

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(TP)A No. 1695/Bang/2019
Assessment Year : 2012-13

M/s. Sartorius Stedim India Pvt. Ltd., No. 69/2 & 69/3, Kunigal Road, Jakkasandra, Nelamangala, Bengaluru – 562 123. PAN: AABCS7591Q	Vs.	The Assistant Commissioner of Income Tax, Circle – 6(1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Narendra Kumar Jain, CA
Revenue by	:	Shri Venudhar Godesi, JCIT-DR

Date of Hearing	:	28-10-2022
Date of Pronouncement	:	28-11-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against the order dated 20/05/2019 passed by the Ld.CIT(A) for A.Y. 2012-13 on following grounds of appeal:

“GENERAL GROUND

1. The Order of the learned Commissioner of Income Tax (Appeals)-6 (hereinafter referred to as CIT(A)) to the extent prejudicial to the Appellant is bad in law.

TRANSFER PRICING - GENERAL GROUNDS

2. The learned CIT(A) has erred in confirming the action of the AO and TPO in:

a) Making a reference for the determination of the Arm's length Price of the international transactions to the TPO

without demonstrating as to why it was necessary and expedient to do so.

b) Not appreciating that there is no amendment to the definition of "income" and the charging or computation provision relating to income under the head Profits & Gains of Business or Profession" do not refer to or include the amounts computed under Chapter X and therefore addition under Chapter X is bad in law.

c) Passing the order without demonstrating that the Appellant had any motive of tax evasion.

GROUNDS RELATING TO TP ADJUSTMENT IN
MARKETING SUPPORT SERVICES SEGMENT

3. The learned CIT(A) has erred in confirming the action of the AO and TPO in making a transfer pricing adjustment of Rs. 27,39,376/-.

4. The learned CIT(A) has erred in confirming the action of the AO and TPO in:

(i) Considering foreign exchange gain/loss as operating in nature in the case of comparables and the Appellant;

(ii) Concluding that berry ratio is not an appropriate PLI in the case of Appellant and adopting OP/OC as the most appropriate PLI; and

5. The learned CIT(A) has erred in confirming the action of the AO and TPO in:

(i) Conducting a fresh TP analysis despite absence of any defects in the transfer pricing analysis submitted by the Appellant; and

(ii) Selecting inappropriate comparables and selecting companies as comparables even though they are not comparable in terms of functions performed, assets utilized, risks assumed, size, have unusual business circumstances, high margin, etc. The lower income tax authorities have erred in adopting the following companies as a comparable:

a. Cyber Media (India) Ltd; and

b. Just Dial Ltd;

(iii) Adopting incorrect margins of the comparables for computing ALP; and

(iv) Not granting working capital adjustment for the marketing support segment.

GROUNDNS RELATING TO TP ADJUSTMENT IN MANUFACTURING SEGMENT

6. *The learned CIT(A) has erred in confirming the action of the AO and TPO in making transfer pricing adjustment of Rs. 12,30,622/-.*

7. *The learned CIT(A) has erred in confirming the action of the AO and TPO in:*

- (i) Considering foreign exchange gain/loss as operating in nature in the case of comparables and the Appellant;*
- (ii) Adopting incorrect margins of the comparables for computing ALP.*

8. *The learned CIT(A) has erred in confirming the action of the AO and TPO in:*

- (i) Conducting a fresh TP analysis despite absence of any defects in the transfer pricing analysis submitted by the Appellant; and*
- (ii) Selecting inappropriate comparables and selecting companies as comparables even though they are not comparable in terms of functions performed, assets utilized, risks assumed, size, have unusual business circumstances, high margin, etc. The lower income tax authorities have erred in adopting the following companies as a comparable:
 - a) Lumax Automotive Systems Ltd; and*
 - b) Mahle Filter Systems (India) Ltd.**
- (iii) Not granting working capital adjustment for the manufacturing segment.*

GROUNDNS RELATING TO TP ADJUSTMENT IN TRADING SEGMENT

9. *The learned CIT(A) has erred in confirming the action of the AO and TPO in making transfer pricing adjustment of Rs. 81,59,183/-.*

10. *The learned CIT(A) has erred in confirming the action of the AO and TPO in:*

- (i) Not considering Resale Price Method as the appropriate method to compute arm's Length price under trading segment;*
- (ii) Considering foreign exchange gain/loss as operating in nature in the case of comparables and the Appellant; and*
- (iii) Not granting working capital adjustment for the trading segment.*

GROUNDNS RELATED TO TP ADJUSTMENT AND RANGE

11. *The learned CIT(A) has erred in confirming the action of the AO and TPO in:*

- (i) Not making proper adjustment for enterprise level and transactional level differences between the Appellant and the comparable companies; and*
- (ii) Not recognizing that the Appellant was insulated from risks, as against comparables, which assume these risks and therefore have to be credited with a risk premium on this account.*

12. *The learned AO and TPO have erred in not allowing the benefit of the +/- 5% range as prescribed in the section 92C(2).*

GROUND'S RELATED TO CORPORATE TAX:

13. *The learned CIT(A) has erred in confirming the action of the AO of:*

- (i) Disallowing entire amount of software purchased u/s 40(a)(ia) for non-deduction of TDS without appreciating that software purchased was capitalised and only depreciations was claimed on it;*
- (ii) Not appreciating that the requirement for withholding tax on purchase of software was mandated vide Finance Act 2012 which was not in force when the Appellant complied with TDS provisions; and*
- (iii) Not appreciating that provisions of section 40(a)(ia) are not applicable on assets capitalised and depreciation claimed thereon.*

14. *The learned CIT(A) has erred in concluding that purchase of software is revenue expenditure without appreciating the facts and circumstances of the case and without giving an opportunity to the Appellant*

The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.

The Appellant prays accordingly."

2. Brief facts of the case are as under:

M/s Sartorius Stedim India Pvt. Ltd. (hereinafter referred as "assessee") is engaged in the business of designing, engineering, manufacturing, supplying, trading, sub-contracting, installation & commissioning and after sales services for large scale filtration systems and fermentation systems.

2.1 The Ld.AO noted that assessee had international transaction with its Associated Enterprise and therefore a reference was made to the transfer pricing officer for determining the arms length price of the international transaction.

On reference being made, the Ld.TPO called for economic details of the international transactions which are as under:

Sl. No	Name of the Segment	Nature of international transactions	TP Adjustment
1	Manufacturing segment for sales to other than AE	Minimal purchase of raw material of Rs. 1.12 crores from AE. Balance purchase and sales to third parties	Rs. 12,30,662/- (page 73-76 of Appeal papers)
2	Manufacturing segment for sales to AE	Purchase of raw material from AE and sale of finished goods to AE	Held at ALP (Para 8.6 on page 76 of Appeal papers)
3	Trading Segment	Import of finished goods and sale to third parties in India	Rs. 81,59,183/- (page 76-77 of Appeal papers)
4	Marketing segment (Commission income)	Marketing on behalf of the AE and receipt of commission income	Rs. 27.39,376/- (page 68-73 of Appeal papers)

2.2 The assessee has international transactions in four segments.

The details of these segments are tabulated below:

Particulars	Amount in Rs.
Import of Raw Materials	5,64,68,056
Import of Finish goods	22,80,97,511

Intent Commission& Expenses Reimbursement, cost charged to SSB	3,13,19,832
Validation Expenses, Microsoft License fee & Interest on ECB loan	89,26,191
Royalty	1,964,221
Import of fixed assets	1,09,60,256

2.3 The Ld.TPO noted that, the assessee had bifurcated the segmental details in respect of the services rendered by it to the AE and non-AE as under:

	Manufacturing segment for sales to other than AE	Manufacturing segment for sales to AE	Trading	Commission
Sale to AE		107387170		282,23,683
Sale to 3 rd party	44,93,57,154		33,34,39,059	

The Ld.TPO noted that the assessee had not made any cost allocation key based on which the expenditure were bifurcated between the AE and non-AE segment. The Ld.TPO also noted that, the assessee considered forex gain /loss as non-operating which was denied by the Ld.TPO. The Ld.TPO thus allocated, the forex gain/loss, proportionately, based on the turnover between manufacturing for sales to non-AE and AE segments and trading segment.

2.4 Further in respect of the manufacturing segment, the Ld.TPO was not satisfied with the companies selected by the assessee. The Ld.TPO noted that assessee had used OP/OR as the PLI and assessee's margin was computed at 2.59%, after taking foreign exchange loss as non-operating in nature, whereas, the comparables selected by assessee had an average margin of 2.57% and therefore it held the transaction to be at arms length.

The Ld.TPO not satisfied with the comparables shortlisted the following comparables after considering the submissions advanced by the assessee with an average margin of 5.08%.

		OP/OR
1	GMM Pfaudler Ltd (Seg)	3.29%
2	Ion Exchange (India) Ltd.	0.03%
3	Multitex Filters Ltd.	4.00%
4	Aquamall Water Solutions Ltd.	10.19%
5	Lumax Automotive Systems Ltd.	9.77%
6	Mahle Filter Systems (India) Ltd.	3.20%
MEAN		5.08

2.5 The Ld.TPO thereafter by taking foreign exchange loss to be operating in nature, computed the margin of assessee under the AE segment to be 4.4%, however no adjustment was proposed under the AE segment as the margin so computed by the Ld.TPO was within $\pm 5\%$ of that of the comparables selected by him.

The Ld.TPO noted that insofar as the manufacturing of sales to non-AE segment, the assessee computed the margin to be (-)6.54% and as this was not at arms length with that of the comparables selected by the Ld.TPO at 5.08% (that pertained to the AE segment), an adjustment was proposed amounting to Rs.12,30,662/- being the shortfall.

2.6 In respect of the trading segment, the Ld.TPO noted that assessee used OP/OR as the PLI to compute the margins of the comparables and had taken foreign exchange gain/loss as the operating. The Ld.TPO noted that assessee had computed the margins of the comparables as 2.92% whereas assessee had computed its margin at (-)4.12%. The Ld.TPO computed the

margin of assessee by treating forex gain/loss as operating in nature and thus proposed adjustment at Rs.81,59,183/- which was excess in AE transaction.

2.7 Thereafter the Ld.TPO noted that assessee had one more segment under the name, "commission" which was in respect of marketing support services rendered by the assessee to its AE. Under this segment, the Ld.TPO was of the view that, the assessee has not carried out a proper search in respect of the comparables involved in similar functions, as that of the assessee, and therefore, a show cause notice was issued listing out a set of comparables proposed by the Ld.TPO. After considering the submissions filed by the assessee, the Ld.TPO selected the following 5 comparables with an average margin of 12.06%, the details of which are as under:

Sl. No.	Company Name	OP/OC (%)
1	Concept Communication Ltd.	4.00%
2	Cyber Media (India) Ltd	7.96%
3	Just Dial Ltd.	28.86%
4	Killick Agencies & Mktg. Ltd.	8.96%
5	Marketing Consultants & Agencies Ltd	10.53%
AVERAGE		12.06%

2.8 The Ld.TPO thus proposed following adjustment in the hands of the assessee.

Adjustment	Reference	Amount in Rs
Adjustment to Marketing Support service segment	Para 7	27,39,376
Adjustment to Manufacturing for sale	Para 8.7	12,30,662

to non-AE segment		
Adjustment to trading segment	Para 9	81,59,183
TOTAL		1,21,29,221

3. On receipt of the transfer pricing order, the Ld.AO passed the draft assessment order on 24/03/2016, incorporating the adjustment proposed by the Ld.TPO. The Ld.AO also made certain disallowances being software capitalized u/s. 40(a)(i) of Rs.6,36,784/- for non-deduction of TDS on purchases of computer software.

3.1 The assessee on receipt of the draft assessment order communicated to the Ld.AO regarding its preference to file an appeal before the Ld.CIT(A). Thus the Ld.AO passed the final assessment order on 20/05/2016.

3.2 Against this final assessment order, the assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) gave partial relief with respect to the transfer pricing adjustment however confirmed the disallowance made by the Ld.AO u/s. 40(a)(i) of the Act.

3.3 Aggrieved by the order of Ld.CIT(A), assessee is in appeal before this *Tribunal*.

4. The Ld.AR at the outset submitted that assessee wish to contest the issues alleged in **Ground nos. 3-4, 5(iv), 7(ii), 8(ii), 8(iii), 9-10 and 13-14.**

Even in the synopsis filed, the Ld.AR has filed submissions only in respect of the above grounds.

Accordingly, all other grounds raised are treated as not pressed for the year under consideration by the assessee.

4.1 Before we undertake the comparability analysis, it is *sinequa non* to understand the functions performed by the assessee under the segments.

FUNCTIONS:

Manufacturing

SSI has the following manufacturing functions with its associated enterprises.

The company imports raw materials and consumables from members of the Sartorius Group which are used in designing, engineering, manufacturing Filtration & Fermentation systems.

The company also import membrane sheets from its holding company and exports the filters manufactured in India.

The company also exports finished goods to its associate concerns.

Trading

SSI has the following international transactions with its associated enterprises in respect of its trading function:

- Import of Filter Cartridges and filtration/fermentation system spares.

Marketing support segment

SSI has the following international transactions with its associated enterprises in respect of its marketing support services:

- Marketing support services based on commission

Based on the above, we shall take the comparability analysis.

5. **Ground no. 3** – the assessee is seeking exclusion of following comparables under the marketing support service segment (commission income).

- 1) Cyber Media (India) Ltd.
- 2) Just Dial Ltd

5.1 Cyber Media (India) Ltd.

5.1.1 The Ld.AR submitted that this company is functionally different as it is engaged in the business of providing media services of placing advertisement including sale of magazines. It is also submitted that, this company is engaged in trading of products and there is no segmental details available in the annual reports. The Ld.AR referred to page 241 of the paper book wherein the revenue from operations have been recorded at Rs.439,683,509/- the break-up of which is given in note 20 being sale of products, sale of services and other operating revenues. He also submitted that the Ld.TPO in para 6.4 of the 92CA order, as well as the Ld.CIT(A) at page 9 has accepted this company to be an advertising company wherein its clients place their advertisements.

5.1.2 The Ld.DR on the contrary relied on the orders passed by the Ld.CIT(A).

5.1.3 We have perused the submissions advanced by both sides in the light of records placed before us.

We note that assessee under the marketing support service segment, is rendering services to its AE based on commission. The Ld.AR submitted that the company Cyber Media (India) Ltd. is providing services of placing advertisement including sale of

magazines. This fact is clear from the annual reports at note 20.1 that is placed in the paper book. We also note that there is a bifurcation of income earned by this company from sale of products and sale of services. Assessee before us is into marketing support services to its associated enterprises. From the segment reporting details, we note that this company is engaged in the media business which is identified as the only and primary business segment of the company. The present assessee before us is not catering to non-AEs for marketing support services as observed from the segmental details and it is a captive service provider insofar as Marketing Support Service segment is concerned.

This company being Cyber Media is into Advertisement of its wide range of clientele that includes advertisement through Magazine. Functionally in our view this company is not comparable with the assessee who is providing Marketing Services to its AE only and the same deserves to be excluded.

5.2 Just Dial Ltd.

It is submitted that this company is functionally different with that of the assessee as it operates as internet based local search engine to locate various business concerns. It is submitted that this company has significant intangibles whereas assessee does not own any intangibles. The turnover of this company is said to be 262.02 crores as against the turnover of assessee being 10.73 crores. Assessee has placed reliance on the decision of *Delhi Tribunal* in case of *Corning Technologies India Pvt. Ltd. vs. DCIT* in *ITA No. 886/Del/2017* for A.Y. 2012-13 by order dated

17/09/2021 wherein this comparable was held to be eliminated in a captive service provider.

5.2.1 On the contrary, the Ld.DR relied on the orders passed by authorities below.

5.2.2 We have perused the submissions advanced by both sides in the light of records placed before us.

We note that the financials of this company is placed at page 244 of paper book. This company has earned revenue from operations at Rs.362,76,75,293/-. The break-up of this revenue has been given in schedule 20 which is sale from search related services, sale from other related services and other operating revenue. It is also an admitted fact that this comparable has a high turnover which is more than 200 crores as compared to the turnover of assessee which is approximately Rs. 10 crores. On this reasoning itself, this comparable deserves to be excluded.

Accordingly, we direct this comparable to be excluded from the final list.

Accordingly, Ground no. 3 raised by the assessee stands allowed.

6. Ground no. 5(iv) is raised by assessee seeking working capital adjustment. The Ld.AR submitted that the working capital adjustment was denied to the assessee for the reason that assessee has not established the net for such adjustment. We note that this issue is no longer resintegra as there has been various decisions passed by *Coordinate Bench of this Tribunal* as well as *Hon'ble High Court* upholding the working capital adjustment being allowed to assessee on actual. We therefore

direct the Ld.AO/TPO to provide the working capital adjustment on actuals in accordance with Rule 10B(1)(e) of the Rules.

Accordingly, this ground raised by assessee stands allowed.

7. Ground no. 7(ii)

The Ld.AR submitted that, by this ground, the assessee seeks correction with regard to computation of margin of comparables.

We direct the Ld.AO/TPO to compute the margins of the outstanding comparables that would survive while giving effect to the present order as per law.

Accordingly, this ground raised by assessee stands allowed for statistical purposes.

8. Ground no. 8(ii) – Assessee seeks to exclude two comparables being

- 1) Lumax Automotive Systems Ltd. and
- 2) Mahle Filter Systems India Ltd.

8.1 The Ld.AR at the outset submitted that, the assessee under the manufacturing segment manufactures filters for pharmaceutical and food processing industries.

It is submitted that in case of Lumax Automotive Systems Ltd., this company is engaged in manufacturing various automotive products like Oil/Air filters, Cleaners & Elements, Rear View Mirrors, Plastic Moulded Components and other components and parts.

8.2 The Ld.AR also submitted that in case of Mahle Filter Systems India Ltd., deals in various automotive products like Air/Oil/Fuel/Hydraulic Filters, Oil Mist Separators, Air Intake Manifolds and Plastic Engine Components.

He thus submitted that both the above comparables are rendering services by manufacturing products which is more used in automotive industry, as against the assessee, that is manufacturing filters for pharmaceutical and food processing industry.

8.3 The Ld.DR submitted that as assessee is using TNMM as the most appropriate method, a broad classification will not prejudice the assessee as the comparables selected by the TPO are also into manufacturing of filters.

8.4 We have perused the submissions advanced by both sides in the light of records placed before us.

While carrying out the comparability analysis, similarity of functions is of utmost importance. Locating comparables with identical or similar transaction is not the assessee task and hence ALP is to be determined by taking comparable transactions in a comparable circumstances by making suitable adjustments. Accordingly, the comparables selected must be close comparable transaction in a comparable circumstances.

8.5 We note that the instances of comparables shortlisted by the Ld.TPO are basically used in automotive industry whereas assessee is manufacturing filters that are used in pharmaceutical and food processing industries.

8.6 Although it is correct that while adopting TNMM as the most appropriate method, only profit based comparison is made however, the start point for every comparison is the product which is the subject matter of the international transaction. In the present facts of the case though there is no primary

difference in the product being filter however the industry to which the comparables are catering is different with that of assessee and therefore there will be a different economic analysis which would impact the manufacturing activity carried on by the comparables and the assessee. In our view, these comparables cannot be considered as good for assessee as assessee is catering to pharmaceutical industry which is much more sensitive than the automotive industry.

Accordingly, we direct these comparables to be excluded from the final list.

9. **Ground no. 8(iii)** has been raised by assessee for non-granting working capital adjustment. We have already dealt this issue in ground no. 5(iv) hereinabove. Respectfully following the same, we direct the Ld.AO/TPO to compute working capital adjustment in accordance with Rule 10B(1)(e).

Accordingly, this ground raised by assessee stands allowed.

10. **Ground nos. 9-10** has been raised by assessee in respect of the trading segment. The Ld.AR submitted that assessee had selected TNMM as the most appropriate method by using OP/OR as the PLI. He submitted that the Ld.TPO accepted the most appropriate method however held foreign exchange gain / loss as operating in nature. The Ld.AR submitted that when the issue was raised before the Ld.CIT(A), the Ld.CIT(A) held that RPM should be the most appropriate method. Before us, the Ld.AR did not object for adopting RPM to be the most appropriate method however he submitted that no comparability analysis has been carried out in respect of the same to determine the arms

length margin under the trading segment. The Ld.DR also agreed to the submissions of the assessee. Based on the joint submission, we are of the opinion that the trading segment of the assessee needs to be *denovo* analysis by the Ld.AO/TPO by using RPM as the most appropriate method.

We also direct the Ld.AO to grant Working Capital Adjustment on actuals based on the details filed.

The Ld.TPO is directed to carry out bench marking analysis of the trading segment by considering appropriate comparables and to compute the arms length price of the transaction in accordance with law.

Accordingly, this ground raised by assessee stands allowed for statistical purposes.

11. Ground nos. 13-14 are in respect of the disallowance computed u/s. 40(a)(ia).

The Ld.AR submitted that during the year under consideration, assessee purchased computer software aggregating to Rs.6,36,784/- on which depreciation was claimed. He submitted that the computer software purchased was capitalized in the books of accounts of the assessee. The Ld.AO however held that assessee has not deducted tax at source and therefore disallowed the expenditure u/s. 40(a)(ia) by relying on the decision of *Hon'ble Karnataka High Court* in case of *CIT vs. Samsung Electronics Co. Ltd.* reported in (2011) 203 Taxman 477.

11.1 The Ld.AR submitted that on an appeal before the Ld.CIT(A), the Ld.CIT(A) upheld the disallowance made. But the Ld.AR submitted that there cannot be any disallowance made u/s.

40(a)(ia) as the expenditure has not been claimed by the assessee. On the contrary, the Ld.DR relied on the orders passed by authorities below.

11.2 We have perused the submissions advanced by both sides in the light of records placed before us.

We note that section 40(a)(i) can be invoked only when an expenditure has been claimed by the assessee. In the instant case the purchase of software has been capitalized and the depreciation is an allowance and not an expenditure. Therefore, section 40(a)(ia) cannot be invoked for non-deduction of TDS. In support of above contention, the assessee relied on the decision of *Hon'ble Karnataka High Court* in case of *PCIT vs. Tally Solutions (P) Ltd.* reported in (2021) 123 taxmann.com 21.

We reproduce the relevant observation of the above decision which is as under:

“10. Thus, from close scrutiny of Section 40(a)(i) of the Act, it is axiomatic that an amount payable towards interest, royalty, fee for technical services or other sums chargeable under this Act shall not be deducted while computing the income under the head profit and gain of business or profession on which tax is deductible at source; but such tax has not been deducted. The expression 'amount payable' which is otherwise an allowable deduction refers to the expenditure incurred for the purpose of business of the assessee and therefore, the said expenditure is a deductible claim. Thus, Section 40 refers to the outgoing amount chargeable under this Act and subject to TDS under Chapter XVII-B. The deduction under Section 32 is not in respect of the amount paid or payable which is subjected to TDS; but is a statutory deduction on an asset which is otherwise eligible for deduction of depreciation. Section 40(a)(i) and (ia) of the Act provides for disallowance only in respect of expenditure, which is revenue in nature, therefore, the provision does not apply to a case of the assessee whose claim is for depreciation, which is not in

the nature of expenditure but an allowance. The depreciation is not an outgoing expenditure and therefore, provisions of Section 40(a)(i) and (ia) of the Act are not applicable. In the absence of any requirement of law for making deduction of tax out of expenditure, which has been capitalized and no amount was claimed as revenue expenditure, no disallowance under Section 40(a)(i) and (ia) of the Act would be made. It is also pertinent to note that depreciation is a statutory deduction available to the assessee on a asset, which is wholly or partly owned by the assessee and used for business or profession. The depreciation is an allowance and not an expenditure, loss or trading liability. The Commissioner of Income Tax (Appeals) has held that the payment has been made by the assessee for an outright purchase of Intellectual Property Rights and not towards royalty and therefore, the provision of Section 40(a)(ia) of the Act is not attracted in respect of a claim for depreciation. The aforesaid finding has rightly been affirmed by the tribunal. The findings recorded by the Commissioner of Income Tax (Appeals) as well as the tribunal cannot be termed as perverse.

In view of preceding analysis, the substantial question of law framed by a bench of this court is answered against the revenue and in favour of the assessee.”

11.3 Respectfully following the above view, we are of the opinion that no disallowance can be made u/s. 40(a)(ia) in the present facts of the case. Accordingly, the addition made by the Ld.AO stands deleted.

Accordingly, this ground raised by assessee stands allowed.

In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 28th November, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 28th November, 2022.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore