

**IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
ITA Nos. 2867 to 2872/Mum/2022
(A.Ys.2012-13 to 2017-18)**

Deputy Commissioner of Income Tax (IT)-3(2)(2) Room No. 1632, 16 th Floor, Air India Building Nariman Point, Mumbai - 400021	Vs.	M/s Mizuho Bank Ltd. Level 17, Tower A, Peninsula Business Park, Senapati Bapat Marg, Lower Parel, Mumbai - 400013
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACDM0940P		
Appellant	..	Respondent

Appellant by :	Soumendu Kumar Dash
Respondent by :	Mehul Talera

Date of Hearing	10.01.2023
Date of Pronouncement	17.01.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

These 6 appeals filed by the revenue are directed against the different order of CIT(A)-57, Mumbai for assessment year 2012-13 to 2017-18. Since, common issue on similar facts are involved in all these appeals, therefore for the sake of convenience these appeals adjudicated together by taking ITA No. 2867/Mum/2022 and its finding will be applied to the other cases.

ITA No.2867/Mum/2022

- “1. Whether on facts and in circumstances of the case and in law, the Ld CIT(A) is correct in holding that it was necessary to issue notice u/s 163 of the Act to branch of the bank for treating it as agent of the Head Office of the Bank
2. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) is correct in holding that the addition has been wrongly made without appreciating the fact that the PE in India has to be treated as

- separate entity and the interest payable by the said PE is to be taxed in India in the hands of PE as income.*
3. *Whether on facts and in circumstances of the case and in law, the Ld CIT(A) is correct in holding that the provisions of section 40(a)(i) of the Act do not apply without appreciating that the interest was chargeable to income.*
 4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing to re-compute the ALP rate of commission in respect of the guarantees by making an addition of 10% increase in the rate of commission in respect of the guarantees by making an addition of 10% increase in the rate of commission currently being charged by the assessee to arrive at the arm's length rate without citing any basis for arriving at this ALP rate determination and applying to the facts of the case.*
 5. *Whether on the facts and circumstances of the case and in law, the Ld CIT(A) erred in directing to re-compute the ALP rate of commission in respect of the guarantees by making an addition of 10% increase in the rate of commission currently being charged by the assessee to arrive at the arm's length rate without citing any basis for arriving at this ALP rate determination and applying to the facts of the case, when, such adhoc method is not a prescribed method for determination of ALP w/s 92C of the IT Act, 1961.*
 6. *Whether on the facts and circumstances of the case and in law, the Ld CIT(A) erred in directing to re-compute the ALP rate of commission in respect of the guarantees by making an addition of 10% increase in the rate of commission currently being charged by the assessee to arrive at the arm's length rate, as against the ALP rate computed by the TPO in his order based on the rate chart of State Bank of India @ 1% where amount of loan was more than 1 million USD and @ 18% for rest amount of loan, to issue guarantee against 100% counter guarantee by reputed international Banks, without adjudicating as to how the rate applied by the TPO is not comparable with the relevant international transaction.*
 7. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in directing to re-compute the ALP rate of commission in respect of the guarantees by making an addition of 10% increase in the rate of commission currently being charged by the assessee to arrive at the arm's length rate without analysing the functions performed, assets used and risks undertaken by the assessee bank.*
 8. *Whether on the facts and circumstances of the case and in law the Ld CIT(A) was right in the allowing relief to the assessee based on the decision of the Bombay High Court in Everest Kento Cylinder Limited (378 ITR 57 (Bom), which clearly stated that no comparison (for transfer pricing purposes) can be made between guarantees issued by commercial banks (like the assessee) with corporate guarantee issued by a holding company for benefit of its AE (subsidiary company) and the commission to be charged in the case of bank guarantees necessarily has to be higher than that of corporate guarantees.*
 9. *The appellant prays that the order of the Ld CIT(A) on the ground(s) be set aside and that of the Assessing Officer be restored*

10. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

2. The fact in brief is that return of income declaring total income of Rs.3,03,57,44,858/- was filed 30.11.2011. The assessee is a foreign bank incorporated in Japan and carries out banking operation in India through branches situated at Mumbai & Delhi. These branches were a permanent establishment within the meaning of DTAA between India & Japan. The assessment u/s 143(3) r.w.s 144C(3) of the Act was finalized on 17.05.2016 and total income was assessed at Rs.307,81,84,271/-. Further facts are discussed while adjudicating the grounds of appeal filed by the Revenue as follows:

Ground No. 1 to 3:

3. During the year under consideration, the head office of the bank in Japan has received interest on borrowing made by the Indian branch to the amount of Rs.165,09,402/- net of tax in which tax has been deducted at source. However, the A.O was of the view that interest income received by overseas office from the branch office in India was deemed to accrue or arise in India. The A.O observed that since the interest had been paid by the branch office, therefore the branch office was representative assessee/agent as per Section 163(1)(c) of the Act and interest paid to head office was taxable in India. Therefore the AO taxed the interest payment of Rs.165,09,402/- to tax at 10% as per the DTAA between India and Japan in the hands of the assessee.

However, the ld. CIT(A) has deleted the addition after following the decision of ITAT Mumbai in the case of the assessee itself for A.Y. 2005-06. The relevant part of the decision of CIT(A) is reproduced as under:

“5.2 Ground No.2:

5.2.1 This ground is against the action of the AO in treating the branch as a representative assessee/agent of its head office u/s 163(1)(c) without according any show cause to the appellant.

5.2.2 This issue is covered by my predecessor's decision in appellant's own case in Appeal No CIT(A)-57/Arr.149/2016-17 for AY 2011-12 dated 24.01.2017 For ready reference, the findings given in that order is reproduced below:

“I have considered the order of the AO and submissions made by the assessee. During the appellate proceedings, the assessee's AR submitted a copy of order of the Hon'ble ITAT in assessee's own case for the AY 2005-06. Identical case for AY 2005-06 wherein identical issue has been dealt by the Hon'ble ITAT, the relevant portion of the order is as under:

The Revenue is in appeal against order of CIT(A) in deleting the disallowance made under Section 40(a)(a). We have considered rival contentions and found that disallowance has been made by the AO on the plea that branch office in India has been treated as permanent establishment and has filed return of income as per IT Act The AO observed that although the branch office is an extension of head office, but it is located in India, tax jurisdiction, as per Article 5 of DTAA between India and Japan PE includes the branch office. The AO further observed that assessee has permanent establishment in the form of branch office, therefore, as per Article 7 of DTAA, provides permanent establishment will be taxable in India finally the AO treated the head office and branch office as two different entities as per the domestic law as well as DTAA, therefore, disallowed the interest payment for non-deduction of tax under Section 40(a) (ia). We found that issue is squarely covered by the decision of the ITAT Special Bench in the case of ABN Amro Bank, 97 ITD 89. Recently the issue is also dealt by the ITA No.3282/09, CO46/13 & ITA No 602/2013 7 ITAT Special Bench at Mumbai in the case of Sumitomo Mitsu Banking Corp. 136 ITD 66 (Mum)(SB), wherein it has been held interest paid by the Indian Branch of the assessee bank to its overseas head office is not chargeable to tax in India. It was further held that the provisions of Section 195 consequently would not be attracted in case of such payment of interest by the Indian Branch to overseas Head Office and the question of disallowance of the said interest by invoking the provisions of Section 40(a)(ia) does not arise Respectfully following the said decision of the Special Bench, we upheld the impugned order of CIT(A) for deleting the disallowance of interest made under Section 40(a) (ia) of the IT. Act.

Similarly, on the issue of amount of interest received by the HQ, the Hon'ble ITAT has held as under-

The Ld. DR, however, has fairly and frankly conceded that both the issues involved in this appeal of the revenue are squarely covered by the recent decision of Special Bench of the Tribunal in the case of Sumitomo Mitsu Banking Corp. Vs. DDIT 136 ITD 66 (Mum) (SB) wherein it has been held that interest paid by the Indian Branch to overseas Head office and the question of disallowance of the said interest by invoking the provisions of sec 40(a)(i) does not arise Respectfully following the said decision

of the Special Bench of this Tribunal, we uphold the impugned order of the Ld. CIT(A) giving relief to the assessee on both the issues involved in this appeal of the revenue and dismiss the said appeal."

The above decisions on interest allowability and interest income of the Hon'ble ITAT in the assessee's own case have been adjudicated in favour of the assessee and in view of this, these parts of ground of appeal are allowed.

One more issue which has been raised is that a notice u/s 163(1) of IT. Act. 1961 was not given to the assessee branch before treating it as agent to its head office First of all, even though the branch has been treated as agent to head office. it is not necessary to invoke provisions of section 163 and give notice u/s 163 because branch and the head office are the same entity and only for assessing the income under IT Act, 1961, these two are being treated separately. Hence, it is held that it was necessary to issue notice under section 163 of IT. Act, 1961 to the branch of the bank as agent of the Head Office of the Bank In nutshell, ground of appeal is partly allowed."

5.2.3 Respectfully following the decision of my predecessor, this ground of appeal is partly allowed."

4. During the course of appellate proceedings before us the Id. Counsel submitted that identical issue similar facts has been adjudicated in the case of the assessee itself by ITAT vide ITA No. 2711/Mum/2017 for AY. 2010-11 on 24.08.2022.

On the other hand, the Id. D.R relied on the order of the A.O.

5. Heard both the sides and perused the material on record. Without reiterating the facts as discussed supra the A.O treated the interest income received by the Head office from the branch office in India as income deemed to accrue or arise in India and taxed the interest income @ 10% of the gross amount under Article 11(2)(a) of the India, Japan DTAA. We have perused the decision of the ITAT as referred supra for A.Y. 2010-11 wherein identical issue on similar facts has been adjudicated in favour of the assessee. The relevant operating para of the order is reproduced as under:

"8. We have considered the rival submissions and perused the material available on record. We find that coordinate bench of the Tribunal in ADIT (International Taxation) vs M/s Mizuho Corporation Bank Ltd., in ITA No.

3282/Mum./2009 etc., vide order dated 26/03/2014, for assessment year 2005-06, while deciding similar issue in favour of assessee, observed as under:

“16. The issue with regard to addition of interest income earned by the head office from the branch office had already been decided by the Tribunal in assessee’s own case in favour of the assessee by relying on the decision of the ITAT Special Bench in the case of Sumitomo Mitsu Banking Corp. 136 ITD 66 (Mum)(SB), wherein it was held that interest paid by Indian branch of the assessee bank to its overseas head office is not chargeable to tax in India. The Tribunal in assessee’s own case in ITA No.7479/Mum/2007, vide order dated 25-7-2012, has held as under:-

“The Ld. DR, however, has fairly and frankly conceded that both the issues involved in this appeal of the revenue are squarely covered by the recent decision of Special Bench of the Tribunal in the case of Sumitomo Mitsu Banking Corp. vs. DDIT 136 ITD 66 (Mum)(SB) wherein it has been held that interest paid by the Indian Branch of the assessee bank to its overseas head office is not chargeable to tax in India. As further held by the Special Bench in the said case, the provisions of sec.195 consequently would not be attracted in case of such payment of interest by the Indian Branch to overseas Head office and the question of disallowance of the said interest by invoking the provisions of sec.40(a)(i) does not arise. Respectfully following the said decision of the Special Bench of this Tribunal, we uphold the impugned order of the Ld. CIT (A) giving relief to the assessee on both the issues involved in this appeal of the revenue and dismiss the said appeal.”

6. Following the decisions of the ITAT as supra we don't find any merit in the grounds of appeals of the Revenue. Further, it is also clear from the findings of the ld. CIT(A) wherein held that it is not necessary to invoke provision of section 163 and give notice u/s 163 because the branch and the head office were the same entity and inadvertently at the concluding part he stated it was necessary to issue notice under section 163 of the Act. Therefore, the grounds of appeals no. 1 to 3 of the revenue stand dismissed.

Ground No. 4 to 8:

3. The TPO has passed order u/s 92CA(3) of the Act on 23.12.2015 where adjustment u/s 92CA(3) of Rs.2,38,66,708/- was made towards compensation received sought by the assessee in the international transaction relevant to issuing of bank guarantee on the strength of

back to back guarantee by the AEs. Accordingly, the AO has made adjustment of Rs.2,38,66,706/- to the total income of the assessee. The fact in brief pertaining to Transfer Pricing adjustment on account of back to back counter bank guarantee is that during the year certain overseas branches of Mizuho Cooperative Bank Ltd. & Mizuho Bank Ltd., having clients who required guarantees to be issued in India, therefore those overseas branches requested MHCB, India branch to provide such guarantees to the beneficiaries and provide back to back counter guarantee to MHCB, India branch to cover any financial liability that MHCB, India Branch would incur on behalf of these overseas branches in connection with guarantees issued to Indian clients on their behalf. The risk of discharging the bank guarantees was taken by the branches issuing counter bank guarantees and MHCB/India branch provides support services in connection with processing of these bank guarantees. After considering that in case of Japanese bank the funding cost was lower than the nationalised bank, in India, the Id. CIT(A) has recomputed the commission for guarantee by making an addition of 10% increase in the rate of commission which has been charged by the assessee to arrive at the arm's length rate.

4. Therefore, the Id. CIT(A) directed the assessing officer to recompute the commission for guarantee by making an addition of 10% increase in the rate of commission being charge by the assessee to arrive at the arm's length rate. The relevant part of the finding of the Id. CIT(A) is reproduced as under:

“4.2 Issuance of Bank guarantees to the clients against counter guarantee issued by overseas AE's:-

Rate of guarantee commission depends on several following factors:

Charging of Guarantee commission varies from transaction to transaction and depends on following factors.

- *Term and condition of issuance of bank guarantee*

- Risk undertaken by the bank on issuance of bank guarantee
- Cost of issuance of bank guarantee
- Credit rating of customer
- Relationship with the customer
- Security Involved in issuance of bank guarantee
- Quantum of guarantee
- Period of guarantee
- Economic and business Interests

Nature and terms of International transactions

Certain overseas branches of Mizuho Corporate Bank Ltd and Mizuho Bank Ltd have clients who require guarantees to be issued in India. Given that these clients are located in India, the overseas branches of Mizuho Corporate Bank Ltd and Mizuho Bank Ltd have requested MHCB, India Branch to provide such guarantees to the beneficiary and provide a back to back counter-bank guarantee to MHCB, India Branch to cover any financial liability that MHCB, India Branch would incur on behalf of these overseas branches in connection with guarantees issued to Indian clients on their behalf. In case where the client of the overseas branch defaults and the guarantee would be invoked then under the back to back guarantee issued to MHCB, India

Branch, the overseas branch would make the payment to MHCB, India Branch which would then onward make the payment to the beneficiary in India.

In connection with the aforementioned transaction, MHCB, India Branch provides support services towards processing of these guarantees such as receiving swift instructions, issuing the guarantee on stamp paper and couriering the same to the party in India, maintenance of log of original documents, sending reports on a periodic basis, reconciliation of transactions received versus those processed etc.

In the instant case, the entire risk of discharging the bank guarantees is borne by the overseas branches issuing the Counter bank guarantee and MHCB, India Branch provides support services in connection with the processing of the bank guarantees.

Functions Performed

Summary of functions performed vis-à-vis this transaction is tabulated as follows:

Type of Functions	MHCB India Branch	Overseas AEs
Issue of guarantee to client	Yes	No
Issue of Guarantee to MHCB india Branch	No	Yes
Processing of Bank Guarantees	Yes	No
Execution of counter bank guarantee	No	Yes
Risk of Liability on guarantee being invoked	No	Yes

Risk Analysis

Briefly summarized below are some of the key business risks, faced by transacting entities in relation to support services rendered by MHCB, India Branch towards processing of these guarantees

➤ *Credit risk*

Guarantees issued by MHCB, India Branch are covered by a counter-bank guarantee issued by the overseas branches and accordingly, MHCB, India Branch carries no risk in its books.

➤ *Foreign exchange risk*

Where MHCB, India Branch is called to discharge a guarantee on behalf of the overseas branches, it would first receive the monies and then discharge the same and accordingly, there is no foreign exchange risk on MHCB, India Branch.

Further, MHCB, India Branch would receive processing fees from its AEs in foreign currency. As there could be differences in the USD, Yen and Indian rupee conversion rates as on the date of receipt of remittances and the Booking date there is an element of foreign exchange risk on MHCB, India Branch.

The risk profile for the entities in respect of the said transaction has been summarized below.

<i>Type of Function</i>	<i>MHCB, India Branch</i>	<i>AEs</i>
<i>Credit Risk</i>	<i>NO</i>	<i>Yes</i>
<i>Foreign exchange risk – Discharging of guarantees</i>	<i>NO</i>	<i>Yes</i>
<i>Foreign exchange risk Processing fees</i>	<i>Yes</i>	<i>No</i>

Using the CUP method, MHCB, India Branch is transacting with its overseas AEs at arm's length in respect of bank guarantee Commission (as defined in Section 92F of the Act).

In view of the above contention, the entire risk of discharging the bank guarantees is borne by the overseas branches issuing the Counter bank guarantees and MHCB, India Branch provides support services in connection with the processing of the bank guarantees.

The Learned AO has erred in considering the guarantee fees charged by the Indian Bank as comparable, without considering the fact that Funding cost is higher for the nationalized banks whereas ours being a Japanese bank where the funding cost is low and hence the said guarantees can be issued at lower rates and accordingly the Arm's Length Price for counter bank guarantee commission is justified.

Also in AY 2011-12 our grounds of appeal on the issue of percentage on guarantee commission was accepted by the learned CIT (A).The CIT(A) has passed the impugned order directing the AO to recomputed the commission for guarantee by making an addition of 10% increase in the rate of commission currently being charged by the appellant to arrive at the arm's length rate. The copy of the CIT (A) is enclosed herewith for your ready reference and record as Annexure III.

Request you to kindly consider the above factors and treat the same at ALP.”

5. During the course of appellate proceedings before us the ld. Counsel at the outset submitted that identical issue on similar facts has been decided by the ITAT in the assessment year 2010-11 to 2011-12

vide ITA No. 2785/Mum/2017 in favour of the assessee on 24.08.2022 therefore, the case of the assessee squarely covered by the decision of ITAT.

On the other hand, the ld. D.R relied on the order of the A.O.

6. Heard both the sides and perused the material on record. With the assistance of the ld. Representatives we have perused the decision of ITAT in the case of 2785/Mum/2017. The relevant part of the decision is reproduced as under:

“17. We have considered the rival submissions and perused the material available on record. In the present case, certain overseas branches of Mizuho Corporate Bank Ltd and Mizuho Bank Ltd have clients who require guarantees to be issued in India. Given that these clients are located in India, the overseas branches of Mizuho Corporate Bank Ltd and Mizuho Bank Ltd request the Indian branch to provide such guarantees to the beneficiary and provide a back-to-back counter bank guarantee to the Indian branch. It is the plea of the assessee that such back-to-back counter bank guarantee is to cover any financial liability that Indian branch would incur on behalf of these overseas branches in connection with the guarantees issued to Indian clients on their behalf. It is further submitted that where the client of the overseas branch defaults and the guarantee would be invoked then under the back-to-back guarantee issued to Indian branch, the overseas branch would make the payment to Indian branch, which would then onward make the payment to the beneficiary in India. In this regard, it is also the submission that Indian branch provide support services towards processing of these guarantees such as receiving swift instructions, issuing the guarantee on stamp paper and couriering the same to the party in India, maintenance of log of original documents, sending reports on project basis, reconciliation of transactions received versus those processed etc. Thus, as per the assessee the entire risk of discharging the bank guarantee is borne by the overseas branches issuing the counter bank guarantee. As per the assessee, Indian branch only faces element of foreign exchange risk as it would receive processing fee from its associated enterprise in foreign currency and there could be difference in USD, Yen and Indian rupee conversion rates as on the date of receipt of remittance and the booking date. As per Form No. 3CEB, forming part of the paper book, the assessee claimed to have applied CUP method for determining the arm's length price of the international transaction of issuing bank guarantee against counter guarantee issued by the associated enterprise. The TPO rejected the contention of the assessee and noted that functions performed, assets used and risk undertaken by the assessee for both transactions i.e. for inter-bank indemnity transaction with its associated enterprises and for the guarantee issued to the third-party customers without any back-to-back guarantee is same. The TPO also noted that even for the similar third party transactions the bank always secures itself fully with collateral security to cover against the risk. Ultimately, the TPO, by applying the rate charged by the Bank of Baroda for issuance of guarantee against 100% counter guarantee by reputed international

banks, made the adjustment in the present case. During the course of hearing, learned AR placed reliance upon the decision of coordinate bench of the Tribunal in *Australia and New Zealand Banking Group Ltd. (supra)*. We find that the basic facts of the aforesaid case are as under:

“3.5. At the outset, we find that overseas branches of ANZ have clients who require guarantees to be issued to the beneficiaries in India. Since the beneficiaries are situated in India, the overseas branches of ANZ are situated in India. The overseas branches of ANZ request the assessee to provide such guarantees to the beneficiaries and in turn provide a back to back inter-bank guarantee/indemnity to assessee to cover any financial liability that assessee may incur in connection with guarantees issued to Indian beneficiaries on behalf of overseas ANZ branches. This is the prime function / activity carried out by the assessee with regard to the impugned international transaction. In case where the client of the overseas branch defaults and the guarantee would be invoked then, under the back to back guarantee issued to assessee, the overseas branch would make payments to assessee which would onward then make the payment to the beneficiary in India.”

18. The coordinate bench of the Tribunal, in the aforesaid decision, noted that the taxpayer does not bear any risk in its books as it is fully protected by overseas counter guarantee/indemnity and there is also no foreign exchange risk as whenever the taxpayer is called upon to discharge the guarantee on behalf of the overseas branches, the taxpayer would first receive the money from overseas branches because of the existing counter guarantee, and then it would discharge the same. The coordinate bench further noted in the aforesaid decision that the assessee received the processing fee from the associated enterprise in foreign currency and the said fees is received immediately after the invoices are raised for the same, thereby the risk of exchange fluctuation would be very negligible due to reduce time span involved therein. We find that the coordinate bench of the Tribunal in para 3.7 of the aforesaid decision also considered the details of fee charged by the taxpayer for each type of services rendered by it. Further, in the aforesaid decision, as noted by the coordinate bench in para 3.7, the taxpayer also filed details of guarantees.

19. However, in the present case, apart from the claim of the assessee that guarantees have been issued to the clients of the overseas branches, in respect of which counter/inter-bank indemnity was executed by the overseas branches, the assessee in the factual paper book has filed the details of commission earned from the bank guarantee issued on behalf of the overseas branches. We find that there is no detail/ document with regard to the counter guarantee/indemnity executed by the overseas branch. Also there is nothing available on record in support of assessee's claim that money has been charged to the overseas branch and overseas branch recover these amounts from the third-party clients and paid them to the assessee. There are also no details regarding whether the aforesaid process of charging and payment by the overseas branch is prior to or post the discharge of bank guarantee in favour of the beneficiary in India, in case of default. Thus, no details have been furnished to support the claim that no risk was borne by the Indian branch. Further, though in Form No. 3 CEB assessee has claimed to determine the arm's length price of international transaction of issuing bank guarantee against the counter guarantee issued by the associated enterprise by applying CUP method, however, there are no details available on record as to how such benchmarking

has been carried out by the assessee. On the other hand, we find that the TPO, by considering the rate charged by Bank of Baroda for issuance of guarantee against 100% counter guarantee by reputed international banks, has made the transfer pricing adjustment by considering it to be an appropriate CUP. However, there is no further analysis as to how the said transaction is an appropriate CUP to the transaction undertaken by the assessee's Indian branch considering the FAR in both the transactions and whether any adjustment for differences as per Rule 10B(1)(a) of the Income Tax Rules is possible. We find that the learned CIT(A) vide impugned order on an ad hoc basis directed computation of commission for guarantee by making addition of 10% increase in the rate of commission charged by the assessee to arrive at the arm's length rate. Thus, in view of the above, we deem it appropriate to remand this issue to the file of TPO for de novo benchmarking of impugned international transaction of issuing bank guarantee against counter guarantee issued by the associated enterprise. The assessee is directed to produce all the documents before the TPO in support of its claim. Further, the TPO shall be at liberty to call for any details or documents for proper benchmarking of the impugned international transaction. In the remand proceedings, the assessee shall have the liberty to file any alternative benchmarking in respect of the aforesaid impugned transaction. As a result, grounds no. 5 to 9 raised in Revenue's appeal are allowed for statistical purpose."

7. As discussed the fact of the assessment year 2012-13 as well as the issue involved are identical to the assessment year 2010-11 except with variation of amount which has been adjudicated by the ITAT vide decision dated 24.08.2022 as discussed supra. Therefore, following the decision of ITAT we restore this issue to the file of TPO for adjudicating de novo as directed by the ITAT in the decision as referred supra, therefore, the appeal of the revenue is allowed for statistical purposes.

ITA Nos. 2868 /Mum/2022

Ground No. 1 to 3:

8. As the facts and the issue involved in these grounds of appeals are the same as grounds no. 1 to 3 vide supra in ITA No. 2867/Mum/2022 therefore, applying the same findings mutatis mutandis, these grounds of appeal of the revenue are also dismissed.

ITA No. 2869/Mum/2022

Ground No. 1 to 3:

9. As the facts and the issue involved in these grounds of appeals are the same as grounds no. 1 to 3 vide supra in ITA No. 2867/Mum/2022 therefore, applying the same findings mutatis mutandis, these grounds of appeal of the revenue are also dismissed.

Ground No. 4 to 8:

10. As the facts and the issue involved in these grounds of appeals are the same as grounds no. 4 to 8 vide ITA No. 2867/Mum/2022 therefore, applying the same findings mutatis mutandis, these ground of appeal of the revenue are allowed for statistical purpose.

ITA No.2870/Mum/2022

11. As the facts and the issue involved in these grounds of appeals are the same as grounds no. 1 to 3 vide supra in ITA No. 2867/Mum/2022 therefore, applying the same findings mutatis mutandis, these grounds of appeal of the revenue are also dismissed.

ITA No.2871/Mum/2022

12. As the facts and the issue involved in these grounds of appeals are the same as grounds no. 1 to 3 vide supra in ITA No. 2867/Mum/2022 therefore, applying the same findings mutatis mutandis, these grounds of appeal of the revenue are also dismissed.

Ground No. 4 to 8:

13. As the facts and the issue involved in these grounds of appeals are the same as grounds no. 4 to 8 vide ITA No. 2867/Mum/2022 therefore, applying the same findings mutatis mutandis, these ground of appeal of the revenue are allowed for statistical purpose.

ITA No.2872/Mum/2022

14. As the facts and the issue involved in these grounds of appeals are the same as grounds no. 1 to 3 vide supra in ITA No. 2867/Mum/2022 therefore, applying the same findings mutatis mutandis, these grounds of appeal of the revenue are also dismissed.

15. In the result the grounds no. 1 to 3 in all the appeals of the Revenue stand dismissed and grounds no. 4 to 8 in all the appeals of the Revenue are allowed for statistical purposes.

Order pronounced in the open court on 17.01.2023

Sd/-

(Aby T Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 17.01.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.