IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I' BENCH, NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER, AND SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 493/DEL/2021 [A.Y 2016-17)

M/s Sony India Pvt. Ltd., A-18, Mohan Co-operative Estate Industrial Area, Mathura Road New Delhi	Vs.	National E Assessment Centre New Delhi.

PAN: AABCS 1571 Q

(Applicant) (Respondent)

Assessee By : Shri Nageshwar Rao, Adv
Ms. Deepika Aggarwal, Adv
Shri Akshay Uppal, Adv

Department By : Shri Bhaskar Goswami, CIT- DR

Date of Hearing : 06.10.2022
Date of Pronouncement : .10.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order dated 31.03.2021 framed u/s 143(3) r.w.s. 144C(13) r.w.s. 143(3A) and (3B) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] pertaining to Assessment Year 2016-17.

2. The assessee has raised as many as 63 grounds of appeal. Therefore, for our convenience, grounds of appeal have been summarized as under:

(i) Transfer Pricing adjustment in respect of transaction of payment of royalty;

(ii) Transfer Pricing adjustment in respect of transaction of provision of advisory services;

(iii) Transfer Pricing adjustment in respect of outstanding receivables;

(iv) Disallowance of stock valuation loss;

(v) Disallowance of expenditure on corporate social responsibility u/s 115JB of the Act by treating the same as apportion of profits

(vi) Disallowance of royalty expenses by holding that the assessee had no liability to pay such royalty;

(vii) Disallowance of provision for warrantee;

(viii) Non-grant of deduction u/s 80G of the Act;

(ix) Non-allowance of amount paid as education cess, though this ground has not been pressed. Therefore, the same is dismissed as not pressed.

3. The above concise grounds shall take care of grounds of appeal from Sl. No. 40 till 63 of the appeal memo. Grounds raised vide Ground Nos. 1 to 39 are related to the outcome of Ground Nos. 40 to 40.6 in respect of transfer pricing adjustment of transaction of payment of royalty.

4. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the ld. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

5. Briefly stated, the facts of the case are that the assessee is a full-fledged distributor of Sony's electronics products in India and is primarily engaged in import and distribution of Sony products mainly comprising of audio/visual entertainment products in the Indian market.

6. During the year, the assessee has also entered into international transactions relating to providing of advisory services to the AEs. The assessee is part of Sony Group, which is primarily focused on electronics, game, entertainment and financial services. Sony Corp is the ultimate parent company of the Sony group and primarily operates under the following segments:

- Imaging and product and solutions segment;
- Mobile products and communications segment;
- Device segment;
- Music segment;
- Game segment;
- Home entertainment and sound segment;
- Pictures; and
- Finance segment.

7. International transactions entered into by the assessee company with its AEs during the year under consideration are summarized in the table below:

Sl. No	Type of International Transaction	Method Selected		Total value of transaction [Rs.]
		MAM	PLI	
i.	Import of finished goods for resale	TNMM	OP/OR	35,834,752,768
ii.	Export of finished goods	TNMM	OP/OR	327,085,563
iii.	Payment of Royalty	TNMM	OP/OR	146.989,634
iv.	Provision of warranty services	TNMM	OP/OR	31,807,003
v.	Receipt of information technology IT services	TNMM	OP/OR	148,688,220
vi.	Receipt of Infrastructure services	TNMM	OP/OR	28,923,552
vii.	Receipt of Technical services	TNMM	OP/OR	194,829,634
viii.	Purchase of airtime slots	TNMM	OP/OR	2,327,513
ix.	Receipt of repair services	TNMM	OP/OR	211,093
X,	Purchase of Promotional Material	TNMM	OP/OR	2,681,920
xi.	Purchase of Samples	TNMM	OP/OR	15,735,124
xii.	Reimbursement Paid by SID to its AEs	TNMM	OP/OR	8,941,313
xiii.	Provision of advisory services	TNMM	OP/OC	21,349,094
xiv.	Reimbursement received by SID from its AEs	Other Method	NA	162,176,641
XV.	Receipt of Call Centre Services	TNMM	OP/OR	45,586,198
xvi.	Receipt of IT Tools	TNMM	OP/OR	17,374,689
xvii	Purchase of Spare and Repair Parts	TNMM	OP/OR	50,199,025
xvii	Purchase of Solid-State Storage	TNMM	OP/OR	1,210,982,320
xix.	Export of Defective Goods	TNMM	OP/OR	25,890,105
XX.	Purchase of Finished Goods	TNMM	OP/OR	4,464,987,701
xxi.	Receipt of Repair Services	TNMM	OP/OR	9,150,299

8. The assessee prepared its segmental accounts in two segments, i.e., consumer electronics and advisory segments as under:

	Consumer Electronics	Advisory
Operating Revenue	80,738,365,545	21,276,403
Operating Cost	78,498,772,084	18,501,220
Operating Profit	2,239,593,461	2,775,183
OP/PR	2.77%	
OP/OC		15.00%

9. In order to bench mark international transaction in the nature of import of finished goods and other aggregated transactions, TNMM was considered as the most appropriate method and the ratio of operating profit to operating sales was considered as the PLI.

10. During the course of TP assessment proceedings, it was noticed that the assessee has paid royalty amounting to Rs. 146,989,634/-. In relation to the transaction, a show cause notice was issued to the assessee by which the assessee was asked to explain the following:

"The following aspects need to be seen while examining the arm's length nature of royalty payment:

(1) The nature and complete description of tire intangible transferred or licensed to the taxpayer in respect of whom royalty is paid is to be examined.

(2) As per the Income Tax Act 1961, each class of transactions has to be examined having regard to the arm's length principle. As payment made in the form of royalty is a class of its own, it requires separate analysis.

(3) The length of arm's length principle would be to see whether the royalty paid by the taxpayer fur die intangible reflect the same charges for the intangible that would have been, or would reasonably be expected to be, levied between independent parties dealing at arm's length for comparable intangible under comparable circumstances.

(4) Royalty payments are to be treated at arm's length only when it is proved substantially by the taxpayer that such intangibles were actually received and further proving that such received intangibles have benefited it.

(5) It needs to be seen how much a comparable independent technology recipient, under comparable circumstances, would be

willing to pay for that intangible? An arm's length entity would be willing to pay for technology / know-how only to the extent that the technology / know-how confers on it a benefit of economic or commercial value.

(6) It needs to be seen whether as a result of such payment, the recipient of the technology / know-how, the taxpayer, resulted in any economic or commercial value to enhance its commercial position. The expected benefit must be sufficiently direct and substantial so that an independent recipient, in similar circumstances, would be prepared to pay for it If o benefit has been provided [or was expected to be provided), the technology / technical

(7) It needs to be seen what is the benefit received / receivable on account of the usage of the intangible property, for which the royalty was paid by the taxpayer. The benefit would :be quantified in terms of value addition achieved by the usage of such intellectual property.

(8) The margin earned by the taxpayer when compared to the arithmetical mean margin of the comparable companies (who are not paying similar payments and also not owning significant intangibles) considered by the TPO. Whether the margin of the taxpayer is lower even after paying amounts towards royalty for the technology transferred by the AE.

(9) Copies of agreements based on which the taxpayer paid the royalty.

(10) The development or usage of the intangible property and the factors affecting the royalty rate. The rate at which the company has paid royalty to the AE vis-a-vis independent parties and the method of computation of such royalty that are paid / payable by the taxpayer to the AE(s).

(11) The going industry rate of royalty for similar intangible / intellectual property right

(12) Whether royalty is paid by any of the concern or subsidiary of the AE / Group anywhere in the world for the use of such similar intangible. If yes, the rate or rates at which it is paid. Whether royalty is paid by any independent concern or entity in any other country through which AE/Group carries on similar business as that of you. If yes, the rate or rates at which it is paid.

(13) Discounted cash flow analysis or any cost-benefit analysis, if any, carried out by the taxpayer."

11. In its reply, the assessee submitted that there are certain product categories for which manufacturing function is outsourced by Sony group companies to independent manufacturers. In keeping with

this, Sony Corp has appointed Moser Baer India Limited [MBIL] and Competition Team Technology [India] Private Limited [CTTL] as an Original Equipment Manufacturer [OEM] for manufacturing of certain products.

12. It was further explained that SID [the assessee] obtained the license to manufacture and sell various blank optical disc of CD-R, CD-RW, DVD + R, DVD-R, DVD-RW and USB Memory under the Sony brand name and further sublicensed the same to MBIL for resale in the local market.

13. The assessee submitted agreements.

14. After considering the submissions and agreements, the TPO formed a belief that there are sufficient reasons to reject the contentions of the assessee since the products were manufactured by CTTL under license from Sony Corporation, Japan and sold by CTTL to the assessee did not justify payment of royalty by the assessee to the AE.

15. Accordingly, the TPO benchmarked royalty paid for goods manufactured to MBIL amounting to Rs. 27,943,965/- at NIL and for identical reasons, payment of royalty amounting to Rs. 100,488,528/- paid for goods manufactured by CTTL was bench marked at NIL and upward adjustment of Rs. 146,989,634/- was proposed.

16. Objections were raised before the DRP and it was strongly contended that the TPO has erred in facts and circumstances of the case and in law by ignoring the commercial substance of the transactions which clearly demonstrates benefit from payment of royalty. It was also contended that the TPO has simply ignored the justification of royalty payment by the assessee to its AE and, accordingly, erred in determining ALP at NIL and further grossly erred in saying that since MBIL and CTTL were manufacturers, they were ultimate user of technology, patent etc and should thus be liable to pay royalty.

17. Objections were dismissed by the DRP holding that the action of the TPO is justified.

18. Before us, the ld. counsel for the assessee, referring to the relevant agreements, stated that these agreements do not license any technology to MBIL and CTTL but only set out terms and conditions that would govern any transaction that either Sony Corp or any of its subsidiaries would enter with MBIL/CTTL [OEMs]. It is the say of the ld. counsel for the assessee that these agreements do not provide any licensing of technology which would be governed by separate agreements which would be specific to the facts and circumstances of each case.

19. Referring to the decision of the Hon'ble High Court of Delhi in the case of Cushman and Wakefield [India] [P] Ltd TS-150-High Court-2014[DEL]-TP, the ld. counsel for the assessee stated that the TPO has not respected commercial expediency of royalty payment and drawing our attention to the decision of the Hon'ble High Court [supra], the ld. counsel for the assessee stated that the authority of the TPO is to conduct a TP analysis to determine ALP and not to determine whether there is a service/transaction or not from which the assessee benefits.

20. The ld. counsel for the assessee vehemently stated that Sony Corp has invested significant amount in manufacturing intangibles for which it should be remunerated and the assessee receives license to use these valuable intangible properties during the course of its operations in India at a fixed royalty rate and in an uncontrolled transaction, Sony Corp would not allow a third party to use its intangible properties created through a large amount of investment without receiving any sort of consideration. It is the say of the ld. counsel for the assessee that Sony Corp owns patents or own right to use certain patents and any third party would need to make payments for use of such patented technology.

21. The ld. counsel for the assessee continued by stating that royalty transaction has already been bench marked using TNMM as most appropriate method and this fact has been completely ignored by the TPO/DRP.

22. Per contra, the ld. DR supported the findings of the lower authorities and read the relevant portion of the order of the TPO/DRP.

23. We have given thoughtful consideration to the orders of the authorities below. The manufacturing license agreement made on 29.09.2015 is exhibited at pages 1114 to 1125 of the Paper Book. The most relevant part of this agreement is worth mentioning here:

> "WHEREAS, SONY designs, develops and manufactures LCD TV products and related components; and
>
> WHEREAS, SID desires to manufacture and sell in the TERRITORY (as hereinafter defined) by itself and/or through SONY's authorized third party, certain LCD TV products; and
>
> WHEREAS, SONY is willing to permit and assist SID in the manufacture and sale of such products in the TERRITORY, upon the terms and conditions hereinafter set forth, all of which are acceptable to SID.
>
> NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth.
>
> XXXXX
>
> (1) SONY hereby grants to SID a non-exclusive, indivisible, non-assignable and non-transferable and non-sublicensable license under the LICENSED PATENTS and/or the LICENSED KNOW-HOW (i) to manufacture or have the SUBCONTRACTOR manufacture the LICENSED PRODUCTS in the TERRITORY by

using the COMPONENTS, and (ii) to sell, use, lease or otherwise dispose of such LICENSED PRODUCTS in the TERRH ORY.

(2) SONY hereby grants to SID, a non-exclusive, indivisible, non-assignable, non-transferable and non-subliceasable license to use the LICENSED TRADEMARKS in the TERRITORY (i) to manufacture or have the SUBCONTRACTOR manufacture the LICENSED PRODUCT'S which shall meet the quality requirements to w'hich reference is made in Paragraph (1) of ARTICLE V of this Agreement, and (ii) to sell, use, lease, otherwise dispose of the

(3) No alteration or modification of the LICENSED PRODUCTS, once approved by SONY pursuant to ARTICLE V hereof, shall be made by SID or the SUBCONTRACTOR without the prior written approval of SONY of such alteration or modification. SID shall cause the SUBCONTRACTOR to, strictly comply with the restriction set forth above in this Paragraph (3).

(4) SONY acknowledges and agrees that SID may have SONY SUBSIDIARIES manufacture and may, by itself or through the SUBCONTRACTOR, purchase from SONY SUBSIDIARIES, the COMPONENTS necessary for the manufacture of the LICENSED PRODUCTS provided that (i) SID shall, jointly and severally, guarantee that SONY SUBSIDIARIES strictly complies with the terms and conditions of this Agreement and any other agreement entered into between SONY and SID regarding the subject matter, (ii) SID shall indemnify and hold SONY harmless

from any and all losses or damages suffered or incurred by SONY as a result of breach by SONY SUBSIDIARIES of the above mentioned terms and conditions, (iii) SID shall in no way be relieved of any of its obligations under this Agreement and (iv) nothing contained herein shall be construed as a transfer or assignment of this Agreement by SID to SONY SUBSIDIARIES. SID shall sell the COMPONENTS manufactured by and purchased from SONY SUBSIDIARIES only to the SUBCONTACTOR if not used in the manufacture of the LICENSED PRODUCTS by SID.

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(1) SID agrees that it will pay to SONY a running royalty equal to two percent (2%) of the Net Sales determined pursuant to Paragraph (2) of this ARTICLE X for each LICENSED PRODUCT.

(2) The "Net Sales" of the LICENSED PRODUCTS shall, for purposes of this ARTICLE X, be the aggregate of the selling prices in the usual course of business for such LICENSED PRODUCTS by SID, without any deductions other than:

(i) sales taxes (and similar taxes pertaining to sale, if any, including but not limited to turnover tax, value added tax and any other corresponding tax imposed cm the LICENSED PRODUCT'S presently or in the future);

(ii) usual trade and cash discounts actually allowed; and

(iii) if invoiced separately, the selling price of packing material and boxes, cartons and crates in which such LICENSED PRODUCTS are packed, as well as freight and insurance charges.

(3) By no later than the first business day of each calendar quarter (i.e., January 1, April 1, July 1 and October 1) during the TERM, SID shall furnish to SONY a statement, certified by an officer of SID, showing the quantities of the LICENSED PRODUCTS sold in the immediately preceding calendar quarter and the amounts of royalty payable with respect to such LICENSED PRODUCTS pursuant to this ARTICLE X; and SID shall pay SONY the royalties payable for each immediately preceding calendar quarter by the end of the month following two (2) months after such calendar quarter.

(4) In order that the royalties and statements provided for in this ARTICLE X may be verified, SID shall keep lull, complete and accurate books and records showing the assembly, manufacture, sale, and/or other disposition of the LICENSED PRODUCTS. SID agrees to permit such books and records to be audited from time to time, but no more than once in each calendar year, at the expense of SONY, by a representative or representatives of SONY acceptable to SID or by an independent certified public accountant appointed by SONY to the extent

necessary' to verify the accuracy of the aforementioned royalties, payments and statements.

(5) All sums of money payable by SID to SONY under this AR ITCLE X shall be paid in United States Dollars and remitted to a bank account designated by SONY, without any deduction of taxes or charges of any kind, which taxes or charges, if any, are assumed by SID as a part of the royalty. Conversion from the local currency to United States Dollars shall be made at the exchange rate applied by the remittance bank on the dale of the remittance. If, at any time during the TERM any competent government of any country shall require that any income tax be withheld by SID and remitted directly to such government on behalf of SONY, SID shall be and is hereby authorized to do so. SID shall promptly transmit to SONY tax receipts issued by the competent tax authorities of such country in respect of income taxes so withheld so as to enable SONY to support a claim for credit against income tax payable by SONY in Japan."

24. A perusal of the above relevant clauses of the agreement shows that MBIL and CTTL are manufacturing sub-contractors and license has been given to the assessee by Sony Corp. It is not a case of the Revenue that MBIL and CTTL have also paid royalty to Sony Corp. Therefore, we fail to understand how MBIL and CTTL can be considered as manufacturer by TPO/DRP for the purposes of royalty payment

because by no stretch of imagination Sony Corp would allow an unrelated party to manufacture its products on which it has sole copyright/trade mark right/manufacturing/distribution rights.

25. Further, we are of the considered view that the TPO has grossly erred in supporting his finding on the premise that the assessee has failed to prove that such intangibles were actually received by it and further failed to prove that such received intangibles have benefitted it.

26. The TPO further erred in justifying his findings by stating that the assessee has not derived any benefit on account of usage of intangible property for which royalty was paid.

27. The Hon'ble High Court of Delhi in the case of Cushman and Wakefield [supra] has categorically held as under:

> "The Court first notes that the authority of the TPO is to conduct a transfer pricing analysis to determine the ALP and not to determine ITA 475/2012 Page 25 whether there is a service or not from which the assessee benefits. That aspect of the exercise is left to the AO. This distinction was made clear by the ITAT in Dresser-Rand India Pvt. Ltd. v. Additional Commissioner of Income Tax, 2012 (13) ITR (Trib) 422:

"8. We find that the basic reason of the Transfer Pricing Officer's determination of ALP of the services received under cost contribution arrangement as 'NIL' is his perception that the assessee did not need these services at all, as the assessee had sufficient experts of his own who were competent enough to do this work. For example, the Transfer Pricing Officer had pointed out that the assessee has qualified accounting staff which could have handled the audit work and in any case the assessee has paid audit fees to external firm. Similarly, the Transfer Pricing Officer was of the view that the assessee had management experts on its rolls, and, therefore, global business oversight services were not needed. It is difficult to understand, much less approve, this line of reasoning. It is only elementary that how an Assessee conducts his business is entirely his prerogative and it is not for the revenue authorities to decide what is necessary for an Assessee and what is not. An Assessee may have any number of qualified accountants and management experts on his rolls, and yet he may decide to engage services of outside experts for auditing and management consultancy;

It is not for the revenue officers to question Assessee's wisdom in doing so. The Transfer Pricing Officer was not only going much beyond his powers in questioning commercial wisdom of Assessee's decision to take benefit of expertise of Dresser Rand US, but also beyond the powers of the Assessing Officer. We do not approve this approach of the revenue authorities. We have further noticed that the Transfer Pricing Officer has made several observations to the effect that, as evident from the analysis of financial

performance, the assessee did not benefit, in ITA 475/2012 Page 26 terms of financial results, from these services. This analysis is also completely irrelevant, because whether a particular expense on services received actually benefits an Assessee in monetary terms or not even a consideration for its being allowed as a deduction in computation of income, and, by no stretch of logic, it can have any role in determining arm's length price of that service. When evaluating the arm's length price of a service, it is wholly irrelevant as to whether the assessee benefits from it or not; the real question which is to be determined in such cases is whether the price of this service is what an independent enterprise would have paid for the same. Similarly, whether the AE gave the same services to the assessee in the preceding years without any consideration or not is also irrelevant. The AE may have given the same service on gratuitous basis in the earlier period, but that does not mean that arm's length price of these services is 'nil'. The authorities below have been swayed by the considerations which are not at all relevant in the context of determining the arm's length price of the costs incurred by the assessee in cost contribution arrangement. We have also noted that the stand of the revenue authorities in this case is that no services were rendered by the AE at all, and that since there is No. evidence of services having been rendered at all, the arm's length price of these services is 'nil'."

28. It is also not in dispute that Sony Corp has invested significant amount and efforts in developing, manufacturing intangibles and for which it should be suitably remunerated and since the assessee has received license to use these value intangibles during the course of its operations in India, the assessee was duty bound to pay royalty for the simple reason that Sony Corp would not allow any third party to use its intangible properties created through large amount of investment without receiving any sort of consideration.

29. It is also not in dispute that the assessee has licensed technology and trade mark from Sony Corp and further licensed them to OEMs and the OEMs manufacture these goods based on technology sub licensed by the assessee and sells them back to the assessee for which the assessee pays royalty at an agreed percentage of net selling price and this payment of royalty by the assessee instead of OEMs is due to commercial necessity and payment of royalty transaction is already bench marked under TNMM.

30. Considering the facts of the case in totality, we do not find any merit in the TP adjustment in respect of transaction of payment of royalty and accordingly direct the Assessing Officer to delete the

adjustment of Rs. 14,69,89,634/-. This ground with all its sub-grounds is allowed and accordingly, grievances raised vide Ground Nos. 1 to 40.6 become otiose.

31. Second issue relates to the TP adjustment in respect of transaction of provision of Advisory Services.

32. Facts relating to this issue are that during the course of TP proceedings, the TPO found that the assessee had provided advisory services to its AE, on which it was earning a mark-up of 15%. This international transaction comprises of :

- Providing market information to new entrants in India market and on the potential customers for ADMS products in India;
- Providing information on customer preferences;
- Providing Information on the credit standing and financial background of the potential product users;
- Providing information on demand and supply drivers in the industry;

- Introducing ADMS products to potential users in India based on the results of market surveys/studies undertaken

- Customer liaison support including facilitating feedback from product users regarding quality and other related matters.

33. For benchmarking the said transaction, the assessee chose TNMM as the most appropriate method with average margin of the comparables in a range of 9.44% to 13.72% and the transaction was held to be at arm's length.

34. The comparables selected by the assessee and the TPO are as under:

S. No.	Name of the Comparable selected by the assessee	Remarks of this office
1	*Priya International Ltd. (Segmental)*	*The Service Income is only24.24% which is less than 75%. Hence Rejected as a*
2	*ICR A Management Consulting Services Ltd.*	*The company is functionally dissimilar to the nature of operations of this segment of the assessee. Hence Rejected as a comparable.*

3	*MCI Management (India) Ltd.*	*The company is persistently loss making as it is facing losses in 2 out of last 3 years including the current FY2016. Hence Rejected as a comparable.*
4	*India Tourism Development Corporation Ltd. (Segmental)*	*Tire company is engaged in progressive development, promotion and expansion of tourism in India. This is in no way comparable to the assessee. Hence Rejected as a comparable.*
5	*Concept Public Relations India Ltd.*	*Fails on one/more filters as detailed above. Hence Rejected as a comparable.*
6	*Kestone Integrated Marketing Services Private Limited fy*	*The company is not functionally compatible with the assessee as majority of its services are event management services. Hence rejected as a comparable*
7	*ICC International Agencies Ltd. (Segmental)*	*The service income ratio of this company is 58.87% which is less than 75%. Hence Rejected as a comparable.*
8	*EDCIL (India)Ltd.*	*Acceptable as comparable.*
9	*Killick Agencies & Marketing Limited*	*Acceptable as comparable.*
10	*Majestic Research Services & Solutions Limited*	*Acceptable as comparable.*

35. The assessee raised objections which were summarily rejected by the DRP.

36. The representatives of both the sides fairly stated that the summary rejection by the DRP/Assessing Officer of the objections raised by the assessee is not justifiable and, therefore, suitable directions may be given to the DRP in this matter.

37. We have given thoughtful consideration to the findings of the DRP on the objections raised by the assessee. We find force in the concession made by the ld. counsel for the assessee and the ld. DR. We find that the DRP has, in fact, summarily rejected the contentions/objections of the assessee without giving any detailed findings on facts.

38. Therefore, in the interest of justice and fair play, we restore this issue to the file of the DRP. The DRP is directed to decide the objections raised by the assessee by a detailed and speaking order after affording reasonable and adequate opportunity of being heard to the assessee. Accordingly, Ground Nos. 41 and 42 with all its sub-grounds are allowed for statistical purposes.

39. Third issue relates to the TP adjustment in respect of outstanding receivables.

40. Briefly stated, the facts of the case are that the assessee strongly contended that all receivables and payables being closely linked to respective main transactions, have been bench marked using combined transaction approach and working capital adjustment for which the assessee filed invoice-wise details for export of slow moving goods including amount of invoice, date of invoice and date of payment of invoice.

41. However, the TPO considered the receivables pertaining to international transaction of export of slow-moving goods outstanding for more than 30 days as separate international transaction of unsecured loan extended to AE.

42. The TPO benchmarked this alleged international transaction on a stand - alone basis using PLR as CUP. The assessee contended for application of LIBOR rate as appropriate rate to bench mark transaction but the TPO was of the opinion that income for transactions relating to the sale accrued and arose in India, therefore, domestic prime lending rate has been applied.

43. The assessee raised objections before the DRP maintaining its stand that outstanding receivables cannot be characterized as unsecured loans and, therefore, the TPO erred in bench marking the same by applying PLR to compute notional interest.

44. After considering the facts, the DRP directed the Assessing Officer to consider 60 days credit for bench marking of impugned international transaction. The DRP further directed to net off payables and charge interest on net receivables after verifying whether invoices raised against AEs was in foreign currency and accordingly, directed use of LIBOR instead of SBI base rate to determine interest. Accordingly, revised adjustment was worked out by the Assessing Officer at Rs. 3,30,682/-.

45. Before us, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

46. We have given thoughtful consideration to the orders of the authorities below. We find that the objections of the assessee have been suitably addressed by the DRP by extending credit period from 30 days to 60 days, netting off payables and charging of interest of net

receivables and acceptance of LIBOR instead of SBI base rate. We, therefore, do not find any reason to interfere with the findings of the DRP.

47. However, the Assessing Officer is directed to follow the directions of the DRP in letter and spirit and apply LIBOR rate without any further addition. Grounds Nos. 43 to 46 are accordingly decided as per our above directions.

48. Next issue relates to disallowance of stock valuation loss.

49. During the course of scrutiny assessment proceedings and from examination of account of the assessee, the Assessing Officer found that the assessee company has valued some of its closing stock on price lower than the cost.

50. The assessee explained that it is following Accounting Standard – AS 2 for inventory valuation according to which, inventories should be valued at the lower of cost and net realizable value for valuation of closing stock.

51. Reply of the assessee did not find any favour with the Assessing Officer who was of the opinion that since all the goods were physically in possession of the assessee, ownership right of those goods were with the assessee only. Till the goods are in the possession of the assessee, there cannot be any losses on account of valuation.

52. The Assessing Officer also dismissed the reliance upon the Accounting Standard – 2 by the assessee stating that the profit and loss, as per Accounting Standard -2, are required to be calibrated with the provision of the Act.

53. The Assessing Officer further observed that valuation of loss is actually in the nature of notional losses because the loss is not actually incurred.

54. Before us, the ld. counsel for the assessee reiterated what has been stated before the Assessing Officer.

55. The ld. DR placed strong reliance on the findings of the Assessing Officer.

56. We have given thoughtful consideration to the orders of the authorities below. At the very outset, we have to state that the observations/comments by the Assessing Officer on application of Accounting Standard – 2 is without any merits and, in fact, uncalled for. Secondly, it is an undisputed fact that the assessee has been consistently following the same method of valuation of closing stock which was cost or net realizable value, whichever is lower.

57. The Hon'ble Supreme Court in the case of Woodward Governor India [P] Ltd 312 ITR 254 had an occasion to consider similar grievance and the Hon'ble Supreme Court held as under:

> "The 1961 Act makes no provision with regard to valuation of stock. But the ordinary principle of commercial accounting requires that in the P&L account the value of the stock-in-trade at the beginning and at the end of the year should be entered at cost or market price, whichever is the lower. This is how business profits arising during the year needs to be computed. This is one more reason for reading section 37(1) with section 145. For valuing the closing stock at the end of a particular year, the value prevailing on the last date is relevant. This is because profits/loss is embedded in the closing stock. While anticipated loss is taken into account, anticipated profit in the shape of appreciated value of the closing stock is not brought into account, as no prudent trader would care to show

increase profits before actual realization. This is the theory underlying the Rule that closing stock is to be valued at cost or market price, whichever is the lower. As profits for income-tax purposes are to be computed in accordance with ordinary principles of commercial accounting, unless, such principles stand superseded or modified by legislative enactments, unrealized profits in the shape of appreciated value of goods remaining unsold at the end of the accounting year and carried over to the following years account in a continuing business are not brought to the charge as a matter of practice, though, as stated above, loss due to fall in the price below cost is allowed even though such loss has not been realized actually. At this stage, we need to emphasize once again that the above system of commercial accounting can be superseded or modified by legislative enactment. This is where section comes into play. Under that section, the Central Government is empowered to notify from time to time the Accounting Standards to be followed by any class of assessees or in respect of any class of income. Accordingly, under section 209 of the Companies Act, mercantile system of accounting is made mandatory for companies. In other words, accounting standard which is continuously adopted by an assessee can be superseded or modified by Legislative intervention. However, but for such intervention or in cases falling under section 145(3), the method of accounting undertaken by the assessee continuously is supreme. In the present batch of cases, there is no finding given by the Assessing Officer on the correctness or completeness of the accounts of the assessee. Equally, there is no finding given by the Assessing Officer stating that the assessee has not complied with the accounting standards.

15. For the reasons given hereinabove, we hold that, in the present case, the "loss" suffered by the assessee on account of the exchange difference as on the date of the balance sheet is an item of expenditure under section 37(1) of the 1961 Act.

16. In the light of what is stated hereinabove, it is clear that profits and gains of the previous year are required to be computed in accordance with the relevant accounting standard. It is important to bear in mind that the basis on which stock-in-trade is valued is part of the method of accounting. It is well-established, that, on general principles of commercial accounting, in the P&L account, the values of the stock-in-trade at the beginning and at the end of the accounting year should be entered at cost or market value, whichever is lower - the market value being ascertained as on the last date of the accounting year and not as on any intermediate date between the commencement and the closing of the year, failing which it would not be possible to ascertain the true and correct state of affairs. No gain or profit can arise until a balance is struck between the cost of acquisition and the proceeds of sale. The word "profit" implies a comparison between the state of business at two specific dates, usually separated by an interval of twelve months. Stock-in-trade is an asset. It is a trading asset. Therefore, the concept of profit and gains made by business during the year can only materialize when a comparison of the assets of the business at two different dates is taken into account. Section 145(1) enacts that for the purpose of section 28 and section 56 alone, income, profits and gains must be computed in accordance

with the method of accounting regularly employed by the assessee. In this case, we are concerned with section 28. Therefore, section 145(1) is attracted to the facts of the present case. Under the mercantile system of accounting, what is due is brought into credit before it is actually received; it brings into debit an expenditure for which a legal liability has been incurred before it is actually disbursed, *(see* judgment of this Court in the case of *United Commercial Bank* v. *CIT* [1999] 240 1TR 3551 . Therefore, the accounting method followed by an assessee continuously for a given period of time needs to be presumed to be correct till the Assessing Officer comes to the conclusion for reasons to be given that the system does not reflect true and correct profits. As stated, there is no finding given by the Assessing Officer on the correctness of the accounting standard followed by the assessee(s) in this batch of Civil Appeals."

58. Respectfully following the same, we direct the Assessing Officer to delete the impugned addition/disallowance. Ground Nos. 47 and 48 are allowed.

59. Next issue relates to the disallowance of expenses on corporate social responsibility u/s 115JB of the Act by treating it as apportion of profits.

60. Similar issue was considered by the co-ordinate bench in the case of GE Power System India Pvt Ltd ITA No. 9120/DEL/2019 order dated 10.08.2022 for Assessment Year 2016-17. The relevant findings of the co-ordinate bench read as under:

> "10. Upon careful consideration, we note section 115JB of the Act provides following adjustment to book profit:-
>
> "115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of eighteen and one-half per cent:
>
> Provided that for the previous year relevant to the assessment year commencing on or after the 1st day of April, 2020, the provisions of this sub-section shall have effect as if for the words "eighteen and one-half per cent" occurring at both the places, the words "fifteen per cent" had been substituted.
>
> (2) Every assessee,--

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013 (18 of 2013); or

(b) being a company, to which the second proviso to sub-section (1) of section 129 of the Companies Act, 2013 (18 of 2013) is applicable, shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of the Act governing such company:

Provided that while preparing the annual accounts including statement of profit and loss,--

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including statement of profit and loss;

(iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including statement of profit and loss and laid before the company at its annual general meeting in accordance with the provisions of section 129 of the Companies Act, 2013 (18 of 2013) :

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 2013 (18 of 2013), which is different from the previous year under this Act,--

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including statement of profit and loss;

(iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including statement of profit and loss for such financial year or part of such financial year falling within the relevant previous year. Explanation 1.--For the purposes of this section, "book profit" means the profit as shown in the statement of profit and loss for the relevant previous year prepared under sub-section (2), as increased by--

(a) the amount of income-tax paid or payable, and the provision therefor; or

(b) the amounts carried to any reserves, by whatever name called, other than a reserve specified under section 33AC; or

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies;

or

(e) the amount or amounts of dividends paid or proposed ; or

(f) the amount or amounts of expenditure relatable to any income to which section 10 (other than the provisions contained in clause

(38) thereof) or section 11 or section 12 apply; or (fa) the amount or amounts of expenditure relatable to income, being share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86; or (fb) the amount or amounts of expenditure relatable to income accruing or arising to an assessee, being a foreign company, from,--

(A) the capital gains arising on transactions in securities; or (B) the interest, 52[dividend,] royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII, if the income-tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, is at a rate less than the rate specified in sub-section (1); or (fc) the amount representing notional loss on transfer of a capital asset, being share of a special purpose vehicle, to a business trust in exchange of units allotted by the trust referred to in clause (xvii) of section 47 or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of units referred to in clause (xvii) of section 47; or (fd) the amount or amounts of expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF; or

(g) the amount of depreciation,

(h) the amount of deferred tax and the provision therefor,

(i) the amount or amounts set aside as provision for diminution in the value of any asset,

(j) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset,

(k) the amount of gain on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit and loss, as the case may be; if any amount referred to in clauses (a) to (i) is debited to the statement of profit and loss or if any amount referred to in clause

(j) is not credited to the statement of profit and loss, and as reduced by,--

(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the statement of profit and loss), if any such amount is credited to the statement of profit and loss: Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or

Explanation below the second proviso to section 115JA, as the case may be; or

(ii) the amount of income to which any of the provisions of section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply, if any such amount is credited to the statement of profit and loss; or (iia) the amount of depreciation debited to the statement of profit and loss (excluding the depreciation on account of revaluation of assets); or (iib) the amount withdrawn from revaluation reserve and credited to the statement of profit and loss, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (iia); or (iic) the amount of income, being the share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86, if any, such amount is credited to the statement of profit and loss; or (iid) the amount of income accruing or arising to an assessee, being a foreign company, from,--

(A) the capital gains arising on transactions in securities; or (B) the interest, 53[dividend,] royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII, if such income is credited to the statement of profit and loss and the income-tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, is at a rate less than the rate specified in sub-section (1); or (iie) the amount representing,--

(A) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47; or (B) notional gain resulting from any change in carrying amount of said units; or (C) gain on transfer of units referred to in clause (xvii) of section 47, if any, credited to the statement of profit and loss; or (iif) the amount of loss on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit and loss, as the case may be; or (iig) the amount of income by way of royalty in respect of patent chargeable to tax under section 115BBF; or (iih) the aggregate amount of unabsorbed depreciation and loss brought forward in case of a--

(A) company, and its subsidiary and the subsidiary of such subsidiary, where, the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 (18 of 2013) has suspended the Board of Directors of such company and has appointed new directors who are nominated by the Central Government under section 242 of the said Act; (B) company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016). Explanation.--For the purposes of this clause,--

(i) "Adjudicating Authority" shall have the meaning assigned to it in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016);

(ii) "Tribunal" shall have the meaning assigned to it in clause (90) of section 2 of the Companies Act, 2013 (18 of 2013);

(iii) a company shall be a subsidiary of another company, if such other company holds more than half in the nominal value of equity share capital of the company;

(iv) "loss" shall not include depreciation; or

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account in case of a company other than the company referred to in clause (iih). Explanation.--For the purposes of this clause,--

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or

(iv) to (vi) [***]

(vii) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the

Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.--For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or

(viii) the amount of deferred tax, if any such amount is credited to the statement of profit and loss."

11. In our considered opinion, none of the clauses above provides that CSR expenses have to be added to book profit. Except for the wild imagination of the Assessing Officer by no stretch of imagination, it can be said expenditure on CSR expenses is a transfer to/from reserve. Hon'ble Apex Court in Apollo Tyers (supra) have clearly laid down that the Assessing Officer or assessee, none can tinker with book profit disclosed in audited account. It is not the case that the accounts have not been prepared as per accepted accounting principle. Once the accounts have been prepared in accordance with standards in this regard, this tinkering by the Assessing Officer has no sanction of law. We have no hesitation in setting aside the addition to book profit in this regard."

61. As no distinguishing decision has been brought to our notice, respectfully following the decision of the co-ordinate bench [supra], we direct the Assessing Officer to delete the impugned addition. Accordingly, Grounds Nos. 49 to 52 are allowed.

62. Next issue raised vide Ground Nos. 53 and 54 relates to the disallowance of royalty expenses by holding that the assessee had no liability to pay such royalties.

63. The underlying facts in this issue are from the account of the assessee. The Assessing Officer noticed that the assessee has claimed royalty expenses of Rs. 14,69,89,634/-. The Assessing Officer proceeded to examine the claim u/s 37(1) of the Act.

64. The TPO disallowed the expenditure of royalty incurred during the year.

65. This issue has been considered by us in detail while adjudicating first issue [supra]. For our detailed discussion therein, these grounds become otiose. Ground No. 53 and 54 have become infructuous.

65. The next issue relates to disallowance of provision for warrantee.

66. From the account of the assessee, the Assessing Officer found that the assessee has created provision for warranty amounting to Rs. 1,93,41,11,535/- and utilized a provision of Rs. 2,31,42,46,202/-. The provision account considered by the Assessing Officer is as under:

Parti-culars/ Years	Sales -1	Opening Provision - 2	Created during the year - 3	Utilised during the year - 4	Reversed during the year - 5	Closing Provision - 6
FY 2009-10	38,56,32,59,962	20,08,23,000	25,68,01,929	27,13,71,000	-	18,62,53,791
FY 2010-11	56,95,58,20,877	18,62,53,791	38,11,09,522	35,63,44,000	-	21,10,19,753
FY 2011-12	67,55,54,46,980	21,10,19,753	71,86,87,000	61,15,41,000	-	31,81,65,585
FY 2012-13	82,58,65,19,196	31,81,65,585	94,07,69,817	82,47,13,833	-	43,42,21,569
FY 2013-14	1,00,16,42,25,151	43,42,21,569	3,05,99,84,007	2,05,20,38,088	-	1,44,21,67,488
FY 2014-15	1,10,10,30,08,336	1,44,21,67,488	2,47,41,55,169	2,56,83,83,121	-	1,34,79,39,537
FY 2015-16	80,73,33,57,459	1,34,79,39,537	1,93,41,11,353	2,31,42,46,202	-	96,78,04,688

67. The Assessing Officer observed that every year the assessee has net surplus in provision for warrantee account. Over a period of time of seven years, the assessee has a surplus of 96.78 crores in the

provision account. The Assessing Officer was of the firm belief that the provision has been claimed as expenditure but remained unutilized.

68. The assessee was asked to show cause as to why addition of provision for warranty in the immediately preceding year should not be persisted this year.

69. The assessee relied upon the decision of the Hon'ble Delhi High Court in its own case wherein the Hon'ble High Court has decided that warrantee provision is not a contingent liability and is allowable as deduction u/s 37(1) of the Act.

70. The Assessing Officer did interpret the judgment of the Hon'ble Delhi High Court in his own way by observing that the Hon'ble High Court has by default agreed that if the amount set aside is unreasonably disproportionate, in that case the disallowance can be made. Accordingly, the Assessing Officer made the following chart:

F.Y.	Provision created as % of sales	Provision utilized as % of creation
2009-10	0.66	105.6
2010-11	0.32	93.5
2011-12	1.06	85.09
2012-13	1.13	87.6
2013-14	3.05	67.06
2014-15	2.24	103.8
2015-16	2.40	119.7

71. The Assessing Officer further made table of closing balance ratio of provision account as under:

F.Y.	Provision created as % of sales	Provision utilized as % of creation
2009-10	0.66	105.6
2010-11	0.32	93.5
2011-12	1.06	85.09
2012-13	1.13	87.6
2013-14	3.05	67.06
2014-15	2.24	103.8
2015-16	2.40	119.7

72. Distinguishing the facts of the year under consideration, from the decision of the Hon'ble High Court of Delhi [supra], the Assessing Officer concluded by holding that the provision is not created on any scientific basis or on any past experience and computed the disallowance as under:

> "The assessee has made provisions @ 0.66%, 0.32%, 1.06%, 1.13%, 3.05%, 2.24%, 2.39%, 2.23%, 1.40% of total sales for the FY 2009-10 to FY 2017-18 respectively. The average rate comes to 1.244% for the period FY 2009-10 to FY 2013-14. The average for the entire period from FY 2009- ID to FY 2017-18 comes to 1.61%. There are some higher amount in subsequent years and the present year. On an estimate basis, the provision to the extent of 1.75% of total sales will be sufficient to meet the requirement of provision. Thus, the amount of provision to the extent of 1.75% of the total sales is allowed and the balance amount is added to total income. The amount of allowance at the rate of 1.75% comes to Rs. 141,28,33,755. The balance amount of Rs. 52,12,77,597/- (80733357459*2.395678% - 80733357459*1.75%) is proposed to be disallowed and added to the total income of the assessee for the year.
>
> 9.22 In all likelihood, the Assessee will take the plea that there has been actual expenditure of Rs. 2,31,42,46,202 on account of warranty for this year itself and therefore, a disallowance of Rs. 52.12 crores is unreasonable. In that regard, it is stated that the

Assessee already has a balance of Rs. 134.79 crores in provision account against which the excess amount can be adjusted. If the rate of 1.75% is adopted for subsequent years also, in that case, the reserve will be used and the same will meet the requirement of write back in subsequent years.

9.23 The excess provision to the extent of Rs. 52.12 crores takes the character of contingent liabilities and therefore, it is proposed to be added to the book profit also.

9.24 The amount of Rs.52,12,77,597/- is proposed to be added to the total income of the assessee company. The AO is convinced that the assessee has furnished inaccurate particulars of income, therefore penalty proceedings u/s 271(1)(c) is proposed to be initiated separately.

73. Strong objections were raised before the DRP. Before the DRP, once again attention was drawn to the decision of the Hon'ble Delhi High Court in the assessee's own case but the objections of the assessee did not find any favour with the DRP who confirmed the findings of the Assessing Officer.

74. We have carefully considered the orders of the authorities below. It is an undisputed fact that same quarrel arose in earlier Assessment Years i.e. 2001-02 to 2003-04 and the quarrel travelled upto the

Hon'ble High Court of Delhi and the Hon'ble High Court in 160 Taxmann 397 held as under:

"The assessee is engaged in the manufacture and sale of TV and audio system. As a matter of policy, it offers warranty of one year on all the products which it has manufactured and sold. In order to provide for claims arising out of such warranties, the assessee set apart different amounts for different assessment years which it claimed towards deduction. The Assessing Officer, however, disallowed the said claim for deduction on the ground that the same was based on what was only a contingent liability and not a liability within the meaning of section 37(1) of the Income-tax Act, 1961. The CIT (Appeals) reversed that view in an appeal preferred by the assessee. The Tribunal has in a further appeal preferred before it by the revenue affirmed that view taken by CIT(A) The present appeal arising out of the said order assails the view taken by the Tribunal.

2. We have heard learned counsel for the parties and perused the order under challenge. The issue whether amounts set apart by the assessee to meet claims arising out of warranties issued by it to its customers can be taken as a permissible deduction under section 37 is no longer *res integra* in the light of a Division Bench of this Court in *CIT* v. *Vinitec Corpn (P.) Ltd* [2005] 278 ITR 337 '. This Court has relied upon the decision of the Supreme Court in *Bharat Earth Movers* v. C/7[2000] 245 1 PR 428 and *IRC* v. *Mitsubishi Motors New Zealand Ltd.* [1996] 222 ITR 697 (PC) held that the

liability arising out of a warranty is an allowable deduction even when the amount payable by the assessee is quantified and discharged in future. The following passage from the above decision is in this regard apposite:

> "14. The *ratio decidendi* of the above cases is squarely applicable to the facts of the present case. It is not disputed that the warranty clause is **part** of the sale document and imposes a liability upon the assessee to discharge its obligations under that clause for the period of warranty. It is a liability which is capable of being construed in definite terms which has arisen in the accounting year. May be its actual quantification and discharge is deferred to **a** future date. Once an assesee is maintaining his accounts on the mercantile system, a liability accrued, though to be discharged at a future date would be **a** proper deduction while working out the profits and gains of lfis business, regard being had to be accepted principles of commercial practice and accountancy." (p. 343)

3. In the instant case also, the assessee has on the basis of the past experience and the extent of claims made against it, set apart different amounts for different assessment years. It is not the case of the revenue that the amounts set apart were unreasonably disproportionate to the amounts which were claimed by the customers on the basis of the warranties in the past. In that view, the Tribunal was justified in holding that the amounts set apart by the assessee was an allowable deduction. No substantial question of

law arises for our consideration in this appeal, which fails and is hereby dismissed."

75. Though the Assessing Officer has tried to distinguish the facts but, in our considered opinion, has grossly failed in distinguishing them. Therefore, respectfully following the decision of the Hon'ble Delhi High Court [supra], we direct the Assessing Officer to delete the impugned disallowance. As the co-ordinate bench in 114 ITD 448 has held that provision for warrantee is an ascertained liability, therefore, respectfully following the decision of the co-ordinate bench, we direct the Assessing Officer to consider it as an allowable deduction in computing the book profit u/s 115JB of the Act. Accordingly, Grounds Nos. 55 to 60 are allowed.

76. Last issue relates to non grant of deduction u/s 80G of the Act.

77. The underlying facts in issue show are that the assessee has claimed deduction u/s 80G of the Act as under:

Name of Donee	PAN of Donee	Amount of Donation (INR)	Eligible amount of Donation (INR)	Annexures
A. Donations entitled for 100% deduction without qualifying limit				
National Culture Fund	GGGGG0000G	1,90,00,000	1,90,00,000	2(a)
Prime Minister's National Relief Fund	AACTP4637Q	49,42,100	49,42,100	2(b)
	Sub-total (A)	2,39,42,100	2,39,42,100	
B. Donations entitled for 50% deduction without qualifying limit				
World Wide Fund for Nature India	AAATW0356P	40,00,000	20,00,000	2(c)
Society for Educational Welfare and	AAGTS4277B	1,14,10,033	57,05,017	2(d)
Isha Outreach	AAATI7085D	12,14,800	6,07,400	2(e)
	Sub-total (B)	1,66,24,833	83,12,417	
Total deduction under sec. 80G of the Act (A+B)			3,22,54,517	

78. In support of the above claim, the assessee moved an application for rectification u/s 154 of the Act in respect of final assessment order passed u/s 143(3) r.w.s 144C of the Act.

79. Considering the claim of the assessee, we direct the Assessing Officer to consider the same as per the provisions of law. The assessee is directed to furnish necessary evidences in support of its claim and the Assessing Officer is directed to examine the same and decide the

issue after affording reasonable and adequate opportunity of being heard to the assessee. This issue is allowed for statistical purposes. Ground No. 61 is disposed of accordingly.

80. Ground Nos. 62 and 63 are not pressed. The same are dismissed as not pressed.

81. In the result, the appeal of the assessee in ITA No. 493/DEL/2021 is allowed in part for statistical purposes.

The order is pronounced in the open court on 17.10.2022.

Sd/-	**Sd/-**
[C.M. GARG] **JUDICIAL MEMBER**	**[N.K. BILLAIYA]** **ACCOUNTANT MEMBER**

Dated: 17th October, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	