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

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

IT(TP)A No.272/Bang/2022
Assessment Year : 2017-18

M/s. Inteva Products India Automotive Private Limited, Manyata Embassy Business Park, N1 Block, 4th Floor, Outer Ring Road, Rachenahalli Village, KR Puram Hobli, Nagawara, Bengaluru-560045. **PAN : AABCM9623K**	Vs.	Deputy Commissioner of Income Tax, Circle-3(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Nikhil Tiwari, CA
Revenue by	:	Shri. Manjunath Karkihalli, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	20.09.2022
Date of Pronouncement	:	21.11.2022

ORDER

Per Shri. Laxmi Prasad Sahu, Accountant Member:

This is an appeal filed by the assessee against the order passed by the AO under section 143(3) r.w.s. 144C(13) & 144B, of the Income-tax Act,1961 ['the Act' for short] order dated 22.02.2022, on the following grounds of appeal:

General ground of appeal

1. *erred in assessing the total income of the Appellant at INR 6,91,98,180 as against returned income of INR4,55,17,051 offered to tax by the Appellant.*

Grounds of appeal in relation to Transfer pricing adjustment

Transfer pricing adjustment

2. *erred inmaking the transfer pricing adjustment amounting to INR 1,94,55,227 to the international transaction pertaining to provision of design engineering services by not accepting the economic analysis undertaken by the Appellant.*

Inappropriately rejecting comparable company identified by the Appellant

3. *erred in rejecting the following company proposed to be considered as comparable for the engineering design segment by the Appellant during assessment proceedings, by stating that, the company is functionally different:*

- *May Softech Private Limited*

Inappropriately considering additional company as comparable to the Appellant

4. *erred in accepting the following additional company as comparable for the engineering design segment of the Appellant without appreciating the said company is functionally not comparable with the Appellant:*

- *Satyam Venture Engineering Services Pvt Ltd*

Non- grant of working capital adjustment

5. *erred in not granting suitable adjustments to account for differences in the working capital employed by the comparable companies for engineering design segment of the Appellant.*

Non- grant of risk adjustment

6. *erred in not granting suitable adjustments to account for differences in the risk undertaken by the comparable companies for engineering design segment of the Appellant.*

Grounds of appeal in relation to Corporate Tax adjustment

Addition made on account of foreign exchange gain on imported assets

7. *erred in not reducing income on account of unrealised foreign exchange difference gain amounting to INR 9,96,759 covered under section 43A of the Act*

Addition of duty drawback which has been offered to tax in subsequent years

8. *erred in making addition of duty drawback amounting to* ***INR*** *32,29,145 which has been offered to tax in subsequent years*

Erred in not reducing the total income of the Appellant on reversal of provision for rent equalization reserve

9. *erred in not allowing additional claim made by the Appellant and not reducing the total income by 1NR 62,99,695 on account of reversal of provision for rent equalization AY 2017-18, without appreciating that such amount was offered to tax in AY 2016-17 on creation of provision.*

Breached principles of natural justice resulting in a void order

10. *the learned AO has breached principles of natural justice by not issuing a show cause notice to give an opportunity of being heard to the Assessee before passing the draft assessment order*

Initiation of penalty proceedings under section 270A(1) of the Act

11. *erred in initiating the penalty proceedings under section 270A(1) of the Act;*

2. The gist of the facts is that the assessee filed return of income on 29.11.2017 declaring total income at Rs.3,80,24,705/-. Subsequently, return was revised and declared income at Rs.4,55,17,051/-. The case was selected for scrutiny and statutory

notice was issued to the assessee. During the course of assessment proceedings, it was observed that the assessee has undertaken international transaction, therefore, for determination of ALP, the case was referred to the TPO with the prior approval of PCIT-3, Bengaluru, under section 92CA of the Act.

3. After receiving reference from the AO, notice was issued to the assessee on 16.09.2019 calling for details and documentation mentioned as prescribed under section 92D of the Act. From the details filed by the assessee, it was observed that the profile of the tax payer is a wholly owned subsidiary of Inteva Products, Netherlands B.V., which is ultimately held by the Renco Group, Inc, USA. Apart from rendering of design engineering support services to Inteva Group entities, the product portfolio of Inteva India includes door latches, window regulators, motors and related electronics. Inteva India operates through the 2 units, out of which one is Bengaluru unit – renders design engineering support services to Inteva Group entities.

4. During the financial year, the taxpayer had entered into the following international transactions with its AEs.

Particulars	Amount (As per 3CEB)	Amount(As per **TP** Study)
Provision of design engineering support services	54,81,77,865	54,81,77,865
Sale of finished goods	12,61,75,561	12,61,75,561

Purchase of goods	83,59,952	83,59,952
Payment of management fees	6,10,11,834	6,10,11.834
Payment of royalty	3,73,32,705	3,73,32,705
interest on ECB Loan	45,95,400	45,95,400
Reimbursement of actual	1,54,33,262	1,54,33,262
Recovery of expenses	70,72,436	70,72,436

5. For determination of ALP, the assessee applied TNMM method by applying certain filters and he found three comparable companies and calculated arithmetic mean margin of 14.82%, which is within the range of ±3% of arithmetic mean of operating margin of the company as computed at 12.80%. Accordingly, the assessee company upheld that the international transactions with its AEs were at arm's length. The learned TPO observed that certain filters have not been applied by the assessee while choosing the comparable companies. Accordingly, he applied fresh search process by applying following filters:

i. Use of current year data wherever available.

ii. Companies having different financial year ending (i.e., 31st March 2017) or the data of the company which does not fall within the 12 month period i.e., 01.04.2016 to 31.03.2017, were rejected.

the PLI was calculated by the TPO at 18.60% and accordingly, there was adjustment under section 92CA of Rs.2,78,64,650/-.

8. In the submission, the taxpayer has also sought for the working capital adjustments as per the details mentioned therein, which was duly considered by the TPO but it was not allowed. The TPO passed his order on 15.01.2021. After receipt of the order from the TPO under section 92CA of the Act, the AO proceeded to pass the Draft Assessment Order and he made certain disallowances in addition to the adjustment made under section 92CA of the Act and assessed the total income of Rs.13,12,69,590/- Accordingly, the AO passed the Draft Assessment Order on 09.04.2021.

9. Aggrieved by the Draft assessment Order, the assessee filed objection before the Ld. DRP. The Ld. DRP, after considering the submissions gave some marginal reliefs to the assessee and passed the order on 31.01.2022.

10. After receipt of direction from DRP the AO passed OGE on 14.02.2022 and the TP adjustment was restricted to Rs. 1,94,55,227/-. The AO passed final Assessment Order on 22.02.2022 assessing the total income of the assessee as under:-

1. Total income as per revised return	Rs. 4,55,17,051/-
Add : Disallowances	
A) Foreign Exchange gain on imported assets	Rs. 9,96,759/-

B) under section 28(iiic) of the Act on account of duty drawback of	Rs. 32,29,145/-
C) TPO adjustments after DRP Direction	Rs.1,94,55,227/-
Total Assessed Income	Rs.6,91,98,192/-

11. Aggrieved from the final Assessment Order, the assessee filed appeal before the Tribunal. The assessee has taken 11 grounds, out of which the learned Counsel for the assessee submitted that ground No.1 is general in nature and he submitted that ground Nos.2 to 6 are TP issues with regard to Engineering Design Services and he further submitted that if ground No.5 is accepted, then other ground Nos.3, 4 and 6 become academic in nature. In respect of ground No.5, learned Counsel for the assessee submitted that similar issue has been decided by the Co-ordinate Bench of the Tribunal in assessee's own case in ITA No.3357/Bang/2018 for Assessment Year 2014-15, order dated 22.08.2022, and the matter has been remanded to the AO/TPO for allowing the working capital adjustment and re-computation of the ALP afresh. The relevant part is as under:-

"12. Ground No.4 reads as follows:-

"On the facts and in the circumstances of the case and in law, the learned AO based on the Directions of Hon'ble DRP has:

Erred in not granting suitable adjustments to account for differences in the working capital employed by the comparable companies for manufacturing segment of the Appellant."

13. The ld. AR submitted that the issue is covered by the decision of the coordinate Bench of the Tribunal in the case of Huawei Technologies India (P). Ltd. v. ACIT, in IT(TP)A Nos. 1940, 2140, & 2051 (BANG.) OF 2017

for AYs 2010-11 & 2013-14 vide order dated 4.8.2021. The ld AR also submitted that in assessee's own case for AY 2013-14 the Hon'ble Tribunal has considered the similar issue wherein the issue is remitted back to the AO/TPO and prayed for similar directions for the year under consideration.

14. We have considered the rival submissions and perused the material on record. We notice that the coordinate Bench of the Tribunal in the case of Huawei Technologies India (P). Ltd. v. ACIT, in IT(TP)A Nos. 1940, 2140, & 2051 (BANG.) OF 2017 for AYs 2010-11 & 2013-14 vide order dated 4.8.2021 has allowed the working capital adjustment. The relevant observations are as follows:-

> *"11. A reading of rule 10B(1)(e)(iii) of the Rules read with sec.92CA of the Act, would clearly shows that the net profit margin arising in comparable uncontrolled transactions has to be adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions, which could materially affect the amount of net profit margin in the open market.*
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> *12. Chapters I and III of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (hereafter the "TPG") contain extensive guidance on comparability analyses for transfer pricing purposes. Guidance on comparability adjustments is found in paragraphs 3.47-3.54 and in the Annex to Chapter III of the TPG. A revised version of this guidance was approved by the Council of the OECD on 22 July 2010. In paragraph 2 of these guidelines it has been explained as to what is comparability adjustment. The guideline explains that when applying the arm's length principle, the conditions of a controlled transaction (i.e. a transaction between a taxpayer and an associated enterprise) are generally compared to the conditions of comparable uncontrolled transactions. In this context, to be comparable means that:*
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> - *None of the differences (if any) between the situations being compared could materially affect the condition being examined in the methodology (e.g. price or margin), or*
> - *Reasonably accurate adjustments can be made to eliminate the effect of any such differences. These are called "comparability adjustments.*
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> *13. In Paragraph 13 to 16 of the aforesaid OECD guidelines, need for working capital adjustment has been explained as follows: "*
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> *13. In a competitive environment, money has a time value. If a company provided, say, 60 days trade terms for payment of accounts, the price of the goods should equate to the price for immediate payment plus 60 days of interest on the immediate payment price. By carrying high accounts*

receivable a company is allowing its customers a relatively long period to pay their accounts It would need to borrow money to fund the credit terms and/or suffer a reduction in the amount of cash surplus which it would otherwise have available to invest. In a competitive environment, the price should therefore include an element to reflect these payment terms and compensate for the timing effect.

14. The opposite applies to higher levels of accounts payable. By carrying high accounts payable, a company is benefitting from a relatively long period to pay its suppliers. It would need to borrow less money to fund its purchases and/or benefit from an increase in the amount of cash surplus available to invest. In a competitive environment, the cost of goods sold should include an element to reflect these payment terms and compensate for the timing effect.

15. A company with high levels of inventory would similarly need to either borrow to fund the purchase, or reduce the amount of cash surplus which it is able to invest. Note that the interest rate July 2010 Page 6 might be affected by the funding structure (e.g. where the purchase of inventory is partly funded by equity) or by the risk associated with holding specific types of inventory) 16. Making a working capital adjustment is an attempt to adjust for the differences in time value of money between the tested party and potential comparables, with an assumption that the difference should be reflected in profits. The underlying reasoning is that:

- *A company will need funding to cover the time gap between the time it invests money (i.e. pays money to supplier) and the time it collects the investment (i.e. collects money from customers)*
- *This time gap is calculated as: the period needed to sell inventories to customers + (plus) the period needed to collect money from customers - (less) the period granted to pay debts to suppliers."*

14. Examples of how to work out adjustment on account of working capital adjustment is also given in the said guidelines. The guideline also expresses the difficulty in making working capital adjustment by concluding that the following factors have to be kept in mind (i) The point in time at which the Receivables, Inventory and Payables should be compared between the tested party and the comparables, whether it should be the figures of receivables, inventory and payable at the year end or beginning of the year or average of these figures. (ii) the selection of the appropriate interest rate (or rates) to use. The rate (or rates) should generally be determined by reference to the rate(s) of interest applicable to a commercial enterprise operating in the same market as the tested party. The guidelines conclude by observing that the purpose of working capital adjustments is to improve the reliability of the comparables.

15. In the present case the TPO allowed working capital adjustment accepting the calculation given by the Assessee. The CIT(A) in exercise of his powers of enhancement held that no adjustment should be made to the profit margins on account of working capital differences between the tested party and the comparable companies for the following reasons:
(i) The daily working capital levels of the tested party and the comparables was the only reliable basis of determining adjustment to be made on account of working capital because that would be on the basis of working capital deployed throughout the year.

(ii) Segmental working capital is not disclosed in the annual reports of companies engaged in different segments and therefore proper comparison cannot be made.

(iii) Disclose in the balance sheet does not contain break up of trade and non-trade debtors and creditors and therefore working capital adjustment done without such break up would result in computation being skewed.

(iv) Cost of capital would be different for different companies and therefore working capital adjustment made disregarding this different based on broad approximations, estimations and assumptions may not lead to reliable results."

16. The CIT(A) also placed reliance on a decision of Chennai ITAT in the case of Mobis India ITA No. 2112/Mds/2011 (2013) 38 taxmann.com. That decision was based on the factual aspect that the Assessee was not able to demonstrate how working capital adjustment was arrived at by the Assessee. Therefore nothing turns on the decision relied upon by the CIT(A) in the impugned order. In the matter of determination of Arm's Length Price, it cannot be said that the burden is on the Assessee or the Department to show what is the Arm's Length Price. The data available with the Assessee and the Department would be the starting point and depending on the facts and circumstances of a case further details can be called for. As far as the Assessee is concerned, the facts and figures with regard to his business has to be furnished. Regarding comparable companies, one has to fall back upon only on the information available in the public domain. If that information is insufficient, it is beyond the power of the Assessee to produce the correct information about the comparable companies. The Revenue has on the other hand powers to compel production of the required details from the comparable companies. If that power is not exercised to find out the truth then it is no defence to say that the Assessee has not furnished the required details and on that score deny adjustment on account of working capital differences. Regarding applying the daily balances of inventory, receivables and payables for computing working capital adjustment, the Delhi Bench of

ITAT in the case of ITO v. E Value Serve.com (2016) 75 taxmann.com 195(Del. - Trib.) has held that insisting on daily balances of working capital requirements to compute working capital adjustment is not proper as it will be impossible to carry out such exercise and that working capital adjustment has to be based on the opening and closing working capital deployed. The Bench has also observed that that in Transfer Pricing Analysis there is always an element of estimation because it is not an exact science. One has to see that reasonable adjustment is being made so as to bring both comparable and test party on same footing. Therefore there is little merit in CIT(A)'s objection on working adjustment based on unavailable daily working capital requirements data. There is also no merit in the objection of the CIT(A) regarding absence of segmental details available of working capital requirements of comparable companies chosen and absence of details of trade and non-trade debtors of comparable companies as these details are beyond the power of the Assessee to obtain, unless these details are available in public domain. Regarding absence of cost of working capital funds, the OECD guidelines clearly advocates adopting rate(s) of interest applicable to a commercial enterprise operating in the same market as the tested party. Therefore this objection of the CIT(A) is also not sustainable.

17. In the light of the above discussion we are of the view that the CIT(A) was not justified in denying adjustment on account of working capital adjustment. Since, the CIT(A) has not found any error in the TPO's working of working capital adjustment, the working capital adjustment as worked out by the TPO has to be allowed. We may also add that the complete working capital adjustment working has been given by the Assessee and a copy of the same is at page 173 & 192 of the Assessee's paper book. No defect whatsoever has been pointed out in these working by the CIT(A). We may also further add that in terms of rule 10B(1)(e)(iii) of the Rules, the net profit margin arising in comparable uncontrolled transactions should be adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions which could materially affect the amount of net profit margin in the open market. It is not the case of the CIT(A) that differences in working capital requirements of the international transaction and the uncontrolled comparable transactions is not a difference which will materially affect the amount of net profit margin in the open market. If for reasons given by CIT(A) working capital adjustment cannot be allowed to the profit margins, then the comparable uncontrolled transactions chosen for the purpose of comparison will have to be treated as not comparable in terms of rule 10B(3) of the Rules, which provides as follows:

"(3) An uncontrolled transaction shall be comparable to an international transaction if—

(i) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged to paid in, or the profit arising from, such transactions in the open market; or
(ii) reasonably accurate adjustments can be made to eliminate the material effects of such differences."

18. In such a scenario there would remain no comparable uncontrolled transactions for the purpose of comparison. The transfer pricing exercise would therefore fail. Therefore in keeping with the OECD guidelines, endeavor should be made to bring in comparable companies for the purpose of broad comparison. Therefore the working capital adjustment as claimed by the Assessee should be allowed. We hold and direct accordingly.'

19. Respectfully following the aforesaid decision, we hold that the working capital adjustment as claimed by the Assessee should be allowed. We hold and direct accordingly."

20. Respectfully following the decisions of the Hon'ble Tribunal in the case of Huawei Technologies India (P) Ltd. (supra), we direct the AO to allow the working capital adjustment and re-compute the ALP accordingly. This ground is allowed.

11. Respectfully following the above decision of the Co-ordinate Bench of the Tribunal in assessee's own case for Assessment Year 2014-15, we also allow the working capital adjustment as claimed by the assessee in his grounds of appeal and the AO/TPO is directed to recompute the ALP afresh and the assessee is also directed to provide necessary documents for substantiating his case and further directed not to seek unnecessary adjournments and the AO is directed to provide reasonable opportunity of being heard to the assessee and decide the issue as per law. Accordingly ground No. 05 is allowed.

12. Since we have allowed ground No.5 of the assessee, there is no need to adjudicate ground Nos.2, 3, 4 and 6 as submitted by the assessee. Hence, these grounds become academic in nature and not require any adjudication.

13. In respect of ground No.7, the assessee submitted that there was a foreign exchange gain on ECB loan, which was utilized for acquisition of imported assets. Therefore, it shall be treated as per the provision of section 43A of the Act on its realization since the gain was capital in nature, therefore, the same should be excluded from the computation of taxable income. In this regard, the Ld. DRP has directed the AO for verification of facts and delete from the additions. In respect of that, the AO did not accept the direction of the Ld. DRP.

13.1. Since the Ld. DRP has given direction to delete the addition after verification, in line with the similar direction, we also direct the AO for deletion of the addition. The AO is directed to follow the direction of the Ld. DRP. This issue is allowed for statistical purposes.

14. Ground No.8 relates to the duty drawback recognized in the financial year but it has been offered to tax in the subsequent financial year. The detailed submission of the assessee has been considered after considering the submission from both the sides

and perusing the material of both sides, we find that there is total drawback of Rs.81,40,075/-, out of which Rs.49,10,930/- has been offered to tax in the impugned Assessment Year, whereas the disputed amount has been offered to tax in the subsequent year as submitted by the assessee. The issue has rightly been dealt by the lower authorities and we hold that the disputed amount should be taxed in the impugned Assessment Year. Since the assessee submitted that the amount has been offered in subsequent year, the AO is directed to verify the facts and if it is found that amount has been offered to tax in the subsequent year, the necessary adjustment should be given to the assessee in this regard. Therefore, this issue is also sent to AO for the purpose of verification and for giving necessary effects in the return of income for the subsequent year. This ground is dismissed in above terms.

15. Ground No.9 relates to reversal of provision for rent. The AR of the assessee submitted that a similar issue has been decided by the Co-ordinate Bench of the Tribunal in assessee's own case for the Assessment Year 2014-2015, which is as under:

> ***"Corporate Grounds***
> *49. Ground No.14 reads as follows:- "On the facts and in the circumstances of the case and in law, the learned AO based on the Directions of Hon'ble DRP, has: 13. Incorrect taxation of provision reversed of INR 5,48,95,774 in AY 2014-15 Erred on the facts and in circumstances of the case by disallowing amount of INR 5,48,95,774 in AY 2014-15 where such amount was already offered to tax in AY 2013-14 under section 40(a)(i) of the Act."*
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> *50. The AO observed that in the statement of computation of income for the year under consideration furnished, the assessee had deducted an amount of*

Rs.5,48,95,774/- from its total income on account of reversal of provisions made for the previous year end 31.03.2013. The assessee vide notices under section 142(1) of the IT Act dated 13.11.2017 and 16.11.2017 was asked to furnish complete ledger of each parties for A.Y.2013-14 and 2014-15 by reflecting their payments in the books for A.Y. 2013-14 and also evidence of tax deducted on these amounts in FY 2014-15 with remittance of tax into government account. In response, the assessee furnished its submission dated 21.11.2017 wherein it stated that the company makes monthly provisions for expenses on ad-hoc basis in its books of account and subsequently reverses these provisions. As the expenses were on ad-hoc basis and reversed subsequently, the assessee did not withhold taxes on the same and followed the approach of withholding taxes only on accounting such expenses on actual basis. Thus, such year-end provisions have been disallowed under section 40(a)(i)/(ia) of the Act in the computation of income and offered to tax in AY 2013-14. The assessee has further stated that as the provisions have been reversed in the subsequent year AY 2014-15, a deduction is now specifically claimed to ensure there is no double taxation of the same amount u/s. 37 of the Act.

51. The arguments of the assessee were considered by the AO and found not acceptable on the ground the assessee company has not made TDS on this amount of provision during the year which was disallowed during the AY 2013-14. The AO stated that only if the TDS was made and paid to Government account, the claim for deduction can be made under section 40(a)(ia) in the year of payment and therefore disallowed the amount of Rs.5,48,95,774/- u/s. 37 of the Act. The DRP upheld the disallowance made by the AO.

52. The ld. AR submitted that the impugned deduction is claimed not on the basis of subsequent tax deduction, but on the basis that entries are reversed in the current year and taxing the same would amount to double disallowance. The ld. AR therefore submitted that the amount claimed needs to be allowed as a deduction for tax computation purposes. The ld AR also submitted that the assessee, based on mercantile system of accounting, makes a provision for various expenses that have accrued at the end of the year but for which invoices are not received at the end of the year. The ld. AR further submitted that the provisions created was not only offered to tax during the year of creation, but in the AY 2010-11, these were either reversed or utilized for payment of the invoices, on which taxes were deducted at source at applicable rate of tax. It is submitted that the entire sum of provision created having suffered tax in the previous assessment year, ought to be allowed as a deduction during the year under consideration, on its reversal/incurring of the expenditure on which taxes were deducted at source.

53. The ld. DR supported the orders of the lower authorities and submitted that the assessee has not furnished any supporting evidence to substantiate the claim of deduction

54. We heard the rival submission and perused the materials on record. According to the ld AR the accounting practice of the assessee is to make the provision for expenses 31st March of the financial year and reverse the same on the 1st day of April of subsequent financial year. The assessee disallowed the provision made on 31st March of 2013 in the computation of income for the assessment year 2013-14. The same amount is claimed as a deduction in the subsequent in the computation of income as the year end provisions are reversed on 1st April 2013. The contention of the assessee that the deduction claimed if not allowed will result in double disallowance has merits. The expenses disallowed is eligible for deduction u/s.40(a)(ia) of the Act as and when the tax is deducted at source on such expenses. The reversal of provisions done on 1st April 2013, would go to nullify the impact of the expenses claimed by way of debit to the profit and loss account on which tax is deducted at the time of the payment. Therefore the reversal of provisions disallowed in the computation of assessment year 2013-14 is to be claimed as a deduction in the assessment year 2014-15 so that the expenses eligible for deduction u/s.40(a)(ia) is rightly claimed in the computation. However the most important fact that needs to be verified in this regard is whether the provision made on 31st March 2013 to the tune of Rs. Rs. 5,48,95,774 is reversed on 1st April 2013 and that the same is reflected correctly in the provision for expenses ledger of the assessee. This needs to be verified to justify the claim of deduction of the said amount in the computation of assessment 2014-15 basis the disallowance done in the year 2013-14. The deduction as per the ld AR is done based on the fact that the provisions which are already disallowed in the previous assessment year is reversed and to avoid double disallowance the same is claimed as deduction in the computation. This fact has not been properly presented before the lower authorities. The lower authorities have to examine whether the year-end provision made on 31st March 2013 is fully reversed on 1st April 2013 and the expenses against which the provision was created is debited to the profit and loss account on payment after deducting TDS. This verification need to be carried out based on the journal entries and ledger copies produced by the assessee for the year under consideration which are submitted now in the form of additional evidence. If the accounting practice of the assessee to reverse the expenses on the 1st day of April of the year under consideration is substantiated by the evidences submitted by the assessee whereby it is demonstrated that there is no doubt allowance expenditure then the assessee would be entitled to claim the amount disallowed in the previous assessment year as otherwise it would amount to double disallowance. We therefore remit the issue back to the AO to verify the ledger and general entries of the assessee for the year under consideration and allow the expenditure in

accordance with law. The assessee may be given a reasonable opportunity of being heard in this matter. The appeal is allowed in favour of the assessee for the statistical purposes."

17. Since the AR submitted that the facts are same in line with the above order passed by the co-ordinate bench in assessee's own case cited supra , therefore, considering the above judgment and arguments from both the parties, we also remit the issue to the file of the AO for fresh consideration in above terms and AU has to ensure, if the ass essee claimed this amount as deduction from the income of the assessee by way of charging to the P&L account or by way of deduction from the profits & gains from business or profession in the computation of total income for the AY 2017-18, the assessee shall deduct TDS on it, otherwise provisions of section 40(a)(ia) of the Act are clearly applicable and the assessee is not entitled to claim this amount as deduction even on actual payment of this expenditure in this assessment year under consideration. Accordingly, this ground is allowed for statistical purpose.

18. In the result, appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/- Sd/-

(Beena Pillai) **(LAXMI PRASAD SAHU)**

Judicial Member Accountant Member

Bangalore,
Dated, 21st November, 2022
/NS/Vms *

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.