. We also find that the facts of this issue in the case on hand, is similar to the facts of the case Datacraft India Ltd. (supra) wherein the Special Bench of the Mumbai Tribunal of this order held as under :

'31. Now we have to consider whether a 'router' can be considered as "computer hardware" or a "computer component". Computer hardware refers to the physical parts of a computer and related devices. Internal hardware devices include motherboards, hard drives, and RAM. External hardware devices include monitors, keyboards, mouse, printers, and scanners. The internal hardware parts of a computer are often referred to as 'components', while external hardware devices are usually called 'peripherals'. Together, they all fall under the category of computer hardware. 'Software', on the other hand, consist of the programs and applications that run on computers. Because software runs on computer hardware, software programs often have 'system requirements', that list the minimum hardware required for the software to run.

31.1 In short, "Router" is a hardware device that routes data (hence the name) from a local area network (LAN) to another network connection. A router acts like a coin sorting machine, allowing only authorized machines to connect to other computer systems. Most routers also keep log files about the local network activity. Now the question is whether this "machine" can be used independent of Computer. If yes, then it cannot be called "Computer Hardware" in all circumstances.

31.2 When "Computer Hardware", is used as a component of the computer, it becomes part and parcel of the computer, as in the case of

operating software in the computer. In such a situation, hardware in question can be considered as a part of a computer and hence a 'computer'. Per contra, when the machine is not used as a necessary assessory or in combination with a Computer, it cannot be called a 'Computer component.'

31.3 Coming to the Routers, it is seen that these can also be used with a Television and in such use, no computer is required. These are also called T.V. routers. Similarly, "Internet Service Providers", give connectivity, by installing a router in the premises of the persons/institutions availing the internet connection. In these cases the router is not used along with a computer. In such a situation, it would be a "Stand alone" equipment. In such cases this cannot be considered a component of a computer or computer Hardware. Giving another example, a computer software can be used in many devices including washing machine, televisions, telephone equipment etc. When such software is used in those devices, it integrates with that particular devices. The predominant function of the device determines its classification. Only if the Computer software, resides in a computer, then it become a part and parcel of a computer and, as long as it is as integral part of a computer, it is classified as a 'Computer'.

31.4 In view of the above discussion, we are of the considered view that router and switches can be classified as a computer Hardware when they are used along with a computer and when their functions are integrated with a 'computer' In other words, when a device is used as part of the computer in its functions, then it would be termed as a computer.

32. Now we will advert to the decisions relied on by the rival parties. We have set out above the cases decided by various Benches of the Tribunal in favour of the assessee. The lead order is in the case of Samiran Majumdar (supra) which has been followed, directly or indirectly, in most of the subsequent cases. We will take up this case for discussion, in which the question was whether printer and scanner could be allowed a higher rate of depreciation as applicable to computers. The Bench noticed that the printer and scanner cannot be used without computer. It was on this appreciation of the factual position that the printer and scanners were held to be part of computer qualifying for depreciation at the rate applicable to computer. In the opposition the orders taking view in favour of the Revenue are led by the case of router mania Technologies (supra). In this case it was observed that the router is a device which links or connects the computers for the exchange of

relevant data. In reaching the conclusion that router is not eligible for depreciation at the rate applicable to computer, the Bench noticed that the router at its own does not perform any logical, arithmetical or memory functions by manipulations of electronic, magnetic or optical impulses.

33. We prefer the view taken in the case of Samiran Majumdar (supra) over that in the case of Router mania Technologies (supra) ; With utmost respect, the Mumbai Bench had taken a narrow view on this issue, by holding that only a device which can perform logical, arithmetical or memory functions by manipulations of electronic impulses etc. is computer. It has restricted the meaning of computer only to the CPU of the computer and pulled out the input and output devices from the ambit of computer. No doubt the function of the computer, as one composite unit, is to perform logical, arithmetical or memory functions etc., but it is not only the equipment which performs such functions that can be called as computer ; All the input and output devices, as discussed above, which support in the receipt of input and outflow of the output are also part of computer. CPU alone, in our opinion, cannot be considered as synonymous to the expression 'Computer'. The function of CPU is akin to the brain playing a pivotal role in the conduct of the body. As we do not call the brain alone as the body, similarly the CPU alone cannot be described as computer. Thus the computer has to necessarily include the input and output devices within its scope, subject to their exclusive user with the computer, as discussed above. If we constrict the definition of computer only to processing unit, as has been held in the case of Router mania (supra), then even the keyboard and mouse etc. will not qualify to be called as computer because these equipments also do not perform logical, arithmetical or memory functions. In the light of the meaning of 'computer' discussed in earlier paras, we are inclined to agree with the view taken by the Kolkata Bench in Samiran Majumdar (supra).

34. We therefore answer the question referred to this Special Bench in affirmative by holding that the routers and switches in the circumstances of the case, are to be included in the block of 'Computer' entitled to depreciation at the rate of 60%.'

10.6.3 The above decision of the ITAT, Mumbai Special Bench in the case of Datacraft India Ltd. (supra) has been followed by the Delhi Tribunal in the case of Microsoft Corpn. India (P.) Ltd. (supra) wherein at para 16 of the order, it was held that :

"16. … it is clear that the above equipment primarily include the routers, switches, modems, etc. which are in the nature of input and output support devices which performs the functions including communication and control and, thus, they are computer hardware when they are used along with computer and when their functions are integrated with 'computer.' Such devices used as part of the computer in its functions and, thus, it can be termed as 'computer' only, therefore, eligible for depreciation @ 60%. Therefore, also we find no infirmity in the claim of the assessee of depreciation @ 60% of ITG networking equipments."

10.6-4 A similar view was adopted by a co-ordinate bench of this Tribunal in the case of NCR Corpn. (P.) Ltd. (supra) wherein at para 10 thereof it was held as under :

"10. Having heard both the parties and having gone through the material on record, we find that this issue is more or less covered by the decision of the Special Bench in the case of Datacraft India Ltd. (cited supra) wherein it has been held that as long as the functions of the computer are performed along with other functions and the other functions are dependent upon the functions of the computer it is a computer entitled to the higher rate of depreciation. The Special Bench has also stated that all the input and output devices of the computer such as key board, mouse, monitor, etc are to form part of the block of computers. In the case before us also the ATM machine is doing both the logical, arithmetic and memory functions by manipulations of electronic magnetic or optical impulses giving debit or credit cash and thereafter dispenses the cash and gives a printed receipt. Thus as can be seen, the computer is an integral part of the ATM machine and on the basis of the information processed by the ITA No.353(Bang)/2010, computer in the ATM machine only, the mechanical functions of the dispensation of cash or deposit of cash is done. Its functions are not limited to the location at which it is placed but it also records the increase or decrease of the balance in the assessee's account in the bank consequent to such deposit or withdrawal and all this is done instantly. Thus it involves the use of internet facilities also to discharge the above functions."

10.6-5 In the above cases, a distinction has been drawn between a computer component being a necessary accessory to be called a "computer component" and not being a necessary component. The MRBs operate along with the servers and computers and are a necessary component of the "computer system". The MRB cannot function without the computers and the computers cannot perform the necessary functions

> required in the case on hand without the presence of the MRBs. In this view of the matter, we are of the opinion that MRBs fit into the definition of a "computer component" as explained above and therefore the decision of the ITAT Special Bench of Mumbai in the case of Datacraft India Ltd. (supra) rendered in respect of "routers" is equally applicable to the "MRBs" used by the assessee. Following the principle as explained in afore-cited decision of the Special Bench of the ITAT, Mumbai (supra), we hold that the MRBs are to be classified as "computers" for the purposes of the claim of depreciation @ 60%. Accordingly, the grounds raised by the assessee at S.Nos.2 (a) & (b) are allowed."

27. Respectfully following the above decision of the Tribunal, we hold that depreciation is to be allowed @ 60% on the CG/TX cards and switches, etc. This ground is allowed in favour of assessee.

Disallowance under Section 14A - Grounds 21 to 21.4

28. During the year under consideration, the assessee had earned a dividend income of Rs.2,04,09,795 which was claimed as exempt after disallowing a sum of Rs.1,96,199 as expenditure incurred in relation to exempt income. The AO invoked the provisions of section 14A r.w. Rule 8D(2) (i) & (ii) and disallowed a sum of Rs.17,18,651 towards expenditure incurred in earning exempt income. The DRP confirmed the disallowance on the ground that the assessee has not maintained separate accounts and the incurring of interest expenditure, especially other administrative and general expenses cannot be ruled out.

29. The ld. AR submitted that the AO ought to have recorded dissatisfaction as to the claim of the assessee having regard to its books of account. He submitted that the lower authorities proceeded on the misconceived basis that the assessee has not made any disallowance

suo motu, which is factually incorrect. He drew our attention to the computation of *suo motu* disallowance made by the assessee at page 1373 of PB. Vol.II and submitted that in the absence of any finding to the contrary on the computation done by the assessee, the AO cannot invoke the provisions of section 14A of the Act. In this regard, he relied on the following case laws:-

- ***Maxopp Investment Ltd. v. CIT*** [2018] 91 taxmann.com 154 (SC)
- ***Essilor India Pvt. Ltd. v. DCIT and Anr.*** [2022] 137 taxmann.com 60 (Karnataka).
- ***Hindustan Aeronautics Ltd.*** [2021] 125 taxmann.com 80 (Karnataka)
- PCIT v. UK Paints (India) Private Limited (2016) 76 taxmann.com 348 (Delhi).

30. The ld. AR further submitted that the assessee had sufficient own funds and where sufficient non-interest bearing funds are available, the presumption is that investments were made out of such funds. It is a settled position that where sufficient non-interest bearing funds are available, the presumption is that the investments were made out of such funds. Reliance in this regard is placed on the following decisions:

- ***CIT v. Reliance Industries Ltd.*** [2019] 102 taxmann.com 52 (SC); and
- ***CIT v. Brigade Enterprises Ltd***. [2021] 124 taxmann.com 237 (Karnataka).

31. We have considered the rival submissions and perused the material on record. Before we go into the facts of the case, we will look at the provisions of section 14Aand Rule 8D which are reproduced as follows:-

"Expenditure incurred in relation to income not includible in total income.

14A. (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :]

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.]

Rule 8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with—

(*a*) the correctness of the claim of expenditure made by the assessee; or

(*b*) the claim made by the assessee that no expenditure has been incurred,

in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:—

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to half per cent of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income :

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee."

32. From the combined reading of the above provisions, it is clear that for the purpose of application of section 14 r.w.r 8D(2)(iii) the AO has to record reasons as to why he is not satisfied with the correctness of the claim of expenditure by the assessee. We notice that the AO though, under the head reasons for applying Rule 8D has made a detailed analysis of the provisions of section 14A has not brought anything on record to factually state that the computation of disallowance made by the assessee as extracted below (page 1373 of paper book. Volume II) is not satisfactory.

Table showing the calculation in arriving at the disallowance under section 14A of the Act

Direct Expense - Salary

Sl No.	Name of the employee	Gross Salary	% of time spent on investment activities earning dividend	INR
1	Praveen Kumar	4,139,542	1.00%	41,395
2	Sudhir S	2,387,307	4.00%	95,492
3	Umesh	468,468	10.00%	46,847
	Total - A			183,735

Sl No.	Indirect Expenses	Expense	Capacity	Per employee expense	No of Employees	INR	Expenditure proportionate to the time spent on dividend earning activities
1	Rent of office	28,656,140	1,200	23,880	3	71,640	3,582
2	Electricity Charges	19,812,659	1,200	16,511	3	49,532	2,477
3	Housekeeping	8,247,548	1,200	6,873	3	20,619	1,031
4	Security Chgs	4,701,777	1,200	3,918	3	11,754	588
5	Staff Welfare	14,287,098	1,250	11,430	3	34,289	1,714
6	Employee Insurance	25,608,900	1,250	20,487	3	61,461	3,073
	Total - B						12,465

Disallowance under section 14A of the Act - 196,199

33. Further the AO has also not called for any details from the assessee or analysed the workings of the disallowance. In this regard we notice that the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154 (SC)* has held as follows:-

> "41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, *suo moto* disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan

> taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO."

34. In view of the above Hon'ble Apex Court judgment, it is clear that no disallowance can be made u/s 14A of the Act read with Rule 8D of the IT Rules, where the A.O. failed to record dissatisfaction of correctness of the claim of the assessee. A similar view has also been taken by the Hon'ble jurisdictional High Court in the case of Essilor India (P.) Ltd. v. Dy. CIT [IT Appeal No. 1001 of 2017, dated 28-1-2021]. Therefore the disallowance made under section 14A r.w.r 8D(2)(iii) is deleted.

35. With regard to disallowance made under Rule 8D(2)(ii) the ld AR submitted that the assessee is having sufficient amount of own funds and hence no disallowance towards interest expenditure is warranted. We notice that the as per the Financial Statements of the assessee as on 31.03.2014 (page 1153 of paper book Volume II), the Share Capital & Reserves and Surplus is at Rs. 778.975 crores and the balance under Investment is at Rs.35.611 crores. This substantiate the fact that the assessee is have enough own funds for making investments it is clear that the assessee has sufficient own funds which exceeds the investments.

36. The Hon'ble jurisdictional High Court in the case of *CIT vs Microlabs Ltd., [2016] 383 ITR 490 (Kar)* has held that -

> 40. We have heard the rival submissions. A copy of the availability of funds and investments made was filed before us which is at pages 38 to 42 of the assessee's paperbook and the same is enclosed as ANNEXURE-

III to this order. It is clear from the said statement that the availability of profit, share capital and reserves & surplus was much more than investments made by the assessee which could yield tax free income.

41. The Hon'ble Bombay High Court in Reliance Utilities & Power Ltd. 313 ITR 340 (Bom) has held that where the interest free funds far exceed the value of investments, it should be considered that investments have been made out of interest free funds and no disallowance u/s. 14A towards any interest expenditure can be made. This view was again confirmed by the Hon'ble Bombay High Court in CIT v. HDFC Bank Ltd., ITA No.330 of 2012, judgment dated 23.7.14, wherein it was held that when investments are made out of common pool of funds and non-interest bearing funds were more than the investments in tax free securities, no disallowance of interest expenditure u/s. 14A can be made.

42. In the light of above said decisions, we are of the view that disallowance of interest expenses in the present case of Rs.49,42,473 made under Rule 8D(2)(ii) of the I.T. Rules should be deleted. We order accordingly."

37. Therefore, by placing reliance on the above judgment and the judgment of the Hon'ble Apex Court in the case of Reliance Industries Ltd. (supra) we hold that disallowance u/s 14A r.w. Rule 8D(2)(ii) is not warranted in the facts of the instant given case. It is ordered accordingly.

Consideration of incorrect amount of income from other sources - Grounds 22 to 22.2

38. During the year under consideration, the assessee had declared an amount of Rs. 4,70,10,723/- as income from other source, in its return of income. However, the AO has considered the gross total

income of Rs. 9,61,58,286/- as the income from other sources. It is prayed that correct amount of Rs. 4,70,10,723/- be adopted.

39. After hearing both the parties, we direct the AO to consider this issue afresh and decide the same in accordance with law.

Disallowance of additional foreign tax credit - Grounds 23 to 23.2

40. The ld. AR submitted that the AO erred in restricting the foreign tax credit to the amount claimed in the return of income, without appreciating the assessee's submission that it would be eligible for additional credit owing to assessed income being greater than returned income. It is submitted that, without prejudice to the Assessee's above grounds, if any of the additions are sustained and the assessed income is higher than the returned income, the Assessee would be eligible for additional foreign tax credit on the enhanced income.

41. After hearing both the parties, we direct the AO to consider this issue afresh and decide the same in accordance with law.

Disallowance of TDS credit - Grounds 24 to 24.2

42. The ld. AR submitted that in the return of income, the Assessee had claimed TDS credit of Rs. 13,08,86,668/-. During the course of the assessment proceedings, the Assessee claimed additional credit of Rs. 24,37,979/- pursuant to additional certificates being received post filing of the return of income. The Assessee also submitted that it had inadvertently considered duplicate entries of TDS claim of Rs.

11,23,572/-. Accordingly, the Assessee requested the Assessing Officer to grant revised TDS credit of Rs. 13,22,01,075/-. However, the Assessing Officer did not consider the request made by the Assessee, without any reason, resulting in short grant of credit of Rs. 13,14,405/-. In this regard it is prayed that the Assessing Officer be directed to grant entire TDS credit of Rs. 13,22,01,075/-.

43. After hearing both the parties, we direct the AO to consider the revised tax credit afresh and decide the same in accordance with law.

44. **Ground Nos.25, 26 & 27** are consequential in nature.

Deduction in respect of unclaimed Foreign Tax Credit (FTC) – Ground No.28.

45. The assessee has raised additional reads as follows:-

> "25.1 The learned A.O. and Hon'ble DRP erred in law and on facts in not allowing deduction for taxes paid in foreign currency in respect of which no credit is claimed in India, while assessing the total income of the appellant.
>
> 25.2 The learned A.O. and Hon'ble DRP ought to have granted deduction towards taxes paid in foreign country in respect of which no credit is available under section 90/90A/91 of the Act read with rule 128 of the Income Tax Rules, 1962.
>
> 25.3 The learned A.O. and Hon'ble DRP ought to have allowed deduction towards unclaimed Foreign Tax Credit even though not claimed as deduction by the Appellant in the return of income."

46. During the year under consideration, the assessee had discharged taxes in foreign countries to the extent of Rs. 14,08,54,695/- (in respect of business income) and Rs. 1,01,330/- (in respect of income from other sources). In respect of the above, the assessee claimed foreign tax credit of Rs. 4,75,69,562/- (in respect of business income) and Rs. 1,01,330/- (in respect of income from other sources). As regards the foreign taxes paid, no credit was claimed to an extent of Rs. 9,32,85,133/-.

47. The ld AR submitted that to the extent no credit is available to the Appellant under Sections 90, 90A, 91 of the Act read with Rule 128 of the Income Tax Rules, 1962, deduction of the foreign tax paid and unclaimed, ought to be allowed. The ld AR placed reliance in this regard on the following decisions:-

- **Reliance Infrastructure Ltd. v. CIT** (reported in (2016) 76 taxmann.com 257 (Bombay);
- **Virmati Software and Telecommunication Ltd. v. DCIT** (Order dated 05.03.2020 passed by the Ahmedabad Tribunal in ITA No. 1135/Ahd/2017); and
- **Tata Consultancy Services Ltd. v. ADIT** (reported in (2020) 121 taxmann.com 190 (Mumbai-Trib.).

48. We heard the ld DR. We notice that the Hon'ble Bombay High Court in the case of Reliance Infrastructure Ltd (supra) has considered a similar issue and held that –

(h) Before dealing with the rival contentions, it would be useful to reproduce the statutory provision arising for our consideration to decide this issue.

"Definitions

2. In this Act, unless the context otherwise requires, -

(1) to (42)** ** **

43. "tax" in relation to the assessment year commencing on the 1st day of April, 1965, and any subsequent assessment year means income tax chargeable under the provisions of this Act, and in relation to any other assessment year income-tax and super-tax chargeable under the provisions of this Act prior to the aforesaid date [and in relation to the assessment year commencing on the 1st day of April, 2006, and any subsequent assessment year includes the fringe benefit tax payable under Section 115WA]

"Amounts not deductible

40. Notwithstanding anything to the contrary in Section 30 to the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession".

(a) In the case of any assessee –

(i), (ia), (ib), (ic)** ** **

(ii) Any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits and gains.

[Explanation 1. - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, any sum paid on account of any rate or tax levied includes and shall be deemed always to have included any sum eligible for relief of tax under Section 90 or, as the case may be, deduction from the Indian income-tax payable under section 91.]

[Explanation 2. - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, any sum paid on account of any rate or tax levied includes any sum eligible for relief of tax under Section 90A.]"

(i) We have considered the rival submissions. So far as the question relating to the Tribunal not following its order in the case of the applicant itself for A.Y. 1979-80, we find that there is a justification for the same. This is so as the decision of this Court in S. Inder Singh Gill (supra) was noted by the Tribunal on an identical issue while passing the order for the subject assessment year. Thus, the Tribunal had not erred in not following its order for A.Y. 1979-80. In fact, the decisions of this Court in South East Asia Shipping Co. (supra) and Tata Sons Ltd. (supra), which are being relied upon in preference to Inder Singh Gill (supra) cannot be accepted as both the orders being relied upon by the applicant was rendered not at the final hearing but on applications under Section 256(2) of the Act and at the stage of admission under Section 260A of the Act. This unlike the judgment rendered in a Reference by this Court in S. Inder Singh Gill (supra). Moreover, the decision in South East Asia Shipping Co. (supra) is not available in its entirety. Therefore, it would not be safe to rely upon it as all facts and on what consideration of law, it was rendered is not known. Similarly, the decision of this Court in Tata Sons (supra) being Income Tax Appeal No.209 of 2001 produced before us, dismissed the appeal of the Revenue by order dated 2nd April, 2004 by merely following its order dated 23rd March, 1993 rejecting the Revenue's application for Reference under Section 256(2) of the Act. Thus, it also cannot be relied upon to decide the controversy. Moreover, the order of this Court in Tata Sons Ltd. (supra) as produced before us for Assessment Year 1985-86 had not noticed the decision of this Court in S. Inder Singh Gill (supra) on a Reference. Therefore, it is rendered per incuriam.

(j) This Court in S. Inder Singh Gill (supra) was required to answer the question whether for the purpose of computing total world income of the assessee as defined in Section 2(15) of the I. T. Act, the income accruing in Uganda has to be reduced by the tax paid to the Uganda Government in respect of such income? The Court while answering the question in the

negative observed that it is not aware of any commercial principle/practice which lays down that the tax paid by one on one's income is allowed as a deduction in determining the income for the purposes of taxation.

(k) It is axiomatic that income tax is a charge on the profits/ income. The payment of income tax is not a payment made/incurred to earn profits and gains of business. Therefore, it cannot be allowed an as expenditure to determine the profits of the business. Taxes such as Excise Duty, Customs Duty, Octroi etc., are incurred for the purpose of doing business and earning profits and/or gains from business or profession. Therefore, such expenditure is allowable as a deduction to determine the profits of the business. It is only after deducting all expenses incurred for the purpose of business from the total receipts that profits and/or gains of business/ profession are determined. It is this determined profits or gains of business/profession which are subject to tax as income tax under the Act. The main part of Section 40(a)(ii) of the Act does not allow deduction in computing the income i.e. profits and gains of business chargeable to tax to the extent, the tax is levied/ paid on the profits/ gains of business. Therefore, it was on the aforesaid general principle, universally accepted, that this Court answered the question posed to it in S. Inder Singh Gill (supra) in favour of the Revenue.

(l) We would have answered the question posed for our consideration by following the decision of this Court in S. Inder Singh Gill (supra). However, we notice that the decision of this Court in S. Inder Singh Gill (supra) was rendered under the Indian Income Tax Act, 1922 and not under the Act. We further note that just as Section 40(a)(ii) of the Act does not allow deduction on tax paid on profit and/or gain of business. The Indian Income Tax Act, 1922 Act also contains a similar provision in Section 10(4) thereof. However, the Indian Income Tax Act, 1922 contains no definition of "tax" as provided in Section 2(43) of the Act. Consequently, the tax paid on income/profits and gains of business/profession anywhere in the world would not be allowed as deduction for determining the profits/gains of the business under Section 10(4) of the Indian Income Tax Act, 1922. Therefore, on the state of the

statutory provisions as found in the Indian Income Tax Act, 1922 the decision of this Court in S. Inder Singh Gill (supra) would be unexceptionable.

However, the ratio of the aforesaid decision in S. Inder Singh Gill (supra) cannot be applied to the present facts in view of the fact that the Act defines "tax" as income tax chargeable under the provisions of this Act. Thus, by definition, the tax which is payable under the Act alone on the profits and gains of business are not allowed to be deducted notwithstanding Sections 30 to 38 of the Act.

(m) It therefore, follows that the tax which has been paid abroad would not be covered within the meaning of Section 40(a) (ii) of the Act in view of the definition of the word 'tax' in Section 2(43) of the Act. To be covered by Section 40(a)(ii) of the Act, it has to be payable under the Act. We are conscious of the fact that Section 2 of the Act, while defining the various terms used in the Act, qualifies it by preceding the definition with the word "In this Act, unless the context otherwise requires" the meaning of the word 'tax' as found in Section 2(43) of the Act would apply wherever it occurs in the Act. It is not even urged by the Revenue that the context of Section 40(a)(ii) of the Act would require it to mean tax paid anywhere in the world and not only tax payable/ paid under the Act.

(n) However, to the extent tax is paid abroad, the Explanation to Section 40(a)(ii) of the Act provides/clarifies that whenever an Assessee is otherwise entitled to the benefit of double income tax relief under Sections 90 or 91 of the Act, then the tax paid abroad would be governed by Section 40(a)(ii) of the Act. The occasion to insert the Explanation to Section 40(a)(ii) of the Act arose as Assessee was claiming to be entitled to obtain necessary credit to the extent of the tax paid abroad under Sections 90 or 91 of the Act and also claim the benefit of tax paid abroad as expenditure on account of not being covered by Section 40(a)(ii) of the Act. This is evident from the Explanatory notes to the Finance Act, 2006 as recorded in Circular No.14 of 2006 dated 28th December, 2006 issued by the CBDT. The above circular inter alia, records the fact that some of the assessee who are eligible for credit against the tax payable in India on the global income to the extent the tax has been paid outside India under

Sections 90 or 91 of the Act, were also claiming deduction of the tax paid abroad as it was not tax under the Act. In view of the above, Explanation inserted in 2006 to Section 40(a)(ii) of the Act, would require in the context thereof that the definition of the word "tax" under the Act to mean also the tax which is eligible to the benefit of Sections 90 and 91 of the Act. However, this departure from the meaning of the word "tax" as defined in the Act is only restricted to the above and gives no license to widen the meaning of the word "tax" as defined in the Act to include all taxes on income/profits paid abroad.

(o) Therefore, on the Explanation being inserted in Section 40(a)(ii) of the Act, the tax paid in Saudi Arabia on income which has accrued and/or arisen in India is not eligible to deduction under Section 91 of the Act. Therefore, not hit by Section 40(a)(ii) of the Act. Section 91 of the Act, itself excludes income which is deemed to accrue or arise in India. Thus, the benefit of the Explanation would now be available and on application of real income theory, the quantum of tax paid in Saudi Arabia, attributable to income arising or accruing in India would be reduced for the purposes of computing the income on which tax is payable in India.

(p) It is not disputed before us that some part of the income on which the tax has been paid abroad is on the income accrued or arisen in India. Therefore, to the extent, the tax is paid abroad on income which has accrued and/or arisen in India, the benefit of Section 91 of the Act is not available. In such a case, an Assessee such as the applicant assessee is entitled to a deduction under Section 40(a)(ii) of the Act. This is so as it is a tax which has been paid abroad for the purpose of arriving global income on which the tax payable in India. **Therefore, to the extent the payment of tax in Saudi Arabia on income which has arisen/accrued in India has to be considered in the nature of expenditure incurred or arisen to earn income and not hit by the provisions of Section 40(a)(ii) of the Act.**

(q) The Explanation to Section 40(a)(ii) of the Act was inserted into the Act by Finance Act, 2006. However, the use of the words "for removal of doubts" it is hereby declared "...." in the Explanation inserted in Section 40(a)(ii) of the Act, makes it clear that it is declaratory in nature and

would have retrospective effect. This is not even disputed by the Revenue before us as the issue of the nature of such declaratory statutes stands considered by the decision of the Supreme Court in CIT v. Vatika Township (P) Ltd. [2014] 367 ITR 466/227 Taxman 121/49 taxmann.com 249 and CIT v. Gold Coin Health Foods (P.) Ltd. [2008] 304 ITR 308/172 Taxman 386 (SC).

(r) In the above facts and circumstances, question (iii)(a) is answered in the negative i.e. against the Revenue and in favour of the applicant assessee. Question (iii)(b) is answered in the negative i.e. against the Revenue and in favour of the applicant assessee.

49. The Hon'ble Bombay High Court in the case of Reliance Infrastructure Ltd (supra) has laid down the ratio that to the extent tax paid in foreign country on income which has arisen/accrued in India, has to be considered in the nature of expenditure incurred or arisen to earn income and is to be allowed as a deduction. In the given case it is submitted that out of the foreign taxes paid no credit was claimed to an extent of Rs.9,32,85,133/-. Of the said foreign tax paid how much is attributable to the income accrues / arises in India needs to be verified in order to arrive at the extent of allowability. This issue is raised as additional ground before the Tribunal and the issue is not factually verified by the lower authorities. We therefore remit this issue back to the AO. The AO is directed to verify the amount of foreign tax credit paid that is attributable to the income accruing / arising in India and allow the same accordingly in the light of the decision of the Hon'ble Bombay High Court in the case of Reliance Infrastructure Ltd (supra) after giving reasonable opportunity of being heard. The assessee is directed to provide necessary information to the AO and cooperate

with the proceedings. It is ordered accordingly. This ground is allowed in favour of the assessee for statistical purposes.

ITA No.2560/Bang/2019 (AY 2015-16)

50. The grounds raised by the assessee for the assessment year 2015-16 relate to the below issues

1. Transfer Pricing adjustment (Ground Nos.1 to 19).
2. Disallowance of depreciation u/s.32 of the Act (Grounds 20 to 20.4)
3. Disallowance made u/s. 14A of the Act (Grounds 21 to 21.4)
4. Disallowance of additional foreign tax credit (Grounds 22 to 22.2)
5. Non-grant of interest u/s. 244A (Grounds 23 to 23.2)
6. Penalty proceedings (Grounds 24 to 24.1)

Transfer Pricing adjustment

51. The relevant grounds similar to assessment year 2014-15 wherein it is contended that the TPO has not understood the business of the assessee are Ground No.4 & 5. This issue is adjudicated in paragraph 16 to 23 of this order. Since there is no change to the facts in assessment year 2015-16, the issue is remitted back for year under consideration also. These grounds are allowed for statistical purposes. Same as in assessment year 2014-15, the rest of the grounds are academic and does not warrant separate adjudication.

Disallowance of depreciation u/s.32 of the Act

52. This issue is adjudicated in Paragraph 27 of this order and is squarely applicable to the year under consideration also since there is no change to the facts from assessment year 2014-15. Therefore this ground is allowed in favour of the assessee.

Disallowance made u/s. 14A of the Act

53. For the year under consideration the AO has disallowed a sum of Rs.81,174 u/s.14A r.w.r. 8D(2)(ii) and Rs.26,84,933 u/s.14A r.w.r. 8D(2)(iii). With regard to disallowance under rule 8D(2)(ii), we notice that the own funds of the assessee in reserves and surplus is more than the amount of investment and Therefore, by placing reliance on the judgment of the jurisdictional High Court in the case of Microlabs Ltd.(supra) and the judgment of the Hon'ble Apex Court in the case of Reliance Industries Ltd. (supra) we hold that disallowance u/s 14A r.w. Rule 8D(2)(ii) is not warranted in the facts of the instant given case. It is ordered accordingly.

54. With regard to disallowance under rule 8D(2)(ii) we notice that in that in computation the assessee has made a disallowance as extracted below:-

Table showing the calculation in arriving the disallowance under section 14A of the Act

Direct Expense - Salary

Sl No.	Name of the employee	Gross Salary	% of time spent on investment activities earning dividend	INR
1	Sudhir S	2,305,867	4%	92,235
2	Vijaya Bhaskar	472,459	10%	47,246
	Total - A	2,778,326		139,481

Sl No.	Indirect Expenses	Expense	Capacity	Per employee expense	No of Employees	INR	Expenditure proportionate to the time spent on dividend earning activities
1	Rent of Office	29,425,898	1200	24,521.58	2	49,043	3,433
2	Electricity Charges	21,189,130	1200	17,657.61	2	35,315	2,472
3	Housekeeping	7,531,045	1200	6,275.87	2	12,552	879
4	Security Charges	5,092,979	1200	4,244.15	2	8,488	594
5	Staff Welfare	10,695,281	1250	8,556.22	2	17,112	1,198
6	Employee Insurance	23,530,932	1250	18,824.75	2	37,649	2,635
			Total - B				11,211

Disallowance under section 14A of the Act (A+B) :- 150,692

55. We also notice that the similar to assessment year 2014-15, the AO has not recorded any specific reason for the suo motu disallowance made by the assessee not being sufficient and did not bring anything to the contrary on record. Hence placing reliance on the decision of the Hon'ble Apex Court in the case of Maxopp Investment Ltd (supra) and decision of the Hon'ble jurisdictional High Court in the case of Essilor India (P.) Ltd (supra) we hold that the disallowance made under section 14A r.w.r 8D(2)(iii) stands deleted.

Disallowance of additional foreign tax credit

56. This issue considered in paragraphs 40 and 41 of this order. For the assessment year 2015-16 also a similar direction is given to the AO. It is ordered accordingly

57. The rest of the grounds are consequential and does not require separate adjudication

58. In the result, both these appeals are partly allowed.

Pronounced in the open court on this 10th day of August, 2022..

Sd/-	Sd/-
(GEORGE GEORGE K.)	(PADMAVATHY S.)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Bangalore,
Dated, the 10th August, 2022.

/*Desai S Murthy* /

Copy to:
1. Assessee 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.