IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA

Before Shri Rajesh Kumar,Accountant Member
&
Shri Sonjoy Sarma, Judicial Member

I.T.A. No. 2084/KOL/2018
Assessment Year: 2014-2015

DIC India Limited,.....Appellant
Transport Depot Road,
Kolkata-700088
[PAN: AABCC0703C]
-Vs.-

Deputy Commissioner of Income Tax,.....Respondent
Circle-10(1),
AayakarBhawan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:
Shri AkkalDudhwewala, A.R., appeared on behalf of the assessee
Shri HukumaSema, CIT, appeared on behalf of the Revenue

Date of concluding the hearing :October 20, 2022
Date of pronouncing the order:January 04, 2023

O R D E R

Per Rajesh Kumar, Accountant Member:-

The assessee is in appeal before the Tribunal against the order dated 30.08.2018 passed u/s 144C r.w.s 143(3) of the Act by Deputy commissioner of Income Tax TPO-1, Kolkata(hereinafter referred to as

AO) in pursuance to the directions issued by the Dispute Resolution Panel-2, New Delhi(hereinafter referred to as 'DRP') vide its order dated 11.07.2018passed under section 144C(5) of the Income Tax Act for A.Y. 2014-15.

2. The assessee has raised the following grounds of appeal:-

> (1) For that on the facts and in the circumstances of the case and in law, the transfer pricing adjustment of Rs.5,75,32,306/- made by the AO/ TPO was unjustified on facts & in law and the same deserves to be deleted in full.
>
> (2)For that on the facts and in the circumstances of the case and in law, the TPO as well as the Hon'ble DRP erred in rejecting the audited segmental accounts provided by the appellant without pointing out any specific defect or infirmity therein and in that view of the matter the transfer pricing adjustment made with reference to the purchase of raw materials & goods from AEs and the sales made to AEs was impermissible and is liable to be cancelled.
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> (3) For that on the facts and in the circumstances of the case and in law, the TPO as well the Hon'ble DRP erred in law and on facts in rejecting the functional analysis conducted by the appellant and the comparables identified for the purposes of undertaking transfer pricing study; and instead including companies which were functionally different, to be 'comparable' to the appellant company.
>
> (4) For that on the facts and in the circumstances of the case and in law, the assessee was engaged in the business of manufacture of printing inks and in that view of the matter the TPO as well the Hon'ble DRP erred in law and on facts in applying a broad comparable strategy and thereby adopting companies engaged in business of manufacture of pigments, detergents & other chemicals etc. to be 'comparable' to the appellant company.

(5) For that on the facts and in the circumstances of the case and in law, the TPO as well the Hon'ble DRP did not objectively set out the filters which were applied, functional analysis conducted and the search strategy adopted for identifying the 'new' comparables, apart from the comparable companies as identified and set out by the appellant in their transfer pricing study and in that view of the matter the comparables identified by the TPO and accepted by the Hon'ble DRP may kindly be directed to be excluded from the TNMM analsysis.

(6) For that on the facts and in the circumstances of the case and in law, the TPO as well the Hon'ble DRP erred in following a subjective & biased approach of rejecting the comparables identified by the appellant without giving any cogent analysis and in that view of the matter the comparables as identified by the appellant deserves to be included while undertaking the TNMM analysis.

(7) For that on the facts and in the circumstances of the case and in law, the TPO / AO may kindly be directed to delete the impugned transfer pricing adjustment of Rs.5,75,32,306/- in full.

(8) For that on the facts and in the circumstances of the case and in law, the AO as well the Hon'ble DRP erred in law and on facts in disallowing the royalty payment of Rs.9,83,66,198/- by treating it to be capital in nature.

(9) For that on the facts and in the circumstances of the case and in law, the royalty was paid by the appellant in the course and for the purposes of business and was therefore revenue in nature and in that view of the matter both the Hon'ble DRP as well as the AO erred in disallowing the entire royalty of Rs.9,83,66,198/- paid during the year.

(10) For that the appellant reserves the right to add to, alter or amplify the above grounds of appeal.

3. The issue raised in Grounds No. 1 to 7 by the assessee is against the direction of DRP upholding the addition made on account of transfer pricing adjustment of Rs.5,75,32,306/- by the ld.

AO/TPO(Transfer Pricing Officer) by rejecting the audited segmental accounts, the functional analysis conducted by the assessee and by identifying the new comparables in transfer pricing study.

4. The facts in brief are that the assessee filed e-return of income declaring total loss of Rs.6,66,11,351/-, which was selected for scrutiny through CASS. The statutory notices were duly issued and served upon the assessee. During the course of assessment proceedings, the ld. Assessing Officer found that there were international transactions to the tune of Rs.84,55,49,593/- during the year and accordingly the case was referred to the ld. TPO for determination of Arm's Length Price. The ld. TPO passed order under section 92CA(3) vide order dated 24.10.2017 determined the ALP by recommending upward adjustment of Rs.18,32,12,544/ to the international transactional. Accordingly draft assessment order was framed by the ld. Assessing Officer vide order dated 22.12.2017 passed under section 144C read with section 143(3) of the Income Tax Act, 1961, which was challenged before the ld. DRP by the assessee and the ld. DRP vide order dated 11.07.2018 partly allowed the appeal by restricting the addition to Rs.5,74,32,036/- in respect of transfer pricing adjustment.

5. At the outset, ld. Counsel for the assessee submitted before the Bench that this issue is squarely covered by the decision of the Coordinate Bench of this Tribunal in assessee's own case in ITA No.2558/KOL/2017 for A.Y. 2013-14, wherein the identical issue has been decided in favour of the assessee. The ld. Counsel submitted that the ld. TPO benchmarked these international transactions by applying entity level external TNMM by rejecting the segmental accounts furnished by the assessee and adopting entity level accounts for the reasons that the segmental accounts were not part of the financial statements of the assessee and that the allocation keys were also not provided. The ld. A.R. submitted that the said segmental accounts were duly maintained by the assessee, though the same were not part of the financial statements. The ld. A.R. also took us through the audited report certifying that the segmental financial information were audited in accordance with the Accounting Standard-17 issued by the Institute of Chartered Accountants of India (ICAI) and also took us through the segment-wise profitability statement of the assessee, a copy of the statement is placed at page no. 146 of the paper book. The ld. A.R. also submitted that allocation keys for the segmental accounts were also available and furnished before the ld. A.O./TPO, which have been given by way of Note on page no. 146 of the paper

book, which is a statement in respect of segment-wise profitability for the assessment year 2014-15. The ld. A.R., therefore, prayed that the said issue may kindly be decided in favour of the assesse by following the decision of the Coordinate Bench of the Tribunal in assessee's own case (ITA No. 2558/KOL/2017 for A.Y. 2013-14).

6. The ld. Departmental Representative, on the other hand, vehemently opposed the arguments of the ld. A.R. nonetheless accepting the fact that the similar issue was also decided in favour of the assessee by the Coordinate Bench of this Tribunal.

7. We have heard the rival contentions and gone through the relevant materialsas placed before us. We find from the impugned order of the Coordinate Bench in assessee's own case in ITA No. 2558/KOL/2017 for A.Y. 2013-14 that the issue has been decided in favour of the assessee. The operative part of the decision is extracted below:-

> *"18. In view of the above findings, the next issue for our consideration is whether therefore the use of segmented information qua the (a) manufacturing segment and (b) trading segment is permissible in the given facts of the present case. In the given facts of the present case, we note that the appellant has two separate & distinct activities viz., manufacturing of printing inks, blankets and trading in press chemicals. It is well understood that the functions involved in manufacturing activities, risks assumed, assets employed are significantly different and higher than the trading activity. Consequently it is 19 ITA No. 2558/Kol/2017 DIC India Limited, AY- 2013-14 generally seen that the profitability of a manufacturing enterprise is higher than the profitability of a trading enterprise. As already held earlier, the cross*

subsidization of the international transactions in a combined approach is impermissible since it results in distorted presentation of facts. Hence if both the manufacturing & trading segments of the appellant are aggregated, the combined profit margin would throw up an inappropriate result in as much as it cannot be compared either with companies engaged in manufacture of printing ink or companies engaged in trading activities. Furthermore in order to benchmark each set of transactions distinctly, it is imperative to use the segmented information of the manufacturing activity and trading activity of the appellant. On these facts we are therefore of the view that the segmented results of the appellant are required to be used for benchmarking the international transactions.

19. We further hold that the argument of the Ld. DR that, since the segmented information did not form part of the published financial statements; it ought not be used, to be devoid of any merit. At the outset, we find merit in the submissions of the ld. AR that whether a particular segment is reportable or non-reportable under AS-17 prescribed by ICAI cannot be held to be decisive criteria to uphold the reliability of the segment identified for the purposes of income-tax laws. We find substance in the ld. AR's arguments that the Income-tax Act, 1961 operates in a different sphere and the requirements and guidelines prescribed in the accounting standards issued by ICAI cannot be inter-linked. We find that the Income-tax Act, 1961 has several provisions, particularly profit-linked deductions etc. wherein assessees are required to carve out and identify separate segmental information and prepare stand-alone accounts for the eligible unit. It is noted that preparation & identification of such segmented results are not linked with AS-17 in any manner and in that view of the matter, we are of the considered view that the lower authorities were unjustified in rejecting the audited segmented results on the frivolous premise that it did not form part of financial statements.

20. We further note that the disclosure of segment information in annual financial statements of an enterprise are governed by the Accounting Standard (AS) -17 (Segment Reporting) issued by the Institute of Chartered Accountants of India (ICAI). The aforesaid 20 ITA No. 2558/Kol/2017 DIC India Limited, AY- 2013-14 accounting standard is applicable to an enterprise subject to certain conditions specified therein. The disclosure of segment information is mandatory for an enterprise, the enterprise discloses requisite information in respect of identifiable segments either product wise or geographical wise. The relevant definitions of the two types of segments in AS-17 read as follows:

"A BUSINESS SEGMENT is a distinguishable component of an enterprise that is engaged in providing an individual product or service or a group of related products or services and that is subject to risks and returns that are different from those of other business segments.

A GEOGRAPHICAL SEGMENT is a distinguishable component of an enterprise that is engaged in providing products or services within a particular economic environment and that is subject to risks and returns that are different from those of components operating in other economic environments."

21. It is thus noted that the AS-17 does not define or identify reportable segment based on the company's function or activity i.e. manufacturing or trading which is carried out in the same/similar products in the same geographical environment and hence there was no occasion for the appellant to have reported its identifiable manufacturing and trading segment in its financial statements since it did not satisfy the criteria laid down in AS-17. We are accordingly of the considered view that there was valid reason for non-disclosure of segment reporting in the audited accounts of the assessee company. At the same time however it is an undisputed fact that the appellant indeed has two identifiable segments i.e. manufacturing & trading which have significantly different FAR profile. The audited segmental information as furnished before the TPO & DRP is available at Pages __ to __ of the paper book. For the reasons as set out in the foregoing, we reject the reasonings put forth by the lower authorities for discarding the segmented information furnished by the appellant.

22. We find that our foregoing findings are supported by the following judicial precedents available on this subject.

(i) M/s Syniverse Mobile Solutions Pvt. Ltd., Hyderabad [TS-51-ITAT-2015], wherein it was held as follows:

"9. We have heard the arguments of both the sides and also perused the relevant material on record. As rightly submitted by the learned counsel for the assessee, segmental details taken by the assessee in its TP analysis cannot be rejected merely on the ground that they are unaudited, as done by the TPO and this position duly supported by several decisions of the Tribunal is not disputed even by the Learned Departmental Representative. He however, has submitted that the segmental details and financials were rejected by the TPO not merely on the basis of unaudited aspect, but he has also given certain specific reasons, such as assumptions and presumptions involved in the allocation of various expenses between different segments. He has also contended that the different segments of the assessee company are heterogeneous and in order to rely upon the financials of such segments for the TP analysis, it is always better to have the same duly audited. He has contended that although there is no legal M/s. Syniverse Mobile Solutions Private Limited, Hyderabad requirement to get the segmental financials audited, it is always preferable for establishing the reliability."

(ii) Brigade Global Service Pvt. Ltd. Vs ITO, Hyderabad [143 ITD 59], wherein it was observed as follows:

"The AR submitted that, in respect of F.I. Sofex (item No. 11 in the chart) introduced by the assessee but rejected by Learned CIT (Appeals) as well as TPO on the ground that nosegmental details were available. Whereas the fact remains that the assessee had furnished the segmental data. The Mumbai Tribunal in the case of Addl. CIT v. Technimont ICB India (P) Ltd. 148 TTJ (Mumbai) (TM) 547 had held that where the segmental data was furnished rejection of such cases as comparable is not justified. It was further held by both the lower authorities that bad debts written off cannot be allowed as

operating cost. The Assessee respectfully submits that bad debts written off forms part of operating cost. In this connection, reliance is placed on the decision of Almatis Alumina Pvt. Ltd. ITA Nos.726&2361/Kol/2017 Assessment Years:2012-13&2013-14 Page|23 Tribunal in the cases of CA Computer Associates (P.) Ltd. v. Dy. CIT [2010] 37 SOT 306 (Mum.Tribunal) and Dy. CIT v. Vertex Customer Services India (P.)Ltd. [2009] 34 SOT 532 (Delhi). 34. The DR submitted that segmental total cost not available and that the subsidiary in India incurred a loss due to which the entire investment as well as recoverable advance had been fully provided for in the books of account. Being so it is not comparable with the assessee company. 35. We have considered the arguments of both the parties. In our considered view for computing the net margin of the assessee for the purpose of transfer pricing only the cost related to the transaction with the AEs has to be considered and accordingly, we agree with the argument that segmental financial data is to be considered for the purpose of arriving at the net margin on an international transaction with the assessee's enterprises in respect of transactions carried on by the assessee. This view of ours is also supported by the order of the Hyderabad Bench of the Tribunal in the case of Foursoft Ltd. vs. DCIT (62 DTR 308) (Hyd). Same view has been taken by the Tribunal in various cases stated by the assessee."

(iii) Asst.CITvsNetguru Ltd. (ITA No. 1799/Kol/2018), Kolkata; wherein it was observed as follows:

"11. We have heard both the parties and perused the material available on record, we note that in ground No.1, the Revenue alleged that the segment reporting was prepared by the assessee company without having regard to the nature of business. According to them, had the segment reporting been prepared having regard to the nature of business, the segment reporting ought to have been part of the audited accounts considering the difference in the risk and returns of the two segments as claimed by the assessee company. So, the contention of the Revenue was that the Ld. CIT(A) erred in accepting the segment reporting prepared by the assessee company. We note that it is an undisputed fact that the assessee company belongs to the category of 'Small and Medium Sized Companies'. As a consequence, theAccountingStandard(AS)-17 is not mandatory for the assessee company. That is why, the assessee company has not disclosed segment reporting in the audited financial statements for the relevant financial year. However, it is pertinent to note that the assessee company submitted segment reporting to the Ld TPO solely for the purpose of application of the TNMM. We note that Coordinate Bench Delhi Tribunal in the matter of GSR Technology (India) (P.) Ltd vs. AGIT reported in[2018] 90 taxmann.com 85 (Delhi - Trib.), has examined the issue as to whether the TPO/DRP erred in disregarding the segmental information provided by the taxpayer for the reason that the same was not an audited one. ln this connection, the Coordinate Bench on the decision of the Coordinate Bench Chennai in the matter of Honeywell Electrical Devices & Systems India Ltd. v. Asstt. CIT reported in [2014] 42 taxmann.com 223/64 SOT 118 (Chennai - Trib.) wherein the Chennai Tribunal, placing reliance on the decision rendered in the matter of 3iInfotec Ltd. v. ITO reported in [2013] 35 txmann.com 582 (Chennai - Trib), held that even if such segmental results were not shown in the audited financial

accounts, they had to be accepted. The Coordinate Bench in the matter of InfotecLtd. v. ITO (supra) held that there was no legal requirement that the segment wiseworking submitted before the TPO should have been audited by the Assessee'sChartered Accountant. The Coordinate Bench Delhi Tribunal further placedreliance on the decision rendered in the matter of Lummus Technology Heat Transfer BV v. Dy. CIT reported in [2014] 42 taxmann.com 342/64 SOT 47(URO) (Delhi - Trib) wherein it was held that segmental results could not berejected on the ground that the same was not audited. The TPO/DRP was required o examine the segmental results if the same were maintained in the ordinary course of business. On perusal of, inter alia, the aforesaid decisions, the Coordinate Bench Delhi in the matter of CSR Technology (India) (P.) Ltd vs. ACIT (supra)held that the AO/TPO/DRP erred in disregarding the segmental result of the taxpayer by proceeding to consider the margin of the taxpayer at the entity level for the transfer pricing analysis.

In view of above judgments of coordinate benches, we note that there was valid reason for non-disclosure of segment reporting in the audited accounts of the assessee company and submission of segment reporting before the TPO. Therefore, the allegation made by the Revenue in this regard needs to be rejected."

23. For the reasons set out above we therefore uphold the use of segmented information for benchmarking the trading activity involving purchase of finished goods and manufacturing activity involving purchase of raw materials and export of manufactured goods. We further note that the segmented information furnished by the appellant before the lower authorities were audited results and complete details of allocation keys were also set out therein. In these circumstances, the segment results cannot be said to be unreliable. However on perusal of the transfer pricing order, we agree with the ld. DR that these segmented results were never verified by the TPO since he had out-rightly rejected the same. Accordingly we uphold the Ld. DR's alternative claim and set aside the audited segmented results to the file of the AO for the limited purpose of verification and cross- check with the overall audited financial statements of the appellant. Needless to say, the appellant shall be afforded sufficient opportunity of being heard, in this regard.

24. Now let us examine the application of the internal RPM, as employed by the appellant, for benchmarking the purchase of press chemicals. It is noted that such drilled down approach was followed by the appellant since it had reliable data, cost systems, ledger level support available from the SAP-ERP system implemented by them in the year 2012. We further observe that RPM in respect of the international transactions involving purchase of traded goods, i.e. press chemicals, was applied by the Revenue in appellant's own case for AYs 2004-05 & 2005-06. In these years it was the Revenue's case that the trading transactions are minimal and therefore entity level benchmarking is not the ideal or the most appropriate approach. Instead the TPO had drawn up the segmented results of the trading segment and conducted internal comparison under RPM to benchmark the transactions. We find that on detailed examination of segmented information, this Tribunal had found the transactions involving purchase of traded goods to be at ALP under internal RPM. The relevant extracts of the decision is as follows:

"From the submission we find that the assessee had imported printing inks from AEs worth Rs. 7.06 crores which was sold to unrelated parties for Rs. 8.09 crores resulting in gross profit margin of 13%. Correspondingly the assessee had imported press chemicals from unrelated parties worth Rs. 1.75 crores which was sold to unrelated parties for Rs. 2.02 crores yielding profit margin of 14%. Without prejudice to the assessee's contention that the aforesaid margins would require turnover adjustment and working capital adjustment, it was 24 ITA No. 2558/Kol/2017 DIC India Limited, AY- 2013-14 observed that the margin was 13% earned from transactions with related parties was found comparable to margin of 14% earned from uncontrolled transactions and was therefore held to be at arm's length by the CIT(Appeals). The difference in margin of 1% was well within the permitted range of +/- 5% allowed in second proviso Section 92C of the Income-tax Act, 1961. In view of above we do not find any infirmity in the order of the ld. CIT(A). Hence we allow assessee's ground."

25. Following the ratio laid down in the above decision rendered in appellant's own case and the given facts of the case, we uphold the application of internal RPM for benchmarking the international transactions involving purchase of press chemicals from AEs. We accordingly direct the TPO/AO to consider the assessee's audited trading segment results and to compute arm`s length price by applying internal RPM.

26. The next question for our consideration is the application of internal TNMM qua the manufacturing segment, for benchmarking the international transactions involving purchase of raw materials and export of manufactured printing inks and the appellant's claim for re- segmentation of the manufacturing segment into further sub-segments viz., (i) manufacture of printing inks and (ii) manufacture of blankets. In this regard, we note that the ld. AR of the appellant did not seriously contend both these aspects. We further find merit in the ld. DR's argument that the alleged sub-segment viz., manufacture of blankets is very small does not have any material bearing on the overall manufacturing segment. Accordingly we reject both these claims of the appellant and hold that external TNMM was the most appropriate method.

27. Now we turn to the issue of the comparability analysis undertaken by the lower authorities under the TNMM. We are of the considered view that for correct application of TNMM, it is necessary for the lower authorities to select comparables, which were functionally similar and engaged in similar line of business as that of the appellant. In the facts of the appellant's case, it is noted that the appellant is engaged in the manufacture of printing inks. On perusal of the TPSR, we find that the process of manufacture of printing inks is distinct and there are variety of range of printing inks which are manufactured across India. Since the "printing inks" in itself is a major industry, we are therefore of the considered view that the industry specific data pertaining to printing inks industry alone should have been taken into consideration. It is noted that the applying the relevant filters, the appellant had identified the 25 ITA No. 2558/Kol/2017 DIC India Limited, AY- 2013-14 following four companies which were engaged in manufacture of printing inks and found to be comparable, having regard it its FAR profile.

(a) Rex-Tone Industries Limited

(b) Sakata Inx (India) Ltd

(c) Tirupati Inks Ld

(d) Organic Coatings Ltd

28. It is noted that comparables (a) to (c) are not in dispute in as much as all of them have been accepted and retained both by the TPO as well as the DRP. With regard to the comparable (d), M/s Organic Coatings Limited, it is noted that although the appellant had contended for its inclusion before the lower authorities but no reasons are found to have been given either by the AO or the DRP to reject the same. Instead we find that the DRP's order is conspicuously silent about this comparable. It was brought to our notice by the ld. AR that this company, M/s Organic Coatings Ltd was found to be functionally comparable and engaged in the same line of business by the DRP, Delhi in the appellant's own case in the earlier AY 2012-13 and thereafter it was also accepted by the TPO to be a comparable. On these facts and in view of the DRP's order for AY 2012-13, we do not find any reason to exclude the company, M/s Organic Coatings Limited from the list of comparables and hence direct the TPO/AO to consider the same.

29. Now we proceed to examine the six comparables, which were identified by the TPO and retained by DRP, but have been disputed by the appellant. The functional analysis conducted by the DRP and the remarks given for retaining them are reproduced hereunder:

Sr.No	Comparable	TPO	Assessee	DRP
1	AshiSongwonColours Ltd	Selected by TPO FAR being same	The compmany is engaged in pigment Industry and is firmly fucused in becomeing a leading global player	The company as per the profile was found to be engaged in the production of pigmenets. The company had only one segmental report. Pigment is one of the basic constituents of the printing ink. On a phalocyaninepigmens reference to the production process of the 'A', it was found that the pigment was the basic raw material which was mixed in an agitator fitted in a pan to finally

				produce ink. This is clos to the process largely involved in the manfuacturing of ink. Thew process and the ingredient being common be comparable is held as a good compaable to be retained.
2	*Lona Industries Ltd.*	*Selected by TPO* *FAR being same*	*The company isinvolved in manufacturing of organic colouring matter and not printing inks.*	*The company was also into manufacturing of pigments. Pigment is one of the basic constituents of the printing ink. As discussed supra, this is a good comparable to be retained.*
3	*Mazda Colours Ltd.*	*Selected by TPO* *FAR being same*	*The company is involved in manufacturing of pigments and not printing*	*It was also into manufacturing of pigments. As discussed supra this is a good comparable and should be retained.*
4	*Sudarshan Chemical Ltd.*	*Selected by TPO*	*The company is involved in manufacturing of pigments and agro chemicals and not printing inks.*	*The company was into the manufacturing of pigments and agro chemicals. The comparable is to be retained.*
5	*Megnmani Organics Ltd.*	*Selected by TPO*	*The company is involved in manufacturing of diverse items such as pigments, agrochemical, power and not printing inks.*	*The company being into the manufacture of the pigments, is held as a good comparable and to be retained.*
6	*Ultramarine and pigments Ltd. (seg)*	*Selected by TPO*	*The company is engaged in manufacturing of organic colouring matter and not*	*This company being predominately into pigments is directed to be retained as a comparable as in above companies.*

			printing inks	

30. On perusal of the above, it is noted that each of the above companies are engaged in manufacture of pigments, which in DRP's opinion is an essential raw material in manufacture of printings inks. According to the DRP therefore these companies could be considered as good comparables. We are however unable to agree with this analysis of the DRP. It is an admitted position that each of the above companies manufacture pigments as their final product. None of them manufacture printing inks. It is also not in dispute that the pigments, are used as a raw material along with dyes, resins, solvents & additives to manufacture the printing inks. The use of pigments in the manufacturing process is limited to colour the ink and make it frosted. Accordingly, it is evident that the manufacturing process& assets employed for producing pigments is materially different than the manufacturing process and assets employed for producing printing inks by consuming various components/materials inter-alia including pigments, dyes, resins, solvents & additives etc. In our considered view therefore it is incorrect to hold the supplier of one raw materialis functionally comparable with the manufacturer. It is further observed that the pigments are of wide variety having different applications and uses in different industries. As a consequence it is noted the price elasticity of the pigments is also very wide, depending it on its variety and actual use. It is also noted that the markets catered by pigment manufacturers, economic forces faced and other commercial factors are also significantly different with the companies involved in manufacture of printing inks. The ld. AR brought to our attention that the pigments are not only used as a raw material in manufacture of printing inks, but it is also an essential raw material in the paint industry, cosmetics industry, food industry, plastic industry, fabric industry etc. Hence, if the DRP's proposition that, the manufacturer of an essential raw material is a good comparable with the manufacturer of the final product, is upheld, then extending the same analogy it would mean that the companies involved in manufacture of printing inks is also comparable with companies engaged in manufacture of paint, fabrics, coloured foods, cosmetics etc., since in all these industries the common essential raw material is pigment. In our considered view however such a proposition is inherently fallacious and cannot be accepted. We agree with the ld. AR's contention that a good comparable can be said to be a company which is 28 ITA No. 2558/Kol/2017 DIC India Limited, AY- 2013-14 engaged in the same line of business and not any down-stream or up-stream company, which forms part of the supply chain. In the present case the appellant manufactures printing inks and not pigments. Instead it procures pigments from pigment manufacturers or suppliers. In our considered view therefore none of the above mentioned six comparables retained by the DRP are good comparables and hence stands rejected/ excluded.

31. With these findings, the AO/ TPO is directed to re-compute the ALP margin taking into consideration the above discussed four comparables and

accordingly benchmark the international transactions involving purchase of raw materials and export of finished goods using the segmental data of the appellant.

32. In the result, the appeal of assessee stands partly allowed for statistical purposes."

8. Since the facts before us are materially same, we,accordingly, set aside the direction of the DRP and direct the AO/TPO to delete the addition. Consequently Grounds No. 1 to 7 are allowed.

9. The issue raised in Grounds No. 8 & 9 is against the disallowance of royalty to the tune of Rs.9,83,66,198/- by the ld. Assessing Officer as well as ld. DRP by treating the same to be capital in nature.

10. At the outset, ld. Counsel for the assessee submitted that the issue is covered in favour of the assessee by the decision of Coordinate Bench of this Tribunal in assessee's own case in ITA No.126/KOL/2017 for A.Y. 2010-11, ITA No. 1363/KOL/2017 for A.Y. 2011-12 and ITA No. 552/KOL/2017 for A.Y. 2012-13, in which the issue has been decided in favour of the assessee. The ld. A.R. submitted that the assessee has granted non-exclusive limited rights to use the technical/licensed information and has also provided that the licensor shall grant training to the personnel of assessee to

enable it to use the technical/licensed information besides providing marketing assistance to the assessee and to access to their global customer base. The ld. A.R. submitted that under the agreement, the assessee cannot selltechnical /licensed information to any third party and in consideration the assessee would pay royalty every year at the specified rate as a percentage of its net sales made e during the tenure of the agreement. The ld. A.R. submitted that the rights over the technical/licensed information would end upon termination of agreement and the assessee has no right to use the technical/licensed information beyond that period after the termination of the agreement, whereas the ld. Assessing Officer observed that there was no embargo on the assessee to use the technical/licensed information even after termination of agreement and, therefore, it has resulted in enduring advantage and creation of capital asset. The AO accordingly disallowed the royalty paid by treating the same as capital expenditure. The ld. A.R. submitted that the ld. DRP rejected the appeal of the assessee on this issue by stating that the Coordinate Bench decision in A.Y. 2010-11 has been challenged before the Hon'ble High Court which can not be a ground for confirmation of the disallowance.The ld. A.R.finally prayed that this issue may be allowed in favour of the assesse by following the decision of the earlier assessment year as stated above.

11. Ld. D.R., on the other hand, fairly stated that the issue was decided in favour of the assesse however the revenue is in appeal before the Hon'ble High Court against the order of tribunal in AY 2010-11, which is pending for adjudication.

12. Having heard both the sides, perusing the relevant material placed before us including the decisionsof the coordinate bench cited by the ld. Counsel for the assessee, we find that the issue has been decided in favour of the assessee in three preceding assessment years for A.Ys. 2010-11, 2011-12 and 2012-13. The operative part in ITA No.126/KOL/2017 for A.Y. 2010-11 is extracted below:-

> *"9. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee. We find Coates of India Limited was the erstwhile name of DIC India Limited (assessee herein) . We find from the technical collaboration agreement entered into between assessee and DIC Corporation, Japan on 5.12.2000 that assessee is engaged in the business of manufacturing of printing inks and allied products in India in its various factories located at Calcutta, Delhi, Mumbai, Chennai, Noida and Ahmedabad. assessee was desirous of upgrading its overall technology and introduction of new technology for manufacturing printing inks and allied products of all types viz., manufacturing of flushed pigments, sheetfed offset inks, gravure inks, web offset inks, news inks, screen printing inks, varnishes of all types including flush varnish, adhesives including packaging adhesives on a continuous basis. The assessee had approached DIC Japan to make available to it the said technical knowhow for the purpose of upgrading its manufacturing technology for the existing as well as future products relating printing inks and allied products on a continuous basis in its plants located at Calcutta, Mumbai, Noida, Ahmedabad , New Delhi , Madras or any other future place as may be determined by assessee from time to time. It is further*

stated that the DIC Japan would. make available to assessee the technical knowhow as aforesaid and the right to use the trade names and brand names. In this regard, the following clauses in the said agreement would. be relevant:-

1.3. "Products" will also include the right of COATES to use the Trade Names, Brand Names relevant to the Products, whether the same be registered or otherwise (hereinafter referred to as "Trademarks"), provided, however, it shall be the responsibility of COATES to ensure compliance with local laws relating to use of such names and marks.

1.4. Licensed Information means such technical information in possession of, and at free disposal of , DIC, on the Effective Date of the Agreement in relation to the Products towards manufacturing, formulation and application and shall also include formulation, production process, quality control, sourcing of input materials, material safety data sheet, safety, health and environment protection measures.

2. LICENSE 2.1. DIC hereby grants COATES a non-exclusive license to use Licensed Information for the manufacture of Products in Territory.

2.2. COATES is granted a non-exclusive right to sell Products in any countries except the countries where DIC has its plant, its subsidiaries or other joint venture arrangements for the manufacture of Products, where DIC is engaged in the ordinary sales activity of Products, and where DIC licenses the exclusive sales right to a third party. However, in the event DIC agrees in writing on the prior written request of COATES, COATES may export Products to such countries as expected above.

2.3. COATES in not granted a right to sublicense to any third parties and shall not make Licensed Information available to any third parties.

4. Compensation 4.1. COATES shall pay DIC a royalty of 2% (two) on total net sales for all Products manufactured and sold. by COATES in India and abroad.

4.2. DIC may from time to time help COATES by purchasing the said products directly or through its group/ associate companies at such prices as may be mutually agreed upon but not less than the actual cost plus reasonable profit margin. Provided however COATES shall be under no obligations to accept such orders from DIC or its associates and DIC shall not be entitled to any royalty on such transactions.

.....

7. SECRECY

7.1. COATES agree to keep the Licensed Information provided hereunder by DIC as secret and confidential and agrees not to disclose it

to any third party provided that the information of the following nature shall be excluded from these secrecy obligations:

(a) Information that is in public domain.

(b) Information that COATES has in its possession at the Effective date which is not subject to an Agreement of Confidentiality. (c) Information which COATES has received rightfully from other sources before or after at the Effective Date.

7.2. The obligation under this article shall survive any termination of this Agreement for ten (10) years.

9. Period of Agreement 9.1. This Agreement will remain in force for 7 years from the Effective Date, provided that DIC, directly or indirectly, owns more than fifty (50) percent of the shares of COATES.

9.2. One (1) year prior to the expiration of this Agreement, the parties shall meet and shall decide jointly either to renew this Agreement for the further period fo five (5) years at the expiration of this Agreement or whether it shall not be renewed after the normal date of expiration.

10. Termination

10.1. Either party may terminate this Agreement forthwith: (1) if the other party is in breach of any of the provisions of this Agreement and fails or is unable to remedy the same within 30 days after receiving notice in writing thereof from the other party.

(2) if the other party becomes insolvent, bankrupt or is placed liquidation.

10.2. If under the provisions of this Agreement COATES ceases to be entitled to use the Licensed Information COATES shall deliver up to DIC all such Licensed Information in tangible form which may then be in its possession and will keep no copies thereof.

9.1. We find from pages 27 to 29 of the Paper Book, a copy of the approval, from Government of India, Ministry of Commerce & Industry , Department of Industrial Policy & Promotion Secretariat for Industrial Assistance vide approval No. 8(2001)/719(2000)/PAB-IL , New Delhi dated 3.1.2001 , of technical collaboration agreement dated 5.12.2000 . Later the technical collaboration agreement was renewed with effect from 1.7.2008 with DIC Asia Pacific Pte Ltd, Singapore with the same terms and conditions. Similarly there was yet another License Agreement entered on 1.4.2007 between the assessee and DIC Japan on same terms and conditions as in earlier agreement except with change in percentage of royalty agreed upon, which is not in dispute before us. Hence royalty was paid by the assessee to DIC Asia Pacific Pte Ltd, Singapore and to DIC Corporation, Japan. We also find from the Fixed Assets Schedule as on 31.3.2010 (relevant to year under appeal) that there has been a minor

addition of Rs 6.58 crores to Plant & Machinery which is hardly 5.23% of Gross Block of Fixed Assets as on 31.3.2010. Hence it could. be safely concluded that no new activity by setting up of a new business venture was carried out by the assessee during the year under appeal for which the licensed information was used by the assessee. We find that the ld. CIT had one hand alleged that the assessee had acquired the business / commercial rights in Intellectual Property Rights (IPR) , but in the very same context , he had also stated that the business / commercial rights have been obtained for a period of seven years only. Admittedly the licensed information has been obtained for a period of seven years by the assessee and hence there cannot be any question of acquisition of such licensed information by the assessee. We have gone through the agreement entered into between the assessee and DIC Asia Pacific Pte Ltd, Singapore and DIC Corporation, Japan and we find that nowhere it was mentioned that the assessee had acquired the business/ commercial rights of IPR so as to fall within the ambit of an asset having enduring nature in the capital field.. On the contrary it is very clearly stated in both the agreements that DIC Asia Pacific Pte Ltd, Singapore and DIC Corporation, Japan has granted license to use technology, knowhow and other license information for a specified period and hence it cannot be said that the assessee had acquired any business / commercial rights thereon. We find that the ld. CIT had persuaded himself to incorrect assumption of facts that assessee by using the licensed information obtained from DIC Asia Pacific Pte Ltd, Singapore and DIC Corporation, Japan had upgraded its P&M and also changed the setting up of P&M to make its finished products viable for the market. This assumption is factually incorrect and does not emanate out of the jurisdictional facts on record. The ld. CIT had not brought any material evidence on record to justify this incorrect assumption thereby leading to incorrect conclusion. We find that the assessee had all along been in the business of manufacture of printing inks and it had not ventured into any new business as could. be evident from its financial statements. We find that the knowhow was provided for upgrading the existing business. This payment of royalty has been allowed as a revenue expenditure in the past by the ld. AO u/s 143(3) of the Act. The ld. CIT merely made a bald statement by stating that the assessee by using the licensed information had entered into new dimensions of business from time to time and hence the payment of royalty could. not be equated with the nature of royalty paid in earlier years, which statement is absolutely without any basis and without any material on record. The assessee had submitted before the ld. CIT that the royalty was paid in respect of licensed information obtained from DIC Asia Pacific Pte Ltd, Singapore and DIC Corporation, Japan for manufacture of resins and printing inks and the licensed information pertains to these specific items i.e resins and printing inks alone and cannot be used to venture into new business. The nature of royalty, mode and manner of payment thereon had remained the same since financial year 2007-08 / 2008-09 as the case may be, in which these agreements were entered into by the assessee. In this regard, we would. like to place reliance on the decision of the Hon'ble Apex

Court in the case of RadhasoamiSatsangvs CIT reported in 193 ITR 321 (SC), wherein it was held. that :

As we are aware of the fact that, strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would. not be at all appropriate to allow the position to be changed in a subsequent year.

9.2. Based on the aforesaid findings, it could. be safely concluded that the ld. AO had arrived at one possible conclusion in the given set of facts and circumstances and had taken one possible view. The ld. CIT is only trying to substitute his own view on the same set of facts and circumstances by invoking his revisionary powers u/s 263 of the Act which in our considered opinion is not permissible in law.

9.3. We find that similar issue was addressed by the co-ordinate bench of this tribunal in the case of DCIT vs Bata India Ltdin ITA Nos. 1826 to 1828/Kol/2012 dated 23.5.2013. In this case also, it had secrecy & confidentiality clause and termination clause similar to what is present in the technical collaboration agreement entered into by the assessee herein. The Tribunal after examining the relevant clauses of the agreement held. as below:-

16. The ld. AR drew our attention to the royalty agreement which was at pages 8 to 28 of the paper book. He drew our attention to para 2.5 of the agreement which specifically says that all the drawings and other documents comprising the technical knowhow and all notes and copies made there from by licensee shall be marked with the words "Secret and Confidential-property of Wolverine World Wide, Inc.". He further drew our attention to Article 6.1wherein it has been agreed that the technical know-how imparted to licensee is and shall remain the exclusive and valuable secret property of licensor. He drew our attention to para 6.5 wherein it has been specifically mentioned that on termination of the agreement the technical know-how papers, instruments, documents etc. both original and all copies and translations thereof and all shop or working notes shall be returned to the licensor. He further drew our attention to Article 11.6 when specified the effects of the termination to show that in the event of termination or expiry of the agreement the licensed products were not to be manufactured nor was its trade marks to be used and all to be returned to the licensor. It was the submission that in view of the decision of the Hon'ble Calcutta High Court in the case of CIT vsHindusthan Motors Ltd. 192 ITR 619 it clearly ITA Nos1826-1828/Kol/2012 & C.O.Nos.10&11/Kol/2013 5 DCIT, Circle-2, Kolkata vs M/s. Bata India Ltd..A.Yrs.2005-06 & 2006-07 shows that this royalty payment was a revenue expenditure as no capital assets came into being in the hands of the assessee.

17. In reply the ld. DR vehemently supported the orders of the AO as well as the ld. CIT(A).

18. We have heard the rival submissions. A perusal of the agreement in respect of the technical know-how and the manufacturing process clearly shows that the assesse has derived no enduring benefit nor has assessee obtained any capital asset on the basis of the payment of the royalty as per the agreement. The technical know-how trade marks denies drawings, notes etc. in respect of the agreement for which the assessee has paid the royalty belongs to the licensor being M/s. Wolverine World Wide, INC. Thus as the assessee has derived no enduring benefit the same cannot be treated as a capital expenditure but is clearly in the name of revenue expenditure and allowable. In the circumstances the AO is directed to allow the royalty paid by the assessee as revenue expenditure as claimed.

9.3.1. We find that this order was further agitated by the revenue by preferring an appeal before the Hon"ble Calcutta High Court which was disposed off in GA No. 3482 of 2013 dated 18.8.2014 in favour of the assessee. The relevant operative portion of the said order is as below:-

So far as question nos. (iv) and (v) are concerned we find from the order of the CIT(A) the assessee did not derive any enduring benefit for payment of lumpsum royalty as the agreement was for non-transferable license to manufacture licensed products in India.

Out of several questions raised by the revenue before the Hon"ble Calcutta High Court, only question no. (iv) was admitted by the Court and all other questions were either disposed of on merits or on the ground that they do not involve any substantial question of law.

9.4. We find that the assessee had filed chartered accountant"s certificate in Form 3CEB for its international transactions which included payment of subject mentioned Royalty to its AE which was certified to be at Arm"s Length by the Chartered Accountant. The assessee benchmarked its royalty transactions by following CUP method and by comparing the royalty percentage made by the comparable companies and arrived at the arithmetic mean of 8.55% on sales. Since assessee paid only 2% as royalty on sales, the assessee justified its royalty payment to be at Arm"s Length. The Transfer Pricing Documentation in this regard was also filed during the hearing wherein at pages 44 to 54 of the TP Study Report, the details of benchmarking of royalty and justification of ALP for the same is reflected. The case was referred to the ld. Transfer Pricing Officer u.s 92CA of the Act after obtaining the prior approval of the ld. CIT. The ld. TPO found that the CUP method is not the suitable method for benchmarking the Royalty Payment and other international transactions and adopted Transaction Net Margin Method (TNMM) and made an upward adjustment of Rs 4,87,70,886/- on various international transactions of the assessee including the payment of royalty. Based on this ld. TPO order examining

the aspect of ALP of royalty payment, the ld. AR argued that the issue of royalty payment had been duly examined by the subordinate authorities and the ld. AO had also made an addition of Rs 82,88,935/- attributed towards royalty which is included in the total TP addition of Rs 4,87,70,886/- and accordingly the same cannot be construed as „lack of enquiry" warranting revision u/s 263 of the Act. In this regard, we hold. that the scope of enquiry as envisaged in the statute by the ld. TPO and by the ld. AO are totally different. The scope of the ld. TPO is restricted only to determination of ALP, whereas, the ld. AO is entitled to get into the propriety of transaction and ascertain whether the same is required to be incurred for the purpose of business or not. Hence the argument advanced by the ld. AR that the verification of royalty payments had been made in depth by the ld. TPO and hence it cannot be said that there was no enquiry by the subordinate authority does not hold. water. We find that the ld. AO had simply adopted the upward adjustment to ALP contemplated by the ld. TPO in his order which admittedly included an adjustment towards royalty in the sum of Rs 82,88,935/-. That does not automatically mean that the entire issue of payment of royalty on propriety basis had been duly examined by the subordinate authorities precluding the ld. CIT from exercising his revisionary jurisdiction on the same. We are also not in agreement with the argument advanced by the ld. AR that the ld. AO had made a reference to ld. TPO on the international transactions carried out by the assessee and hence the ld. AO had applied his mind that the royalty payment was in the revenue field and addition had been made thereon by the ld. TPO and ld. AO. Hence it amounts to application of mind by the ld. AO. We find that the international transactions carried out by the assessee would. be both on capital as well as on revenue account. The entire international transactions would have to be referred by the ld. AO to the ld. TPO u/s 92CA of the Act. As we had already stated that the scope of enquiry of the ld. TPO is merely restricted to determination of ALP of international transactions which would. be both on capital and on revenue account. Hence the order of ld. TPO on royalty payment and addition made thereon would. not come to the rescue of the assessee.

9.5. We also find that the issue of allowability of royalty as revenue expenditure was considered by the Hon'ble Calcutta High Court in the case of Timken India Ltd vs CIT reported in (2014) 51 taxmann.com 184 (Calcutta) dated 30.7.2014 which considered the decisions relied upon by the ld. AR [i.eCIT vs I.A.E.C. (Pumps) Ltd- 232 ITR 316 (SC) and ld. DR (i.eAlembic Chemical Works Co. Ltd vs CIT - 177 ITR 377 (SC)]. The Hon"ble Calcutta High Court held. as under:-

5. Mr.Majumdar, learned advocate appearing in support of the appeal, submitted that the facts and circumstances of the present case are identical with those in the case ofAlembic Chemical Works Co. Ltd. v. CIT [1989] 177 ITR 377/43 Taxman 312 (SC). The assessee company, he contended, was already in existence and the assessee was also engaged in the business of ball bearings. The assessee entered into an agreement with the foreign company for the purpose of acquiring a new technology.

In an identical situation in the aforesaid case of Alembic Chemical Works Co. Ltd. (supra), the Apex Court held. that "it appears to us that the answer to the questions referred should. be on the basis that the financial outlay under the agreement was for the better conduct and improvement of the existing business and should., therefore, be held. to be a revenue expenditure. Reference may also be made to the observations of this Court in CIT v. CIBA of India Ltd."

6. Mr.Majumdar also relied upon a judgment in the case of CIT v. I.A.E.C. (Pumps) Ltd. [1998] 232 ITR 316 (SC), wherein Their Lordships of the Supreme Court agreed with the views of the High Court holding that "we are of the opinion that the above features clearly establish that what was obtained by the assessee is only a licence and what was paid by the assessee to Aturia is only a licence fee and not the price for acquisition of any capital asset."

7. Mr.Majumdar submitted that considering the fact that the payment made by the assessee is on account of a license fee and considering that the Supreme Court was considering an identical question in the case of I.A.E.C. (Pumps) Ltd. (supra) the question should. be answered in favour of the assessee.

8. Ms.Gutgutia, learned advocate appearing for the revenue, drew our attention to a judgment of the apex Court in the case of Jonas Woodhead& Sons (India) Ltd. v. CIT[1997] 224 ITR 342/91 Taxman 1 (SC). She submitted that the moot question for consideration has been indicated in the aforesaid judgment as follows:

"Whether the expenditure or payment thus made makes an accretion to the capital asset and after the court comes to the conclusion that it does so, then it has to be held. to be a capital expenditure."

9. She contended that the vexed question has been made simpler by the apex Court in the aforesaid case. If the payment made by the assessee makes an accretion to the capital asset the expenditure is capital in nature. She contended that the assessee may have already had an existing plant and machinery. It may also be true that the assessee was pursuing the same line of business, but it cannot be denied that by paying the sum of USD 200,000 the assessee acquired a new technology. There was as such accretion to the capital of the assessee in the sense that the company became better equipped to do its business with the help of technology. Therefore, the expenditure has to be treated as a capital expenditure. On the top of that, from the agreement entered into between the assessee and the non-resident it would. appear that the benefit of such payment is of an enduring nature which is to continue to benefit the assessee for a period of six years. It was, as such, a plain case of a capital expenditure on which the assessee was entitled to claim depreciation. The assessee has already been allowed depreciation at the rate of 25%. Accordingly, more than just treatment was given to the

assessee and this court should. refrain from interfering with the order under challenge.

10. We have considered the rival submissions of the learned advocates for the parties. The submissions advanced by Ms.Gutgutia are no doubt meritorious and certainly represent one way of looking at the things. Sight cannot however be lost of the fact that the payment made by the assessee is on account of license fee. By making such payment, the assessee has got a permission to use the technology. The money paid is irrecoverable. In case the business of the assessee for some reason or the other is stopped, no benefit from such payment is likely to accrue to the assessee. The license is not transferable. Therefore, it cannot be said with any amount of certainty that there has been an accretion to the capital asset of the assessee. In case, the assessee continues to do business and continues to exploit the technology for the agreed period of time, the assessee will be entitled to take the benefit thereof. But in case it does not do so, the payment made is irrecoverable. It is in this sense that the matter was looked into by the High Court of Madras and was endorsed by the apex Court in the case of IAEC (Pumps) Ltd. (supra). The point as a matter of fact is covered by the aforesaid judgment. Nothing really is left for us to do in the matter.

11. We are, therefore, of the opinion that the question has to be answered in the affirmative and in favour of the assessee.

12. The appeal is, thus, allowed.

The aforesaid decision of Hon"ble Calcutta High Court is squarely applicable to the facts of the instant case on merits. We find that the decision of the Hon'ble Madras High Court in the case of CIT vs Southern Switchgear Ltdreported in (1984) 148 ITR 273 (Mad) does not come to the rescue of the revenue as in that case, it was categorically found that in addition to the acquisition of technical knowledge, the assessee company got an exclusive right to manufacture and sell its articles without any objection from anyone including the foreign company and this is clearly an advantage of enduring nature. It was further observed in that case that it is well established that even without acquisition of an asset, a right of a permanent advantage could. be acquired and the cost of acquisition of such a right could. be taken to be capital expenditure. In the instant case, the assessee shall not be entitled to use the Licensed Information and it had to deliver up to its AE all such Licensed Information in tangible form which may then be in its possession and will keep no copies thereof. Moreover, assessee in the instant case was given by its AE only a non-exclusive and non-transferable license to use Licensed Information for manufacture of products. Assessee was not granted any right to sublicense to any third parties or make available any licensed information to any third parties and is also directed to maintain the secrecy and confidentiality of the licensed information by not disclosing to any third party and such secrecy & confidentiality clause shall be binding even after termination

of the agreement for ten years. Hence it is a restrictive usage privilege given to the assessee in the instant case and hence the facts before the Hon"ble Madras High Court are squarely distinguishable".

13. Since the issue before us is similar to one as decided by the Coordinate bench in earlier assessment years, we, therefore, respectfully following the said decisions of the tribunal in assessee's own case , set aside the order of DRP an';
d direct ld. A.O./TPO to delete the addition. Consequently Grounds No. 8 & 9 are allowed.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 4th January, 2023.

Sd/-	Sd/-
(SonjoySarma)	**(Rajesh Kumar)**
Judicial Member	**Accountant Member**

Kolkata, the 4th day of January, 2023

Copies to : *(1)* ***DIC India Limited,***
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(2) Deputy Commissioner of Income Tax,
Circle-10(1),
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P-7, Chowringhee Square,Kolkata-700069

(3) Members, Dispute Resolution Panel-2, New Delhi;

(4) The Departmental Representative
(5) Guard File

TRUE COPY

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.