IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE

Before Shri George George K, JM & Ms.Padmavathy S, AM

IT(TP)A No.2835/Bang/2017 : Asst.Year 2013-2014

M/s.Dell International Services India Private Limited Divyashree Greens, Sy.Nos.12/1, 12/2A & 13/1A,Challaghatta Village,Varthur Hobli Bengaluru – 560 071. **PAN : AAACH1925Q.**	v.	The Additional Commissioner of Income-tax (LTU) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.T.Suryanarayana, Advocate
Respondent by : Sri.Praveen Karanth, CIT-DR

Date of Hearing : 13.01.2023		**Date of Pronouncement : 20.01.2023**

O R D E R

Per George George K, JM :

This appeal at the instance of the assessee is directed against final assessment order dated 30.11.2017 passed u/s 143(3) r.w.s. 144C of the I.T.Act. The relevant assessment year is 2013-2014.

2. The brief facts of the case are as follows:

The assessee is a company, engaged in the business of manufacturing and trading in computer systems including support and maintenance services and leasing of computers. For the assessment year 2013-2014, the return of income was filed on 30.11.2013 declaring total income of Rs.22,31,24,760. The assessment was selected for scrutiny and notice u/s 143(2) of the I.T.Act was issued on

11.09.2014. During the course of assessment proceedings, it was noticed that the international transactions entered by the assessee with its Associated Enterprises (AEs) had exceeded the prescribed limit, hence, the matter was referred to the Transfer Pricing Officer (TPO) to determine the Arm's Length Price (ALP) of the said transaction. The TPO passed order u/s 92CA of the I.T.Act on 19.10.2016. In the said order, the TPO had proposed following adjustments:-

Manufacturing segment	Rs.307,69,14,132
Technical service provided to AEs (ITES)	Rs.3,08,20,552
Marketing Service Charges receivable from AEs	Rs.1,28,28,101
Warranty charges received / receivable from Dell India	Rs.141,37,00,000
Total	Rs.453,42,62,785

3. Pursuant to the TPO's order, the draft assessment order was passed u/s 143(3) r.w.s. 144C of the I.T.Act on 23.12.2016. In the said draft assessment order, the assessee incorporated the TP adjustment proposed by the TPO and also made certain corporate tax additions / disallowances.

4. Aggrieved by the draft assessment order, the assessee filed objections before the Dispute Resolution Panel on 24.01.2017. The DRP vide its directions dated 20.09.2017 disposed of the objections raised by the assessee. The DRP granted partial relief to the assessee. The assessee got relief of Rs.17,95,03,416 with regard to the TP adjustment and partial relief was also granted in the corporate tax segment. Pursuant to the DRP's directions, the impugned final assessment order

was passed on 30.10.2017. In the final assessment order, the A.O. has made following additions / disallowance:-

Additions / Disallowances		
Sl. No.	Particulars	Amount (Rs.)
(i)	Transfer Pricing Adjustments	435,47,59,369
(ii)	Disallowance u/s 40(a)(ia) for short deduction of tax	4,18,320
(iii)	Disallowance of rebate and volume discount incurred and stock and sell (SNS) model of distribution	52,42,23,354
(iv)	Deferred revenue / unearned revenue classified under liabilities	100,30,45,893
(v)	Disallowance of claim u/s 40(a)(a) / 40(a)(ia) (51830340 + 163279058)	21,51,09,398
(vi)	Capital expenditure	2,67,16,286
(vii)	Less : Depreciation on Capital Expenditure for A.Y. 2009-10	86,88,273
(viii)	Less : Depreciation on Capital Expenditure for A.Y. 2012-13	38,26,423
(ix)	Interest on delayed payments of TDS	26,349
(x)	Central Sales-tax – Rajasthan	2,006

5. Aggrieved by the final assessment order, the assessee has preferred the present appeal before the Tribunal. The assessee has raised seven grounds under the transfer pricing segment and nine grounds under the corporate tax segment. The grounds raised read as follows:-

"I. Transfer pricing

1. Order/ Directions bad in law and on facts

- *The order issued by the Additional Commissioner of Income-tax (ACIT'), Large Tax Payers Unit CLTU'), Bangalore [(Assessing Officer') or (AO')], under section 143(3) read with section 144C (13), pursuant to the directions issued by the Hon'ble Dispute Resolution Panel ['Ld. DRP'], is bad in law and on facts and is in violation of the principles of natural justice.*

- *Without prejudice to the generality of the above, the order*

issued by the Ld. AO is bad in law insofar as the fact that the Ld. AO did not issue to Dell International Services India Private Limited (for the merged entity Dell India Private Limited) CDIPL', 'the Appellant or 'the Company'), a show cause notice, as per proviso to section 92C(3) of the Income-tax Act, 1961 ['the Act'].

- *The directions issued by the Ld. DRP did not take cognizance of the objections raised by the Appellant in relation to the transfer pricing matters with respect to the ad hoc adjustments proposed for the manufacturing segment and warranty charges.*

- *The order passed by the Ld. AO is bad in law in so far as not following the directions issued by the Ld. DRP, which are binding on the Ld. AO, without considering the provisions of section 144C(10) of the Act.*

2. ***Determination of arm's length price by the Ld. TPO in relation to the Manufacturing Segment***

- *The Ld. DRP and Ld. AO/ Ld. TPO erred in rejecting the value of international transaction of manufacturing activity, as recorded in the books of account, at an arm's length price amounting to INR 160,511,692 on net basis.*

- *The Ld. DRP and the Ld. AO/ Ld. TPO erred in determining a· new arm's length price in substitution of the arm's length price determined by the Appellant, thereby undertaking a transfer pricing adjustment of INR 3,076,914,132 on total turnover of this segment.*

- *The Ld. AO / Ld. TPO erred in adjusting the entire manufacturing segment based on mere surmises and conjectures and completely ignoring the Appellant's submission that the transfer pricing adjustment, if any, should be made only to the international transactions with associated enterprises i.e. INR 160,511,692 on net basis. The Ld. DRP further erred in confirming the same*

- *Without prejudices to the generality of the foregoing, the Ld. AO j Ld. TPO and the Ld. DRP grossly erred in not granting an appropriate adjustment on account of under-utilisation of the Appellant's capacity in respect its manufacturing segment for the relevant year.*

- *The Ld. AO / Ld. TPO erred in rejecting the Appellant's basis of computing the capacity adjustment for its manufacturing*

segment. The Ld. DRP erred in confirming the same.

- *The Ld. AO/ Ld. TPO erred to appreciate that it is a settled law that adjustments on account of idle capacity have to be made while doing the comparability analysis and that reasonably accurate adjustments are required to be made on factors that could materially affect the amount of net profit margin. The Ld. DRP erred in confirming the same.*

- *The Ld. AO and Ld. TPO should have appropriately considered collating information in the absence of data available in public domain of companies selected as comparable companies, for their capacity utilization.*

- *The Ld. AO and Ld. TPO erred in not following the directions of the Ld. DRP wherein the Ld. DRP had directed that the cherry picked comparables viz. Smart Card I T Solutions Ltd, Epitome Components Private Limited, Micropack Limited and Sark Synertek were ought to be rejected.*

- *Without prejudices to ground no. 2.8 above, the Ld. AO j Ld. TPO and the Ld. Panel erred in concluding the aforesaid companies as comparable despite these companies being functionally dissimilar to the Appellant.*

- *The Ld. AO and Ld. TPO erred in including Electronics Corporation of India Ltd. despite the company being functionally dissimilar to the Appellant. The Ld. DRP also erred in confirming the same.*

3. ***Erroneous adjustment of Rs. 141.37 Crores as Warranty cost to be received from AEs***

- *The Ld. AO and Ld. TPO erred on facts in considering that the Appellant undertakes warranty obligations for the direct sales made by Dell Global B.V., The Netherlands, Singapore Branch CDGBV'). This is based on mere surmises and conjectures and completely ignoring the facts and the functions assets and risk analysis of the Appellant in connection to the same. The Ld. DRP also erred in confirming the same.*

- *The Ld. TPO and Ld. AO erred on facts and in law in arbitrarily proposing an adjustment on account of warranty cost in relation to the marketing support services, to the tune of INR 121.27 Crores, which is one-third of total warranty expenses, without considering the facts of the Appellant. The Ld. DRP erred in confirming the same.*

- *The Ld. TPO and Ld. AO erred in not following the directions*

of the Ld. DRP for the previous years and arbitrarily applied a mark-up of INR 12.10 Cr to the adhoc warranty cost allocated. The ld.DRP erred in confirming the same.

- *Without prejudices to the above grounds, the Ld. TPO and Ld. AO did not take cognizance of the details filed by the Appellant in connection to the direct sales made in India by its associated enterprise viz. Dell Global B.V., The Netherlands, Singapore Branch CDGBV').*

- *The Ld. TPO and Ld. AO further erred in not restricting the TP adjustment in proportionate to the DGBV sales made in India. The Ld. DRP erred in confirming the same.*

- *Without prejudice to the above grounds, the Ld. TPO inadvertently erred in determining the arm's length price of INR 141.37 Cr and made an excess transfer pricing adjustment of INR 8 Cr on account of arithmetical inaccuracy.*

4. Erroneous data used by the TPO

- *The Ld. AO and Ld. TPO has erred in law and the Ld. DRP further erred in confirming use of data, which was not contemporaneous and which was not available in the public domain at the time of conducting the transfer pricing study by the Appellant.*

- *The Ld. DRP, the Ld. AO and Ld. TPO erred in law and on facts in disregarding the application of multiple-year data while computing the margins of comparable companies.*

5.Non-allowance of appropriate adjustment to the comparable companies by the Ld. DRP and AO/ TPO

- *The Ld. AO and Ld. TPO erred in law and on facts in not allowing appropriate adjustments under Rule 10B to account for, inter alia, differences in (i) accounting practices, (ii) marketing expenditure, (iii) research and development expenditure, (iv) working capital, (iv) risk profile and (v) capacity adjustment to account between the Appellant and the comparable companies.*

6. Variation of 3% from the arithmetic mean

- *The Ld. AO and Ld. TPO erred in law in not granting the benefits of proviso to section 92C(2) of the Act available to the Appellant.*

7. Relief

- *The Appellant prays that the Ld. AO be directed to grant all-such relief arising from the preceding grounds as also all relief consequential thereto*

II Corporate Tax

1. ***Disallowance under section 40(a)(ia) of the Act for short deduction of tax - Rs. 418,320***

- *The learned Assessing Officer ("AO") has erred in disallowing an amount of Rs. 418,320 under section 40(a)(ia) of the Act for short-deduction of taxes.*

- *The Hon'ble DRP and learned AO erred in not appreciating that section 40(a)(ia) of the Act is attracted in cases of non-deduction of taxes or for non-payment of taxes after deduction within the specified time prescribed under the provisions of the Act.*

- *The Hon'ble DRP and the learned AO fails to appreciate the judicial precedents put forth by the Appellant in this regard.*

2. ***Disallowance of Rebate and Volume discount incurred under Stock and Sell (SNS) model of distribution under section 40(a)(ia) of the Act - Rs. 524,223,354***

- *The Hon'ble DRP and learned AO has erred in disallowing rebate and volume discount given to distributors under SNS model of distribution under section 40(a)(ia) of the Act, without appreciating that the provisions of TDS is not applicable on such expenses.*

- *The Hon'ble DRP and learned AO has erred in upholding that the provisions of section 194H is applicable on such rebate and volume discount.*

- *The Hon'ble DRP and the learned AO ought to have considered the judicial precedents, wherein it has been held that the provisions of TDS are not applicable on rebate and volume discount.*

- *The Hon'ble DRP and learned AO has erred in stating that the transaction is not on principal-to-principal basis merely because the distributor is a reseller.*

- *The Hon'ble DRP and learned AO ought to have appreciated that rebate is offered to distributors who purchase a pre-determined quantity and the same is not paid as commission to sales agent.*

- *The Hon'ble DRP and learned AO has also erred in stating that the ownership of the distributor is temporary without appreciating that once the Appellant sells the goods, the title is passed on to the distributor and any unsold goods would not be returned to the Appellant.*

- *The Hon'ble DRP and learned AO has erred in stating that there is a service component in the course of buying and selling of goods for which commission/ rebate is provided.*

- *The Hon'ble DRP and learned AO has erred in stating that the case laws relied by the Appellant are distinguishable from the facts of the present case.*

3 Disallowance of Deferred revenue - Rs. 100,30,45,893

- *The Hon'ble DRP and the learned AO has erred in disallowing deferred revenue by placing reliance on the assessment order for AY 2009-10 and AY 2010-11.*

- *The Hon'ble DRP and learned AO ought to have appreciated that out of the revenue from contract for services extending beyond the current financial year, only the proportionate revenue pertaining to the current year can be assessed to tax. The portion of revenue in relation to the services to be provided in future, the income would accrue only during such period and not in current financial year.*

- *The Hon'ble DRP .and learned AO has erred in not accepting the matching concept of accounting enunciated by the Generally Accepted Accounting Principles.*

- *The Hon'ble DRP and learned AO fails to appreciate that the accounting policy followed by the Appellant Company is in line with the matching principles and has recognized the revenue in respect of contracts spanning over current financial year proportionately in the year of providing the services. Subsequently, following the matching concept, the cost in relation to providing such services has been recognized in the respective year.*

- *The Hon'ble DRP and learned AO has erred in not considering the fact that, recognizing the entire consideration of the contract spanning more than one financial year, as income during the current year would tantamount to taxing the gross receipts and not the profits or gains arising from such sale.*

- *The Hon'ble DRP and learned AO ought to have appreciated*

the fact that, what is sought to be taxed under the head "Profits and Gains of Business or profession" is 'profits and gains' and not 'gross receipts'.

- *The Hon'ble DRP and learned AO has failed to appreciate the accounting policy adopted by the Appellant to defer the proportionate cost of purchase of Software License over the period of Software License contract. Notwithstanding the above, having brought to tax, the entire consideration from trading in Software Licenses, the portion of cost of purchase deferred for recognition over the period contract ought to have been allowed as deduction.*

- *Notwithstanding and without prejudice to the above contention, we submit that should the said deferred revenue be taxed in the current year, corresponding relief ought to be provided in the future years, wherein the same is offered to tax.*

4. ***Disallowance of claim under section 40(a)(i)/40(a)(ia) of the Act - Rs. 215,109,398***

- *The Hon'ble DRP and learned AO has erred in disallowing Rs. 51,830,340 under section 40(a)(ia) of the Act on the contention that the Appellant Company has not provided details in respect of deduction of tax at source.*

- *Without prejudice to the above, The Hon'ble DRP and learned AO has erred in not considering the arguments that the provisions of TDS is not applicable on rebate under stock and sell model amounting to Rs. 163,279,058*

- *The Hon'ble DRP and learned AO has erred in not considering the submission made by the Appellant Company that it had added back the said provision amounts in the computation of income of AY 2012-13 and the same was consequently claimed as a deduction in the computation of income of AY 2013-14 on reversal basis.*

- *The Hon'ble DRP and learned AO has erred in disallowing the expenses without appreciating the fact that the same had already suffered tax in AY 2012-13 and disallowing the same again in AY 2013-14 would amount to double taxation of such provision of expenses.*

5. Disallowance of fixtures and stores interiors expenses - Rs. 26,716,286

- *The Hon'ble DRP and learned AO has erred in disallowing an*

amount of Rs. 26,716,286 in the nature of fixture and stores interiors expenses stating that the expenses are capital in nature.

- *The Hon'ble DRP and learned AO ought to have appreciated the fact that the expenditure is incurred by the Appellant for maintaining uniformity in the franchisee stores and the Appellant neither owns nor derives any enduring benefit on such expenditure incurred. Thus, the said expenditure is revenue-in-nature and deductible under section 37(1) of the Act.*

- *The Hon'ble DRP and learned AO has erred in stating that the investment is one time and the life time of the assets is more than one year giving enduring benefit to the Appellant without appreciating that the expenditure incurred by the Appellant has not resulted in bringing into existence any such asset or advantage to the Appellant but only facilitates in running the business of the Appellant efficiently by maintaining uniform standards across all Dell franchise showrooms.*

- *The Hon'ble DRP and the learned AO erred in not relying on the judicial precedents put forth by the Appellant in this regard.*

6. Disallowance of interest under section 201(1A) on delayed payment of TDS - Rs. 26,349

- *The Hon'ble DRP and learned AO has erred in disallowing interest under section 201(lA) of the Act on delayed payment of TDS amounting to Rs. 26,349 contending that the same has no connection with the business carried on by the Appellant.*

- *The Hon'ble DRP and learned AO ought to have appreciated that such interest under section 201(lA) of the Act is compensatory in nature and has arisen in • .1 the course of carrying on business and therefore should be allowable under section 37 of the Act.*

- *The Hon'ble DRP and the learned AO erred in not relying on the judicial precedents put forth by the Appellant in this regard.*

7. Disallowance of unpaid Central Sales tax ("CST") - Rs.2,006

- *The Hon'ble DRP and learned AO has erred in disallowing CST not appreciating the fact that CST amount was not routed*

through the profit and loss account and hence, the same should not be added back in the computation of income.

- *Notwithstanding the above, if the above-mentioned expense is held to be disallowed in the current year, the learned AO should be directed to allow the same on payment basis.*

- *The Hon'ble DRP and the learned AO erred in not relying on the judicial precedents put forth by the Appellant in this regard.*

8. Short credit of TDS - Rs. 439,706,585

- *The learned AO has erred in not following the directions of the Hon'ble DRP vide order dated 20 September 2017, as the Hon'ble DRP has directed the learned AO to verify the latest form 26AS and provide relief accordingly.*

- *The learned AO erred in not considering the submission filed on 19 October 2017, post directions, wherein the Appellant has submitted the copy of form 26AS which reflects TDS credit amounting to 439,706,585.*

9. Levy of interest under section 234B of the Act - Rs.504,357,205

- *The learned AO has erred in levying interest under section 234B of the Act amounting to Rs. 504,357,205.*

The Appellant craves leave to add, alter, rescind and modify the grounds provided herein above or produce further documents, facts and evidence before or during the course of hearing of this appeal.

For the above and any other grounds, which may be raised at the time of hearing, it is prayed that necessary relief may be provided."

We shall adjudicate the above grounds as under:

I Transfer Pricing (Manufacturing Segment) [Ground I(2)]

6. During the relevant assessment year, the assessee had performed some manufacturing activities, rendered technical and support services to the AEs, etc. The assessee in its TP

study, treated the ALP of the aforesaid international transaction undertaken by the assessee with its AEs at arm's length. On a reference by the A.O. to the TPO, the TPO determined TP adjustment aggregating to Rs.453,42,62,785. One of the adjustments was with regard to the manufacturing segment amounting to Rs.307,69,14,132. The method adopted by the assessee was TNMM in the TP Study. The assessee had selected six comparables using data base of Prowess Capitaline Plus and arrived at the arithmetical mean of 2.36%. The TPO rejected the TP study of the assessee. The TPO adopted TNMM method as the most appropriate method and by applying certain filters, selected eleven comparables. (five comparables added by the TPO). The TPO reworked out the net margin on cost earned by the assessee at 0.87% by rejecting the adjustment made by the assessee towards under-utilized of capacity. The net mark up on cost earned by the assessee as computed by the TPO, the comparable selected by the TPO, computation of ALP and the TP adjustment made are detailed below:-

Net mark-up on cost earned by the assessee as computed by the TPO

Operating Income	Rs.5434,19,06,540
Operating Cost	Rs.5841,58,43,349
Operating Profit (Op. Income – Op.cost)	(Rs.47,39,36,809)
Operating / Net mark-up (OP/TC)	-0.87%*
Note : The assessee in the TP study had made an adjustment towards underutilized capacity, which the TPO rejected and arrived at a margin of (-)0.87%.	

Companies selected by TPO and the arithmetic mean of their PLIs :

Sl. No.	Company Name	Average (in %)
1.	BLG Electronics Limited	2.52
2.	Circuit Systems (India) Ltd.	2.90
3.	Fine-Line Circuits Limited	0.93
4.	VXL Instruments Limited	1.68
5.	TVS Electronics Limited	1.30
6.	Electronics Corporation of India Ltd.	6.04
7.	Smart Card IT Solutions Limited	12.01
8.	Epitome Components Pvt. Ltd.	5.19
9.	Sulakshana Circuits Limited	3.23
10	Micropack Private Limited	9.58
11	Sark Synertek Limited	7.36
	Arithmetic Mean	4.79

Computation of arm's length price by the TPO and the adjustment made:

Taxpayers operating revenue	Rs.5434,19,06,540
Taxpayers operating cost	Rs.5481,58,43,349
Taxpayers operating profit	Rs.(-) 47,39,36,809
OP/OR	-0.87%
Arm's length OP/OR	4.79%
Arm's length OP	Rs.260,29,77,323
Arm's length cost	Rs.5173,89,29,217
Adjustment u/s 92CA	Rs.307,69,14,132

7. Aggrieved by the adjustment made, the assessee filed objection before the DRP. The DRP rejected the assessee's contention seeking restriction of adjustment to the value of international transaction. The assessee's contention seeking grant of adjustment towards under-utilized capacity was also rejected by the DRP. The DRP directed the TPO to verify if certain companies feature in the search matrix and include the same if they so feature.

8. Aggrieved by the directions of the DRP, the assessee has raised this issue before the Tribunal. The assessee in the manufacturing segment, has raised the following issues before us:-

(i) TPO erred in not granting under-utilized capacity (Ground 2);
(ii) TPO erred in determining an adjustment in respect of the entire manufacturing segment, without restricting the same to the value of international transactions (Ground 2);
(iii) TPO erred in including Smart Card IT Solutions Ltd., Sark Synertek Limited, Electronics Corporation of India Ltd. (Ground 2).

We shall adjudicate the above issues raised before us under the manufacturing segment, as under.

Adjustment towards under-utilized capacity

9. It is claimed that the assessee had an installed capacity of 25,92,000 units as against which it operated only at a capacity of 13,74,695 units (i.e., the assessee had only utilized 53.04% of its installed capacity). The assessee had determined an adjustment of Rs.242,47,02,666 as the adjustment sought for the aforesaid under-utilized capacity. The TPO, however, rejected the assessee's claim for adjustment (refer page 7 to 11 of the TPO's order). The TPO held that it is an industrial phenomena and not affecting the

assessee specific. The view taken by the TPO was confirmed by the DRP in its directions (refer page 5 to 7 of the DRP's directions).

9.1 Aggrieved, the assessee has raised this issue before the Tribunal. It was submitted that the grant of adjustment towards utilized capacity is recognized under the Act and the Rules. In this context, the learned AR relied on the order of the Bangalore Bench of the Tribunal in the case of IKA India (P.) Ltd. v. ACIT reported in (2019) 101 taxmann.com 276 (Bangalore-Trib.) and Continental Automotive Components India (P.) Ltd. v. DCIT reported in (2022) 137 taxmann.co 246 (Bangalore-Trib.).

9.2 The learned DR took us through the reasoning of the TPO for rejecting the assessee's claim. The learned DR submitted that the downslide in the business is industry specific and therefore, no adjustment can be granted on account of under-utilized capacity.

9.3 We have heard rival submissions and perused the material on record. The TPO has rejected the adjustment sought by the assessee for the reason stated at pages 7 to 11 of the TP order. The TPO has stated that adjustment, if any, can be made to the operating cost of the comparable companies. The TPO has stated that under-utilization of capacity is due to general trend in the industry, which is also affecting the comparable. The TPO has stated that the

assessee was incorporated in the year 2003 and it is not the initial stage of operations. The adjustment is also rejected on the ground that the assessee has assumed 100% capacity utilization of the comparables. Further the TPO has stated that while calculating the adjustment of under-utilization of capacity, the assessee has considered all costs and there is no analysis of fixed cost, variable cost and semi variable cost. The DRP confirmed the findings of the TPO and also observed that the assessee, without prejudice, reduced its claim of adjustment from Rs.242.47 crore to Rs.138.84 crore.

9.3.1 From the submissions filed before the lower authorities, it is observed that the assessee has given details of under-utilization of capacity from assessment year 2011-2012 onwards and all the years have under-utilization of capacity. The assessee was incorporated in the year 2003. From the details available in the record, it is not clear if the installed capacity of 25,92,000 units is from the beginning of incorporation or was enhanced subsequently due to demand conditions. Further, no details are available on the record as to whether the utilization level improved in the subsequent years. No reason are given as to why there is under-utilization of capacity for 3 years. No details are given as to what is the general industry utilisation level. No doubt the details of comparables are not available in the public domain, but the assessee has not even explained the industry scene prevalent during the year and what are circumstances applicable in its case resulting in under-utilisation of capacity. No efforts are

made even to bring the details of industry utilization level or general industry trend on the record.

9.3.2 Further, entire cost after excluding raw material consumed, forex loss, provision of warrant and loss on sale of fixed assets has been considered for computing the capacity under-utilization adjustment. The TPO has rightly observed that all the costs cannot be removed for capacity under-utilization adjustment. It is beyond understanding how can costs like freight, commission, sub-contracting charges, rates & taxes etc can be considered for capacity under utilization adjustment. The approach of the assessee of taking all cost for adjustment is bereft of any merit. Further, adjustment cannot be made assuming 100% capacity of the comparables.

9.3.3 The assessee has relied on the decisions in the case of IKA India Private Limited v. ACIT (supra). The assessee in that case was in third year of operation. In the case on hand, the assessee is incorporated in 2003 and year under consideration is A.Y. 2013-2014. The decision of Continental Automotive Components India Pvt. Ltd. v. DCIT reported in (2022) 137 taxman.com 246 followed the decision in the case of IKA India Private Limited v. ACIT (supra) and remanded the case back to AO / TPO. In the instant case, the assessee is not in the initial year of operation and therefore, adjustment cannot be granted without analyzing additional factors. In the

case of IKA India Private Limited v. ACIT (supra), the Tribunal observed as follows:-

> *"33. The assessee has under-utilized capacity during the subject assessment year and is accordingly factually and legally eligible to an adjustment for the same. Therefore, such a benefit cannot be denied to the assessee only for the reason that the data about comparable companies is not available. Requiring the assessee to produce such a data which is not available in public domain would tantamount to requiring the Appellant to perform an impossible task. The only way to get the data in the current case, would be where the TPO collates the same from the comparable companies by exercising his powers under section 133(6) of the Act."*

9.3.4 We agree with the above observations that if the assessee has under-utilization capacity during the subject assessment year and it will be factually and legally eligible for an adjustment for the same. However, in the instant case, same is not demonstrated except stating the installed capacity and utilization level. For the aforesaid reasoning, we reject the plea of the assessee as regards the adjustment of under-utilization capacity. It is ordered accordingly.

Restriction of adjustment to the value of international transaction:

10. It is submitted that the TPO while determining the adjustment, took into consideration the revenue and the cost of the assessee at entity level without restricting to the value of the international transaction. The learned AR submitted that the TP adjustment is to be confined to the transaction with its AEs and not with its non-AEs. In support of this contention, the learned AR relied on the judgment of the

Hon'ble Bombay High Court in the case of CIT v. Pheonix Mecano (India) Pvt. Ltd. in ITA No.1182/2014 (judgment dated 07.06.2017). It was submitted that the Special Leave petition preferred by the Revenue against the judgment of the Hon'ble Bombay High Court was rejected by the Hon'ble Apex Court vide order dated 05.02.2018 in SLP No.4205/2018. Further the learned AR placed reliance on the order of the Bangalore Bench of the Tribunal in the case of IKA India (P.) Ltd. v. ACIT reported in (2018) 98 taxmann.com 312 (Bangalore-Trib.).

10.1 The learned DR supported the order of the TPO.

10.2 We have heard rival submissions and perused the material on record. The assessee operates on cost plus basis. For the year under consideration, the assessee had realized profit margin of 1.93%. The break-up of the transaction with the AE and the third party and the segmental working are as under:-

Break-up of Revenue

Particulars	Amount in INR	In % to total sales
Domestic manufacturing segment	4611,68,12,978	87%
Sales made to AEs segment i.e. the international transaction	675,36,79,232	13%
Total	5240,08,57,506	100%

Segmental workings:

Particulars	Domestic manufacturing	Sales made to AEs	Total manufacturing
Operating revenue	4758,82,27,308	675,36,79,232	5354,19,06,540
Operating cost	4547,19,46,530	662,56,48,497	5209,75,95,027
Operating profit	211,62,80,778	12,80,30,735	224,43,11,513
Profit margin	4.45%	1.93% (OP/OC)	

10.3 In terms of section 92CA of the I.T.Act, the A.O. can refer the matter to the TPO for computation of ALP in relation to the international transaction and the TPO had empowered compute the ALP only in respect of the international transaction. No adjustment can be made in respect of transaction entered into with non-AEs. Therefore, the action of the TPO to make TP adjustment at entity level instead of restricting it to international transaction is not legally correct. The Hon'ble Bombay High Court in the case of CIT v. Phoenix Mecano (India) Pvt. Ltd. (supra) had held that the determination of ALP ought to be restricted to the transaction with the AEs. The Special Leave Petition preferred by the Revenue against Hon'ble Mumbai High Court judgment was dismissed by the Hon'ble Supreme Court (supra). The Bangalore Bench of the Tribunal in IKA India (P.) Ltd. v. DCIT((supra) has also held that the transfer pricing adjustment should be only restricted to the AE related transaction of the assessee. The Tribunal in the said case, followed its earlier order in assessee's own case for assessment year 2012-2013 in ITA No.2129/Bang/2017 (order dated 17.09.2018). In the light of the aforesaid reasoning and the judicial pronouncements, cited supra, we direct the TPO to compute

the TP adjustment restricting the same to the transaction with the AEs. It is ordered accordingly.

Exclusion of certain companies from the comparable list

11. The assessee is seeking to exclude three companies from the comparable list, namely, (i) Smart Card IT Solutions Limited, (ii) Sark Synertek Limited and (iii) Electronics Corporation of India Ltd. We shall adjudicate the above three companies as under:-

(i) Smart Card IT Solutions Limited

11.1 It is submitted that the above company is engaged in card manufacturing and offers solutions and consulting services. It is claimed that the company manufactures and markets smart cards to customers internationally. It is submitted that the company offers SIM cards, RUID cards, calling cards, ID cards, driving licenses, vehicle registration cards, railway ticketing, RSBY and other insurance cards, loyalty cards, etc. none of which are similar to the product manufactured by the assessee. Therefore, it is submitted that it is functionally dissimilar and ought to be excluded from the final list of comparables.

11.2 The learned DR supported the order of the TPO and the DRP.

11.3 We have heard rival submissions and perused the material on record. The annual report of Smart Card IT

Solutions Limited is placed on record (page 93 to 185 of the Index of Annual report). On perusal of the annual report of the said company, we find that prima facie this company was engaged in smart card manufacturing and offers solutions and consulting services. Prima facie, Smart Card IT Solutions Limited have a different functional profile from that of the assessee. However, the test of functionality should be applied consistently to all the companies by both the assessee and the TPO. There cannot be cherry picking by either of them. Discussing the contention of the assessee, the TPO at page 12 of his order, had stated that even the assessee had considered comparables like BLG Electronics, Circuit Systems and Fine Line Circuits Limited, which are engaged in the business of manufacture of printed circuit boards and assessee has not objected to these companies as they have low profits. Therefore, we deem it fit to remand the issue of exclusion of Smart Card IT Solutions Limited to AO / TPO to apply the test of functionality consistently.

(ii) <u>Sark Synertek Limited</u>

12. It is submitted that this company is engaged in manufacturing of printed circuit boards, trading of switch gear and rendering of services. It is stated that the segmental details as regards these diverse services are unavailable, and therefore, the company cannot be selected as a comparable.

12.1 The learned DR supported the order of the TPO and the DRP.

12.2 We have heard rival submissions and perused the material on record. The annual report of the above company is placed on record from pages 186 to 223 of the index of Annual Report. On perusal of the financials of the said company, we find Sark Synertek Limited is engaged in the manufacture of printed circuit boards, trading of switchgear and rendering of services. Prima facie, the functions cannot be compared with that of the assessee. However, we find that the assessee had considered comparables like BLG Electronics, Circuit Systems and Fine Line Circuits Limited, which are also primarily engaged in the business of manufacture of printed circuit boards and the assessee has not objected to these companies to be taken as comparables, as they have low profits. As mentioned earlier, the test of functionality should be applied consistently to all the company by the TPO and assessee. There cannot be cherry picking by both the assessee as well as the TPO. Therefore, we are of the view that the matter needs to be examined afresh by the AO / TPO to apply the test of functionality consistently.

(iii) <u>Electronics Corporation of India Limited</u>

13. The DRP rejected the assessee's submission to exclude the above company from the list of comparables by stating that it was one of the comparables selected by the assessee in its TP study.

13.1 It is submitted that the above company is functionally dissimilar, and therefore, ought to be excluded. It was submitted that during the relevant under consideration, the company had effected sales of control and instrumentation systems for the prototype unit of 700MW, radiation detection equipment for seaports, C4I systems for missiles, communication radio, jammers, artillery fuzes, security systems for the Indian embassy, etc. which are different from the products manufactured by the assessee. More importantly, it is submitted that the company is a government of India enterprise and therefore, is not comparable to the assessee. In this context, the learned AR relied on the order of the Mumbai Bench of the Tribunal in the case of Thyssenkrupp Industries India (P.) Ltd. v. Addl.CIT reported in (2013) 33 taxmann.com 107 (Mum-Trib.).

13.2 The learned DR supported the orders of the TPO and the DRP.

13.3 We have heard rival submissions and perused the material on record. The annual report of ECI is placed on record from pages 1 to 92 (Index of Annual Report). The ESI is to be rejected as a comparable on the ground that it is a Government company. In this context, we rely on the order of the Mumbai Bench of the Tribunal in the case of Thyssenkrupp Industries India (P.) Ltd. v. Addl.CIT (supra). Though the assessee had taken this company as a comparable in its TP study, the assessee can raise objections

to the comparability of the said company before the TPO or before the appellate forums. In this context, we rely on the judgment of the Hon'ble Bombay High Court in the case of CIT v. Tata Power Solar Systems Limited reported in (2017) 77 taxmann.com 326 (Bombay) and the Special Bench of the Tribunal order in the case of DCIT v. Quark Systems Pvt. Ltd. reported in (2010) 4 ITR (Trib.) 606 (ITAT-Chd.).

Adjustment determined in respect of warranty cost [Ground I(3)]

14. It is claimed that the assessee provides telephonic support services for standard problems to the customers who purchase the products sold by Dell Global B.V. (DGBV) in India. It is submitted that the technical support services include services in relation to products sold by DGBV which are under warranty period. It is stated that in relation to warranty services, the cost of third party service provider and spares are borne by the assessee, and recovered from DGBV. It is submitted that the warranty obligation as regards the sales made by the AEs directly in India is wholly on the AEs and the assessee only provides co-ordination and support services as regards the same, for which it is compensated on cost plus 5%. It is stated that the co-ordination and support services includes call centre support, cost for third party services for assistance to customers of the AEs, etc. The cost of spares and parts to be replaced under the warranty are borne by the AEs.

14.1 The TPO made an adjustment on the basis that the assessee had not made any recovery towards warranty services and the out of pocket warranty charges paid to third parties. The DRP had issued certain directions, however, in the impugned final assessment order, the adjustment made under the segment was retained.

14.2 Aggrieved, the assessee has raised this issue before the Tribunal. It is submitted that the assessee had recovered expenditure incurred in respect of the warranty services, with a mark up of 5%, and therefore, no further adjustment is warranted. It was submitted that the above issue was considered by the Tribunal in assessee's own case for assessment year 2009-2010 in ITA No.269/Bang/2014 (order dated 18.03.2022) and also for assessment year 2010-2011 in IT(TP)A No.562/Bang/2015 & Ors. (order dated 18.08.2022).

14.3 The learned DR supported the order of the TPO.

14.4 We have heard rival submissions and perused the material on record. We find that an identical issue was considered by the Tribunal in assessee's own case for assessment years 2009-2010, 2010-2011 and also for assessment year 2012-2013. The issue raised in the above ground 3 of the transfer pricing segment was restored to the AO / TPO to examine whether the assesee had recovered expenditure incurred in respect of warranty services with the

mark-up of 5%. The relevant finding of the Tribunal in assessee's own case for assessment year 2009-2010, which has confirmed the direction of the DRP for the above said assessment year, reads as follows:-

> *"8.7 We have heard rival submissions and perused the material on record. The assessee had submitted that the amount of Rs.211.42 crore does not pertains to the sales made by the AEs in India and it pertains solely to the sales made by the assessee. The DRP in its directions held that the assessee was to show that expenses in relation to providing support services for AEs warranty obligation are either reduced from the cost or accounted for separately. The DRP in fact directed that since the services in relation to the warranty obligations are provided by third party service providers and the assessee is only coordinated for the same, no mark up is warranted. The relevant finding of the DRP in this regard reads as follows:-*
>
> > "6.6.6 The assessee is directed to demonstrate to the TPO that the above reimbursement has either been reduced from the costs or accounted for separately. In absence of such demonstration, the TPO can take the above to be a part of the warranty costs debited to the P&L account and effect suitable adjustment. Since the services related to warranty are being handled by a third party and the assessee is being used only as a medium, the TPO is not correct in charging a markup on this amount. Hence, the objection relating to markup on the warranty cost is upheld. The TPO cannot charge a markup on warranty amount as such services are not rendered by the assessee to its AE."
>
> *8.7.1 In the light of the above directions of the DRP, which we are in consonance with the TPO, is directed to reexamine the issue raised in ground 10 afresh. It is ordered accordingly.*
>
> *8.7.2 Hence, ground 10 is allowed for statistical purposes."*

14.5 In the light of the above said order of the Tribunal, in assessee's own case, which is identical to the facts of the

year under consideration, we restore ground 3 (TP segment) to the files of the AO / TPO. It is ordered accordingly.

CORPORATE TAX ISSUE

Disallowance u/s 40(a)(ia) of the I.T.Act for short deduction of tax [Ground II(1)]

15. The brief facts in relation to the above ground are as follows:

For the assessment year under consideration, the assessee had deducted tax at source on certain payments made to GT Enterprises u/s 194J of the I.T.Act. There was a short deduction of tax to the extent of Rs.4,18,320. The A.O. disallowed the amount u/s 40(a)(ia) of the I.T.Act by following the judgment of the Hon'ble Kerala High Court in the case of CIT v. PVS Memorial Hospital Limited reported in (TS-439-HC-2015). The view taken by the A.O. was upheld by the DRP.

15.1 Aggrieved by the directions of the DRP, the assessee has raised this issue before the Tribunal. The learned AR submitted that short deduction of tax would not attract disallowance u/s 40(a)(ia) of the I.T.Act. In this context, the learned AR relied on the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Kishore Rao & Others (HUF) reported in (2017) 79 taxmann.com 357 (Karnataka).

15.2 The learned DR supported the orders of the AO and the DRP.

15.3 We have heard rival submissions and perused the material on record. The Hon'ble jurisdictional High Court in the case of CIT v. Kishore Rao & Others (HUF) (supra) had held that short deduction of tax would not attract disallowance u/s 40(a)(ia) of the I.T.Act. The Hon'ble jurisdictional High Court placed reliance on the judgment of the Hon'ble Calcutta High Court in the case of CIT v. S.K.Tekriwal reported in (2014) 46 taxmann.com 444 (Calcutta). The relevant finding of the Hon'ble jurisdictional High Court, reads as follow:-

> *"6. In our view, as per the decision of the Calcutta High Court, the view taken by the Tribunal is that Section 40(a)(ia) of the Act may be invoked only in case of there being an absence of deduction. Further, in case of bona fide wrong impression, if the deduction is at a lesser rate, the same cannot be a ground for disallowance by invoking the provisions of Section 40(a)(ia)."*

15.4 In view of the above judgment of the Hon'ble jurisdictional High Court, we delete the disallowance of Rs.4,18,320. It is ordered accordingly.

15.5 In the result ground II(1) is allowed.

Disallowance u/s 40(a)(ia) of the I.T.Act with regard to rebate given to the customers [Ground II(2)]

16. The A.O. during the course of assessment proceedings called for the details of tax deducted at source on various payments. For the details called for, payments amounting to Rs.52,42,23,354 was also sought. The A.O. submitted that the payments were in the nature of rebate given to the distributors on which tax were not liable to be deducted at source. The A.O., however, rejected the contention of the assessee and held the transaction was between principal and agent and not principal to principal basis. Therefore, the A.O. concluded that the assessee was obliged to deduct tax at source u/s 194H of the I.T.Act and since no tax was deducted at source, the said amount was disallowed u/s 40(a)(ia) of the I.T.Act. The DRP rejected the objections of the assessee and upheld the view taken by the A.O.

16.1 The learned AR reiterated the submissions that a sum of Rs.52.42 crore represents rebate payment to distributors on which the provisions of TDS are not applicable. The learned AR took us through the agreement to drive home the point that the transaction of the assessee with its distributors is in relation to rebate / discount on principal-to-principal basis and hence the provisions of section 194H of the I.T.Act is not applicable. It was submitted that on identical facts, the Tribunal in assessee's own case for assessment year 2010-2011 (supra) had allowed the issue in favour of the assessee. It was further submitted that the issue of deductibility of tax at source on commission and rebate was picked up for scrutiny during the assessment

proceedings for assessment year 2015-2016 and upon considering the submissions filed by the assessee, the A.O. accepted the position that tax is not required to be deducted at source.

16.2 The learned DR supported the findings of the AO and the DRP.

16.3 We have heard rival submissions and perused the material on record. The Tribunal in assessee's own case for assessment year 2010-2011 (supra) had considered an identical issue and restored the same to the files of the A.O. The Tribunal directed the A.O. to consider various clauses of the distribution agreement entered by the assessee with its distributors and to determine whether the payments made is a rebate / discount on a principal to principal basis or whether it is a principal to agent basis. The relevant contentions raised before the Tribunal and the findings rendered on the contentions are detailed below:-

> *"54. The ld AR submitted that the sum of Rs. Rs.20,37,71,038 represents rebate payment to distributors on which the provisions of TDS are not applicable. It was further submitted that the Assessee is in the business of manufacture and trading of computers along with related accessories that are sold goods through its distributors by adopting two models for distribution as described under:*
>
> **A. Bill to Order**
> Under this model, the distributor undertakes to collate orders from the prospective customers on behalf of the Assessee and acts as an agent between the customer and Assessee for which the distributor earns commission at a prescribed rate on every successful order. The Assessee is ultimately responsible for all the risks and reward arising from such orders after the same is accepted. The entire obligation pertaining to fulfilment of orders is on the Assessee and not the distributor. The

Assessee deducts applicable taxes at source on such commission paid to the distributors under bill to order model.

B. Stock and Sell (SNS)
In this model the distributors purchase final products from the Assessee at its own risk and in turn sell the same to the ultimate customer or a sub distributor at a predetermined price. The title in the goods is passed on to the distributor upon delivery of goods subsequent to sale by the Assessee. It is the responsibility of the distributor thereafter to sell such goods to the consumers and any unsold goods would not be returned back to the Assessee. Further, the distributor shall make the payments in relation to such purchases, within the time prescribed in the agreement irrespective of whether the same is sold by him or not. Further, upon achieving certain predetermined targets as set out by the Assessee, the distributors are eligible for rebate / volume discount at a predetermined rate. Therefore the nature of relationship between the **Assessee and the distributors is that of a principal-to-principal** and therefore there is no tax is liable to be deducted at source. This is evident from a reading of the agreement at page 2063 of Volume 5.

55. The ld AR drew our attention to the various clauses of the agreement to substantiate that the transaction of the Assessee with its distributors in relation to rebate / discount is on principal-to-principal basis and hence the provisions of 194H are not applicable. Further the ld. AR relied on the following case laws in this regard –

- ***Harihar Cotton Pressing Factory v. CIT*** (Reported in [1960] 39 ITR 594 (Bombay)
- ***Ahmedabad Stamp Vendors Association v. UOI***
(Reported in [2002] 124 Taxman 628 (Gujarat)) - ***CIT v. Ahmedabad Stamp Vendors Association*** (Reported in [2012] 25 taxmann.com 201 (SC
- ***Bharti Airtel Ltd. v. DCIT*** (Reported in [2014] 52 taxmann.com 31 (Karnataka)
- ***CIT v. United Breweries Ltd***. (Reported in [2017] 80 taxmann.com 123 (Andhra Pradesh and Telangana)
- ***CIT v. Intervet India (P.) Ltd.*** (Reported in [2014] 49 taxmann.com 14 (Bombay
- ***ACIT v. Acer India (P.) Ltd***. (Order dated 05.10.2018 passed by this Hon'ble Tribunal in ITA No.1940/Bang/2018)

56. The ld. DR relied on the orders of the lower authorities.

57. We have considered the rival submissions and perused the material on record. The assessee is distributing the products under two models i.e. Sales through distributors who act as agents and gets compensated on a commission basis. The second model is where the products are sold to the distributor and the distributer get a rebate in the products purchased

based on the business volume. When the relationship between the assessee and the distributor is on a principal to principal basis, the rebate /volume discount given by the assessee on the price of products sold to distributer cannot be characterized as commission in order to attract section 194H of the Act thereby there is no liability to deduct tax at source. We notice that the Hon'ble jurisdictional High Court has expressed a similar view in the case of Bharti Airtel Ltd (supra) where it is held that –

> "51. From the aforesaid clauses, it is clear that there is no relationship of principal and agency. On the contrary, it is expressly stated that the relationship is that of principal to principal. Secondly the Distributor/Channel Partner has to pay consideration for the Product supplied and it is treated as sale consideration. There is a Clause, which specifically states that after such sale of Products, the Distributor/Channel Partner cannot return the goods to the assessee for whatever reason. It is the Channel Partner and the Distributor who have to insure the products and the godowns at their cost. They are even prevented from making any representation to the retailers unless authorized by the assessee. What is given by the assessee to its Distributor/ Channel Partner is a trade discount. It is not commission."

58. It is the contention of the assessee that the clauses of the agreement with its distributors demonstrate that the transactions in relation to rebate/discount are on a principal-to-principal basis not attracting the provisions of section 194H. We are of the view that the agreements with distributors require examination to verify the claim of the assessee. We therefore remit this issue to the AO for verification of the agreements which the assessee has entered into with the distributors in relation to discount/rebate transactions and decide the allowability based on the ratio laid down by the Hon'ble High Court after giving reasonable opportunity of being heard to the assessee. This ground is allowed for statistical purposes."

16.4 In view of the above order of the Tribunal in assessee's own case for assessment year 2010-2011 (supra), we restore the issue raised in ground II(2) to the files of the A.O. The A.O. shall follow the directions of the Tribunal given for the assessment year 2010-2011. It is ordered accordingly.

Addition of deferred revenue [Ground II(3)]

17. The brief facts in relation to the above ground are as follows:

The assessee is engaged in the business of sale of computer hardware. It offers warranty services to its customers on a contractual basis. The assessee provided services for a defined period and for a agreed consideration. It is submitted that the entire sale price for the warranty is invoiced to customers along with sale of products during the previous year. However, the obligation to provide services and outflow of resources (cost of spares, labour and logistics) would happen over a period of time. Therefore, it was submitted that in line with the matching principles of accounting the revenue for the same would be recognized proportionately in the year of providing the services. It is stated that following the matching concept, the cost to provide such services would also recognized in the same year.

17.1 The A.O. has in line with the assessment order for assessment year 2010-2011, brought to tax deferred revenue of Rs.100,30,45,893 by stating that the Income-tax Act, 1961 does not provide for concept of deferred revenue.

17.2 The DRP by placing reliance on the directions in assessee's own case for assessment years 2009-2010 and 2010-2011, rejected the objections of the assessee and upheld the order of the A.O.

17.3 Aggrieved, the assessee has raised this issue before the Tribunal. The submission made by the learned are briefly recapitulated as under:-

— *At the outset, it is submitted that the AO erred in proceeding on an erroneous footing that there is no concept of deferment of income as per the Act and contending that the income of Rs. 100,30,45,893/- has accrued to the Appellant during the financial year 2012-13.*

— *It is submitted that the AO ought to have relied on the cancellation policy provided under the terms of warranty wherein the customer has the right to cancel the contract with a prior notice and upon cancellation of the contract, the Assessee has to refund the entire consideration less cost of services already rendered. A copy of warranty terms and conditions are produced at Annexure 11 to the submissions dated 17.10.2016 at pages 2018-2022 read with the warranty terms and conditions at pages 2041-2047 in Volume 3 of Paperbook.*

— *In terms of Section 5 of the Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which is received or is deemed to be received in India in such year,* ***accrues or arises or is deemed to accrue or arise to him in India during such year.*** *It is submitted that during the year under consideration, to the extent of Rs. 100,30,45,893/-, no income "accrued" to the Assessee.*

— *In the Assessee's case, as the obligation to provide the warranty services which could involve outflow of resources like goods(spares) and services are yet to occur and hence, in line with the generally accepted accounting principles, revenue is recognized on a straight-line basis over the period of contract. Any portion of consideration for which invoices have been raised but, some portion of the contract period pertains to subsequent year would be classified under* ***"other liabilities" and the same would be recognized as revenue in the year in which obligation to provide the services arise****.*

— *To illustrate, say the Company sells a laptop in December 2011 along with warranty for two years. In such a case, proportionate revenue towards warranty services for four months would be accounted in FY 2011-12 and the balance would be carried forward to the next two years and offered to tax based on time proportion. Thus, though the full consideration for providing the service is agreed and received during the FY 11-12, the obligation to service the customer arises over a period of time in FY 11-12 (4 months), 12-13 (12 months) and 13-14 (8 months). Thus, the contracts which are extending beyond the current financial year, the consideration towards such contracts should also be assessed to tax on annual basis in which the services are provided. Until such*

consideration is recognized as revenue, the same shall be classified under other liabilities.

— *Under the Act, income accrues or arises when the Assessee acquires a right to receive the same. The right to receive is coupled with the liability on the other party to make the payment. In the Assessee's case, in relation to contracts for services extending beyond the financial year 2012-13 under consideration, the Assessee is under a contractual obligation to render the service to the customer in the subsequent years and the same would involve outflow of cost/resources for the Assessee. Further, in case the contract is cancelled, the Assessee is liable to refund the consideration received originally, less cost of services already rendered.*

— *It is submitted that as and when the services are rendered in a particular year, the revenue deferred to such year is recognized as revenue during such year (amortised) and offered to tax. The movement of deferred revenue is as under:*

Assessment Year	Opening Balance (under Other Liabilities)	Closing Balance (under Other Liabilities)	Net debit to Revenue (P&L)
2010-11	(216,92,03,935)	(341,83,99,970)	124,91,96,035
2011-12	(341,83,99,970)	(481,01,21,184)	139,17,21,213
2012-13	(481,01,21,184)	(586,44,58,169)	105,43,36,985
2013-14	(586,44,58,169)	(686,75,04,062)	100,30,45,893

— *Clearly, the Assessee has been recognizing the revenue periodically on the basis of accrual and offered them to tax.*

— *The issue is squarely covered by the order of this Hon'ble Tribunal in **Assessee's own case for assessment year 2010-11** [order dated 18.08.2022 passed in IT(TP)A Nos. 562 & 400/Bang/2015] at paras 31-35, and the order passed in the Assessee's own case for the assessment year 2011-12 [order dated 11.11.2022 passed by this Hon'ble Tribunal in IT(TP)A Nos. 641 & 642/Bang/2016] at paras 29-36 and 2012-13 [order dated 11.11.2022 passed by this Hon'ble Tribunal in IT(TP)A No. 2834/Bang/2017] at paras 28-35 where the assessee's ground of appeal was allowed, accepting the above contentions and the addition deleted.*

17.4 The learned DR supported the order of the AO / TPO.

17.5 We have heard rival submissions and perused the material on record. We find an identical issue was considered

by the Tribunal in assessee's own case for assessment year 2010-2011. The Tribunal on perusal of the sample warranty agreements and following the Co-ordinate Bench order in the case of Schneider Electric IT Business India Pvt. Ltd. v. JCIT, LTU in ITA Nos.299/Bang/2014 and 218/Bang/2014 (order dated 30.04.2019), deleted the addition on account of deferred revenue expenses. The relevant finding of the Tribunal in this regard reads as follows:-

> *31. We heard the rival submissions and perused the materials on record. The main ground on which the DRP confirmed the order of AO is that the amount received towards warranty is not refundable even when the customer cancels the warranty agreement. The relevant extract from the DRP order reads as under –*
>
> > "Having heard the assessee we find that the assessee has stated that the amount so received on account of installation services and upsell warranty services was part of the goods sale process and not refundable to the payers even if the service could not be ultimately utilized by the customer. Even where such customer opts to cancel using the service being offered by assessee, the unutilized balance was not refundable. Thus, the amount paid was for outright purchase of services and not an advance to be appropriated against future use of the service. The assessee acquires the absolute right to utilize the amount so received. Thus, the income crystallizes as soon as a customer makes payment. The right to receive the income vests with the assessee as soon as the services are purchased by customers. Since, the assessee employed mercantile system of accounting, income would accrue with receipt and it cannot be considered as advance income, which could be deferred for tax purpose."
>
> *32. However it is submitted that upon cancellation of the contract, the Assessee has to refund the entire consideration less cost of services already rendered. On perusal of a sample warranty terms (pages 2527-2540, relevant page 2537, Volume 6 of the paperbook) we notice that the assessee would refund the money upon premature cancellation of warranty service. The extract of the clause in the agreement is reproduced below for reference:-*
>
> > "**Cancellation**. Subject to the applicable product and services return policy for Customer's geographic location, Customer may terminate this Service within a defined number of days of Customer's receipt of the

Supported Product by providing Dell with written notice of cancellation. If Customer cancels this Service within that period, Dell will send Customer a full refund less the costs of support claims, if any, made under this Service Description. However, if that period has transpired since Customer's receipt of the Supported Product, Customer may not cancel this Service except as provided by an applicable state/country/province law which may not be varied by agreement.

Dell may cancel this Service at any time during the Service term for any of the following reasons:

Customer fails to pay the total price for this Service in accordance with the invoice terms;

Customer refuses to cooperate with the assisting analyst or on-site technician; or

Customer fails to abide by all of the terms and conditions set forth in this Service Description.

If Dell cancels this Service, Dell will send Customer written notice of cancellation at the address indicated on Customer's invoice. The notice will include the reason for cancellation and the effective date of cancellation, which will be not less than me 0-01 days from the date Dell sends notice of cancellation to Customer, unless state law requires other cancellation provisions that may not by varied by agreement. IF DELL CANCELS THIS SERVICE PURSUANT TO THIS PARAGRAPH, CUSTOMER SHALL NOT BE ENTITLED TO ANY REFUND OF FEES PAID OR DUE TO DELL."

33. The assessee recognizes that portion of consideration for which invoices have been raised pertaining to the year under consideration and the balance portion of the contract period that pertains to subsequent year is classified under "other liabilities". The revenue thus deferred is recognized in the year in which obligation to provide the services arise. In Assessee's case, as the obligation to provide the warranty services which could involve outflow of resources like goods(spares) and services are yet to occur and hence it is submitted that in line with the generally accepted accounting principles, the revenue is recognized on a straight line basis over the period of contract. Under the Act, income accrues or arises when the assessee acquires a right to receive the same and the right to receive is coupled with the liability on the other party to make the payment. Further in relation to contracts for services extending beyond the financial year 2009-10 under consideration, the Assessee is under a contractual obligation to render the service to the customer in the subsequent years and the same would involve outflow of cost/resources for the Assessee. It is also important to note that, in case the contract is cancelled, the Assessee is liable to refund the consideration received originally, less cost of

services already rendered. From the detailed working and sample invoices submitted before the DRP (pages 2294 and 2541 to 3192 of Volume 6 of the paperbook) that the when the services are rendered in a particular year, the revenue deferred to such year is recognized as revenue during such year (amortised) and offered to tax and therefore it is clear that the Assessee has been recognizing the revenue periodically on the basis of accrual and offered them to tax.

34. The coordinate bench of the Tribunal in the case in SchneiderElectric IT Business India Pvt. Ltd. v. JCIT, LTU [ITA Nos. 299/Bang/2014 and 218/Bang/2014) dated 30.04.2019] has considered a similar issue and held that –

> "91. We have carefully considered the rival submissions. The first aspect which we would like to clarify is that it was not correct on the part of the AO to characterize the sum of Rs.5,38,22,153 as undisclosed income. The income is disclosed in the books of accounts but is not recognized for the purpose of income tax computation because of the Assessee's accounting policy which in turn is based on AS-9 of ICAI. The second aspect which has to be clarified is that the deferment of revenue as not pertaining to the relevant AY 2009-10 is also substantiated by the Assessee and the basis of deferral of revenue is clearly given in paper book no.7 pages 1620 to 1897. Therefore there can be no dispute that the income deferred did not pertain to AY 2009-10, if one were to accept that deferral of income, though it has accrued to an Assessee, is possible. The principal question therefore that needs to be addressed is regarding whether deferring revenue is permissible under the mercantile system of accounting followed by the Assessee where income that accrues or arises to an Assessee has to be regarded as income.
>
> 92. The learned counsel for the Assessee in his rejoinder submitted that the decision of the Tribunal rendered in the case of Optum Health & Technology (India) (P.) Ltd. (supra) is clearly distinguishable because in that case not only was the revenue received but also services were rendered and still the Assessee chose to defer revenue recognition and it was in those circumstances, the Tribunal held that deferring revenue was not proper and had to be regarded as income of the relevant year.
>
> 93. We have given a very careful consideration to the rival submissions. Similar issue had arisen for consideration in the case of Punjab Tractors Co-op. Multipurpose Society Ltd. (supra) before the Hon'ble Punjab & Haryana High Court. In that case the facts were that the assessee was engaged in the purchase and sale of tractors, motor cycles, etc., and doing their repairing. It had received advances from the buyers of tractors to cover their service charges for a period of one year after the expiry of initial warranty period. It had shown same on the liability side in the balance sheet for the assessment year 1978-79 under the head 'Post-Warranty Service Advances' (PWS Advances). It used to make

adjustment of the amount received from PWS Advances Account to the Workshop Income Account during the quarter in which the work of repairs and services was done, and included the amount so adjusted as income of the relevant year. Out of the aggregate amount shown in PWS Advances Account, the Assessing Officer treated proportionate sum for the period covered as the assessee's income for the assessment year in question. The Commissioner invoked section 263 and held that the entire amounts received in the previous year towards PWS Advances were trading receipts of the year directly connected with the business of servicing and repairs of tractors. He, accordingly, set aside the assessment. On appeal, the Tribunal upheld the Assessing Officer's action disagreeing with the finding of the Commissioner. On reference, the Hon'ble Punjab &Haryana High Court held as follows:

> *"The taxability of income normally depends upon the system of accounting followed by the assessee. Even in the case of an assessee following the mercantile system of accounting, a mere claim, by the assessee in respect of an amount without the right to claim cannot form the basis for taxability. Where the assessee follows the cash system of accounting, the taxability is to be based on receipt basis and not on accrual basis. Receipt, either accrued or deemed, is not made a condition precedent to taxability. Profits or gains are taxable if they have accrued or have arisen or are, under the Act, deemed to have accrued or arisen to the assessee in the accounting year. Generally, income must accrue first, receipt normally follows the accrual. In other words, the right to receive must come into existence before the actual receipt takes place. Receipt, by itself, is not sufficient to attract tax. It is only receipt as 'income' which would attract tax. Every receipt by the assessee is, therefore, not necessarily income in his hands. It bears the character of income at the time when itaccrues in the hands of the assessee and then it becomes eligible to tax. What is relevant to determine whether money received is income or simply an advance, is the initial character of the receipt and not the head under which the amount is credited in the books of account. If no income has resulted, it cannot be said that income accrued merely on the ground that the assessee has been following the mercantile system of accounting."*
>
> *The Hon'ble Court accordingly upheld the stand of the Assessee. Holding that the Assessee did not become owner of the money received unless the services are rendered and was not entitled to appropriate the same till service was rendered in lieu of which the same was received in advance.*

94. The Hon'ble Madras High Court in the case of Coral Electronics (P.) Ltd. (supra) also dealt with similar case. The assessee is a private limited company carrying on business in television sets. In the previous year ending 31st March, 1983, and 31st March, 1988 corresponding to the

assessment years 1983-84 and 1988-89, respectively, the assessee had collected service charges, which were bifurcated into two items, one as pertaining to year and another pertaining to the subsequent assessment year and, therefore, excluded from consideration in determining the total income of year. The Assessing Officer treated it as income and taxed the same. The Tribunal has held that it is not taxable income. On a reference the Hon'ble Court held the amount that was received was only as charges for the services to be rendered in future. The services may be rendered or may not be rendered depending upon withdrawal of the money as and when the customer required. So, it is highly uncertain as to whether it would at all remain as income of the assessee. Only when the service is done the assessee has a right over the amount that was deposited. Till then, he has no right over the same. It is in that sense till then, it cannot be considered as an income of the assessee and is not eligible to tax.

95. The Mumbai ITAT in the case of IOT Infrastructure & Energy Services Ltd. (supra) had to deal with identical case. The facts of that case were that the Assessee had not offered for tax an amount being difference between progress billing as on 31-3-2007 and cumulative revenue booked as per accounts as on 31-3-2007 in respect of three contracts. The assessee explained to Assessing Officer that progress billing was inclusive of advances received from customers which amount did not reflect work performance. It was also explained that progress billing was done not only for amount of work done but also for mobilisation and other advances receivable by it as per terms of relevant contract
and that mobilisation and other advances received by assessee by raising progress billings did not represent income of assessee at time of raising progress bills and same therefore had no effect whatsoever on income of assessee, which was recognised by method of percentage of completion. The Assessing Officer, however, held that amount due to customers as shown by assessee was nothing but understatement of its profits and added same to total income of assessee. On further appeal the question before the Tribunal was as to whether amount due to customers as shown by assessee was nothing but receipt of advance before accrual of income and, therefore, same could not be treated as income of assessee at point of receipt. The Tribunal held in favour of the Assessee.

96. As far as the decision of the Tribunal in the case of Optum Health & Technology (India) (P.) Ltd., is concerned, as rightly contended by the learned counsel for the Assessee the facts were that the sums were received in advance and in respect of the sums received services were also performed but still the Assessee did not recognize revenue but postponed recognition based on the bills raised on the clients for services performed. Though there are observations in the order of the Tribunal that postponement of recognition of income is not possible on the basis of AS-9 of ICAI when income accrues or arises under the mercantile system of accounting, those observations have to be confined as decision on the facts of that case. In the light of the decision of the Hon'ble High Courts of Punjab & Haryana and the Hon'ble Madras High Court, we are of the

view that the claim made by the Assessee deserves to be accepted. Accordingly the addition made by the AO and confirmed by the DRP is directed to be deleted. Gr.No.19 is accordingly allowed."

35. In the light of the decision of the coordinate bench of the Tribunal and considering the facts of the case as discussed above, we are of the view that claim of the assessee deserves to be accepted and the addition made by the AO as confirmed by the DRP is hereby deleted. This ground accordingly is allowed in favour of the assessee."

17.6 Respectfully following the Co-ordinate Bench order of the Tribunal in assessee's own case, the addition made by the AO and confirmed by the DRP with reference to the deferred revenue is hereby deleted. Accordingly, ground II(3) is allowed.

Disallowance of claim u/s 40(a)(i) / 40(a)(ia) of the I.T.Act [Ground II(4)]

18. The assessee had claimed Rs.158 crore and Rs.36.66 crore as amount admissible u/s 40(a)(ia) and section 40(a)(i) of the I.T.Act, respectively, which were disallowed in the earlier years. The A.O. during the course of assessment proceedings, called for the details of tax deducted at source and the remittance during the year. The payment in respect of the details sought for was an amount of Rs.16,32,79,058. It was claimed that it is in the nature of rebate given to the customers under stock and sell model, on which taxes were not liable to be deducted at source. The assessee was able to furnish the details of the TDS u/s 40(a)(ia) to the extent of Rs.153,06,91,293 out of Rs.158,25,21,633. Therefore, the A.O. made disallowance of Rs.5,18,30,340 (158,25,21,633 –

153,06,91,293) on the ground that the nature of the expenditure and details of the TDS were not provided by the assessee. Secondly, as regards the sum of Rs.16,32,79,058, the A.O. held that the TDS ought to have been deducted on rebate as such payments are covered u/s 194H of the I.T.Act, and hence, the same is to be disallowed u/s 40(a)(ia) of the I.T.Act. The DRP rejected the objections of the assessee and upheld the disallowance of Rs.21,51,09,398 (16,32,79,058 + 5,18,30,340).

18.1 Aggrieved, the assessee has raised this issue before the Tribunal. The relevant submissions with reference to the above two additions reads as follows:-

"Disallowance to the extent of Rs. 5,18,30,340 -

- *At the outset, the assessee submits that the amount of Rs. 158,25,21,633/- claimed as deduction represents the amount disallowed in AY 2012-13 under Section 40(a)(ia) of the Act. The said amount represents provision for expenses where the assessee would not have received the invoices at the year end and therefore based on a reasonable estimate a provision is created. While provision for expenses created would be reversed in the subsequent year, the actual invoices are accounted on receipt and the taxes wherever applicable would be withheld. In view of the above accounting and tax treatment, it is submitted that a deduction for the entire amount shall be allowed in AY 2013-14.*

- *Out of the total provision of expenses disallowed of Rs. 158,25,21,633/-, the assessee while providing complete break up, has provided evidence of TDS done/ TDS not applicable for substantial sum of Rs. 153,06,91,293/-. However, for certain expenses as listed below, considering the volume of transactions, the assessee had not submitted the details of TDS in respect of some of the following, as indicated:*

Particulars of Payment	**Amount disallowed u/s 40(a)(ia) (INR)**	**Evidence for TDS given (INR)**	**Difference (INR)**

Freight	31,56,15,532/-	39,75,65,546/-	(1,63,31,923/-)
Contract – Others	9,82,81,937/-		
Advertisement	16,46,61,955/-	37,06,35,583/-	(3,42,48,397/-)*
Repairs & Maintenance	2,32,67,228/-		
Staff Welfare	1,17,75,882/-		
Travelling and Conveyance	58,30,101/-		
Legal and Professional	9,57,01,235/-		
Warranty	10,36,47,579/-		
Accounting & Audit fee	72,73,030/-	75,97,261/-	3,24,231/-
Royalty payment	35,02,23,675/-	34,86,49,424/- There is no short deduction. The difference is on account of exchange rate used for deduction of tax.	-
Commission and Rebate	40,62,43,479/-	5,17,57,270/-	-
		35,44,86,209/-	
Total	**158,25,21,633/-**	**153,06,91,293/-**	**(5,18,30,340/-)**

**It is submitted that now, the Assessee is filing additional evidence, explaining the difference of Rs. 3,42,48,397/-*

In any event, it is submitted that in view of substantial evidences being given, the claim ought to be allowed (refer the decision of this Hon'ble Tribunal in the ***Appellant's own case for the assessment year 2011-12****, wherein this Hon'ble Tribunal accepted the Appellant's claim that in view of the size of the company, substantial compliances having been made, the claim ought to be allowed).*

Disallowance to the extent of Rs. 16,32,79,058 –

It is submitted that the above amount represents provision created in FY 2011-12 towards rebate for stock and sell model of distribution. The invoice wise listing of the expenses were furnished by Annexure 9 at page 2033-2038.

As submitted earlier under Ground II.2, on these payments, provisions of Section 194H have no applicability, and therefore tax is not liable to be deducted at source."

18.2 Further, the learned AR submitted that on identical issue, the Tribunal for assessment year 2010-2011 had restored the matter to the files of the A.O. to re-examine the issue.

18.3 The learned DR supported the orders of the AO / TPO.

18.4 We have heard rival submissions and perused the material on record. The assessee has filed additional evidence just like the A.Y. 2010-2011, explaining the difference of Rs.3,42,48,397 (out of addition of Rs.5,18,30,340). On identical facts, the Tribunal in assessee's own case for assessment year 2010-2011 (supra), had restored the matter to the files of the A.O. to re-examine the issue. The relevant finding of the Tribunal in this regard reads as follows:-

> *"66. During the AY 2009-10, the Assessee had suo motu made a disallowance of Rs. 22,05,17,807/-, being provision created towards various items, on which taxes were not deducted at source. In the AY 2010-11 under consideration, the Assessee reversed the same in its accounts and claimed the expenditure on actual basis on which taxes were deducted at source. Since the aforesaid amount of Rs.22,05,17,807/- had already been offered to tax in the previous AY, the Assessee claimed the deduction of the same in the computation of income for AY 2010-11. During the course of hearing the AO called on the assessee to furnish the details of tax deducted at source on the amount claimed as deduction. Since the assessee was able to furnish evidences of tax deducted at source to the extent of Rs. 16,69,09,884/- out of Rs. 22,05,17,807/-, the AO made a disallowance of Rs.5,09,07,923/- for want of evidence, on the ground that under Section 40(a)(ia) of the Act deduction of the amount was allowable only if tax was deducted at source.*
>
> *67. Before us, the ld. AR submitted that the impugned deduction is claimed not on the basis of subsequent tax deduction, but on the basis that entries are reversed in the current year and taxing the same would amount to*

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

68. The ld AR also submitted additional evidence with the breakup of the provisions and the subsequent payments / reversals along with the listing of invoices and the tax deducted at source. The ld AR prayed for the admission of the additional evidence.

69. The ld. DR supported the orders of the lower authorities. The ld DR submitted that the additional evidences should not be admitted as the assessee had sufficient opportunity to submit the supporting evidence to substantiate the claim of deduction which the assessee failed to furnish and therefore prayed that the additional evidences should not be accepted.

70. With regard to the disallowance made towards the provisions made the additional evidences now produced goes the root of the issue and the core reason for not allowing the deduction by the lower authorities. For a proper adjudication of the issue and for substantial cause, the additional evidence is admitted and taken on record

71. We heard the rival submission and perused the materials on record. The chart showing details of the section 40(a)(ia) allowance claimed in the year under consideration which is submitted as additional evidence is extracted below

Sl. No.	Nature of expenses	Amount of provision disallowed in AY 2009-10 u/s 40(a)(ia) (A)	Listing with the actual invoices raised in AY 2010-11 (B)	C=(A-B)	Reversal entries made out of the amounts mentioned in (A) (D)	Balance (C-D)
1.	Advertising	7,26,35,204	7,15,90,630	10,44,574	6,80,93,152	
2.	Repairs and maintenance	2,70,56,573	--	2,70,56,573	2,66,24,360	4,32,213

3.	Freight Charges	11,66,34,963	11,48,59,720	17,75,243	--	17,75,243
4.	Audit Fees	41,91,067	48,66,723	(6,75,656)	41,91,070	--
		22,05,17,807	19,13,17,073	2,92,00,734	9,89,08,582	22,07,456

72. According to the ld AR the accounting practice of the assessee is to make the provision for expenses 31st March of the financial year and reverse the same on the 1st day of April of subsequent financial year. The assessee disallowed the provision made on 31st March of 2009 in the computation of income for the assessment year 2009-10. The same amount is claimed as a deduction in the subsequent in the computation of income as the year end provisions are reversed on 1st April 2009. The contention of the assessee that the deduction claimed if not
allowed will result in double disallowance has merits. The expenses disallowed is eligible for deduction u/s.40(a)(ia) of the Act as and when the tax is deducted at source on such expenses. The reversal of provisions done on 1st April 2009, would go to nullify the impact of the expenses claimed by way of debit to the profit and loss account on which tax is deducted at the time of the payment. Therefore the reversal of provisions disallowed in the computation of assessment year 2009-10 is to be claimed as a deduction in the assessment year 2010-11 so that the expenses eligible for deduction u/s.40(a)(ia) is rightly claimed in the computation. However the most important fact that needs to be verified in this regard is whether the provision made on 31st March 2009 to the tune of Rs. Rs. 22,05,17,807 is reversed on 1st April 2009 and that the same is reflected correctly in the provision
for expenses ledger of the assessee. This needs to be verified to justify the claim of deduction of the said amount in the computation of assessment 2010-11 basis the disallowance done in the year 2009-10. The assessee has erroneously submitted before the CIT(A) / AO that the deduction is claimed u/s.40(a)(i) and hence the authorities disallowed the claim as the assessee did not produce the details of tax deducted. However the deduction as per the ld AR is done based on the fact that the provisions which are already disallowed in the previous assessment year is reversed and to avoid double disallowance the same is claimed as deduction in the computation. This fact has not been properly presented before the lower authorities. The lower authorities have to examine whether the year-end provision made on 31st March 2009 is fully reversed on 1st April 2009 and the expenses against which the provision was created is debited to the profit and loss account on payment after deducting TDS. This verification need to be carried out
based on the journal entries and ledger copies produced by the assessee for the year under consideration which are submitted now in the form of additional evidence. If the accounting practice of the assessee to reverse the expenses on the 1st day of April of the year under consideration is

substantiated by the evidences submitted by the assessee whereby it is demonstrated that there is no doubt allowance expenditure then the assessee would be entitled to claim the amount disallowed in the previous assessment year as otherwise it would amount to double disallowance. We therefore remit the issue back to the AO to verify the ledger and general entries of the assessee for the year under consideration and allow the expenditure in accordance with law. The assessee may be given a reasonable opportunity of being heard in this matter. The appeal is allowed in favour of the assessee for the statistical purposes."

18.5 In line with the directions of the Tribunal in assessee's own case, which is identical to the issue raised for the relevant assessment year, we restore the matter to the files of the A.O. to re-examine the issue afresh. It is ordered accordingly.

Disallowance of fixtures and stores interiors expenses [Ground II(5)]

19. For the assessment year 2013-2014, the assessee claimed an amount of Rs.2,90,47,055 being expenditure incurred towards fixtures and stores interiors as a revenue expenditure. It is submitted that the said expenditure was incurred by the assessee for maintaining uniformity in franchisee stores and the assessee not being the owner nor it derives any enduring benefit on such expenditure, the same ought to be allowed as revenue in nature.

19.1 The A.O. classified the expenditure as capital in nature for the reason that (i) Form 3CD filed for the assessment year 2013-2014 noted the said expenditure aggregating to Rs.2,90,47,055 as capital expenditure debited

to profit and loss account; (ii) it was incurred towards purchase / acquiring of assets; and (iii) it is one time investment by the assessee and lifetime of the assets are more than one year giving enduring benefit to the assessee. The A.O., however, accepted the alternative claim of the assessee to allow depreciation (worked out to Rs.23,30,769) and accordingly made a disallowance of the expenditure to the extent of Rs.2,67,16,286.

19.2 The DRP rejected the objections raised by the assessee.

19.3 Aggrieved, the assessee has raised this issue before the Tribunal. The learned AR submitted that the assessee has primarily engaged in the manufacturing and trading of Dell brand computer hardware and peripheral products. It is submitted that the sale of all these products in India are also carried out under a franchise model. Under the said model, third party contractors would act as a franchise for the assessee in India, where the said franchise would open exclusive shops / stores for sale of its products. In order to maintain the uniform standard and to ensure all the franchise stores required furnishing of interiors, the assessee incurs certain expenditure on behalf of the franchises. It was submitted that such expenditure was neither recoverable nor gives the assessee any kind of ownership. Sample copy of the franchisee agreement entered into by the assessee is placed on record as Annexure 2 to the submission dated 07.09.2017

(pages 1927 to 1942 – Volume 3 of the paper book). It is submitted that the said expenditure has not resulted in bringing into existence any asset or advantage to the assessee, but only facilitates the business operations of the assessee efficiently by maintaining uniform standards across all franchisee stores. Hence, it was brayed that the same may be allowed as revenue expenditure. The learned AR submitted that the issue in question is squarely covered by the order of the Tribunal in assessee's own case for assessment year 2012-2013 in IT(TP)A No.2834/Bang/2017 (order dated 11.11.2022), wherein the Tribunal held that the said expenditure incurred is revenue in nature.

19.4 The learned DR, on the other hand, supported the orders of the AO / DRP.

19.5 We have heard rival submissions and perused the material on record. We find an identical issue was considered by the Tribunal in assessee's own case for assessment year 2012-2013 (supra). The Tribunal had followed the Bangalore Bench order of the Tribunal in the case of M/s.Nike India Private Limited v. DCIT in IT(TP)A No.202/Bang/2021 (order dated 26.07.2022). The Tribunal after considering the franchisee agreement entered by the assessee with its franchisees held that the expenditure incurred is in the nature of revenue and the same is to be allowed as a deduction. The relevant finding of the Tribunal in assessee's

own case for assessment year 2012-2013 (supra), reads as follows:-

> *"36. For the year under consideration the Assessee incurred an expenditure amounting to Rs. 4,25,15,813/- towards fixture and stores interiors expenses. The expenditure was claimed as being revenue in nature and deductible under Section 37(1) of the Act for the reason that the said expenditure was incurred for maintaining uniformity in the franchisee stores and the Assessee neither owns nor derives any enduring benefit on such expenditure.*
>
> *37. The AO classified the expenditure as capital in nature for the reasons that (i) the Form 3CD filed for AY 2012-13 noted the said expenditure aggregating Rs. 4,25,15,813/- as capital expenditure debited to profit and loss account; (ii) it was incurred towards purchase / acquiring of assets; and (iii) it is one time investment by the Assessee and lifetime of the assets are more than one year giving enduring benefit to the Assessee.*
>
> *38. The AO accepted the alternative claim of the Assessee to allow depreciation on the said amount (worked out to Rs. 42,51,581/-) and accordingly made a disallowance of the expenditure to the extent of Rs. 3,82,64,232/-.*
>
> *39. The CIT(A) confirmed the order of the AO.*
>
> *40. The ld. AR submitted that for an expenditure to be treated as capital in nature, the asset must be owned by the Assessee, used by the Assessee and further the same should result in an enduring benefit for the Assessee. The ld AR also submitted that the assessee has incurred expenditure on behalf of the Franchisees towards furnishing the interiors as per the set standards of the Assessee. The ld AR further submitted that the said expenditure has not resulted in bringing into existence any asset or advantage to the Assessee but only facilitates the business operations of the Assessee efficiently by maintaining uniform standards across all Franchisee stores. Hence, the expenditure is revenue in nature and deductible under Section 37(1) of the Act as the same is laid out wholly and exclusively for the business of the Assessee. Reliance was placed on the following case laws:-*
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> *i. Empire Jute Co. Ltd. v. CIT [Reported in [1980] 3 Taxman 69 (SC)] at para 11;*
> *ii. CIT v. Geoffrey Manners & Co. Ltd. [Reported in [20090] 180 Taxman 87 (Bombay) at paras 3-5;*
> *iii. CIT v. Asian Paints (India) Ltd. [Reported in [2016] 75 taxmann.com 152 (Bombay)] at para 5(e);*
> *iv. CIT v. IBM India Ltd. [Reported in [2014] 43 taxmann.com 470 (Karnataka)] at para 10;*

v. DCIT v. Jubilant Foodworks Ltd. [Reported in [2022] 137 taxmann.com 345 (Delhi-Trib.) at para 11.

41. The ld. DR relied on the orders of lower authorities.

42. We have considered the rival submissions and perused the material on record. We notice that the coordinate bench of the Tribunal in the case of M/s. NIKE India Pvt.Ltd vs DCIT (IT(TP)A No.202/Bang/2021 dated 26.07.2022) has considered a similar issue and held that –

> 32. In so far as the aforesaid grounds of appeal are concerned, the material facts are that the assessee claimed deduction of a sum of Rs.14,45,55,444/- as revenue expenditure. These expenses were incurred by the assessee for furnishing the retail showrooms where the assessee's products are sold by the retailers i.e., franchisees. On perusal of the ledger of these expenses, the AO found that expenses include furniture for the stores, designs of the stores, etc. The AO on perusal of the agreement between the assessee and one of the franchisees viz., Pioneer Sports Company, New Delhi, found that all cots of refurbishment of the shop including and not limited to the cost of any new hardware and software solution shall be borne by the Nike i.e., the Assessee. According to the AO, these items of expenses cannot be regarded as revenue expenses as they endure for a longer period of time. The AO also made a reference to clause 12 of the agreement whereby the franchisee has to bear the insurance of goods and fixtures supplied by the assessee. Considering all these aspects, the AO concluded that the expenditure as a capital expenditure and he accordingly disallowed the claim of the assessee for deduction. The DRP agreed with the conclusions of the AO.
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> 33. The learned Counsel for the assessee submitted that expenses are purely revenue in nature and the intention was to ensure that the franchisee showrooms confirmed to certain standards. It was submitted that the expenses do not add any value to existing assets and they are revenue in nature. Alternatively, it was claimed that the assessee should be allowed depreciation in the event the expenditure is treated as capital in nature. Learned Counsel for the assessee placed reliance on the decision of the ITAT, Bengaluru Bench, in the case of Emdee Apparel IT(TP)A Nos.2834/B/17 & 134/Bang/2018 Page 34 of 37 in ITA Nos.576, 577/Bang/2007, order dated 21.09.2012. In the aforesaid case, the question arose in the context of identical expenditure incurred in the case of retail trader of Reebok Footware and Shoes incurring expenses which was disallowed as capital expenditure by the Revenue authorities. The Tribunal, after considering the various decisions cited on behalf of the assessee, finally concluded as follows:

"Coming to question No.2, we find that in a catena of decisions relied upon by the learned counsel for the assessee (cited supra), it has been held that when any expenditure is incurred by an assessee on leasehold premises, even though it may give an enduring benefit, it would not amount to capital expenditure as no capital asset is being created in favour of the assessee. In some of the cases, the expenditure is on civil and electrical works also. In the case before us, we find that the AO has erroneously held that there was no termination clause in the agreement of lease and that the lease is permanent. We find that the lease is for a period of 4 years only and the assessee was to pay for lease rental as well interest-free security deposit for the lease and also that the assessee is required to incur the expenditure for interior and exterior works for carrying on the business as per 'brand' specifications. In such a situation, it cannot be said that the assessee is deriving an enduring benefit nor can it be said that any capital asset has been created in favour of the assessee. The quantum of expenditure cannot determine the nature of the expenditure. Therefore, respectfully following the decisions relied upon by the learned counsel for the assessee we hold that this expenditure is revenue in nature. This ground of appeal is accordingly allowed."

34. Learned DR placed reliance on the order of the AO and also made a reference on the decision of the ITAT, Delhi Bench, in the case of Carrier Airconditioning and Refrigeration Ltd., in ITA No.5244/Delhi/2015, order dated 13.07.2018.

35. We have given a careful consideration to the rival submissions. The decision rendered by the ITAT Delhi in the case of Carrier Air-conditioning (supra) was a case of renovation to a leased premises and the finding was that it was a complete replacement of the existing premises. In this case we are concerned with refurbishing a show room to make it attractive for customers to visit and purchase assessee's products. In the given circumstances, we are of the view that the decision in the case of Emdee Apparels (supra) is applicable. Consequently, the claim made by the assessee is directed to be accepted and the relevant grounds of appeal are allowed."

43. The Assessee is primarily engaged in the manufacturing and trading of Dell brand Computer hardware and peripheral products. The sale of all these products in India are also carried out under a Franchise model. Under the said model, third party contractors would act as a Franchisee for the Assessee in India, where the said Franchise would open exclusive shops/ stores for sale of its products. To maintain the set standards and to ensure all the Franchise stores provides the customers an environment where these products are sold in Dell exclusive stores, the Franchisees are required to furnish the interiors as per the set standards of the Assessee,

which include specific type of glow sign board towards use of the Assessee's name, logo and trademarks on the stores, fixtures, etc. In order to facilitate the above objective, the Assessee incurs such expenses on behalf of the Franchisees which are neither recoverable nor give the Assessee any kind of ownership towards the same. The ld AR submitted a sample copy of franchisee agreement entered into by the Assessee (pages 232 and 246 – Volume 2 of the paper book). On perusal of the sample franchise agreement it is noticed that the assessee is required to bear the cost of interior and exterior designing of the store, infrastructure for selling Dell's products. The cost born by the assessee includes cost towards furniture, branding, glow signboard & fixing etc. The assessee is required to incur the expenditure for interior and exterior works for carrying on the business as per 'brand' specifications. The agreement entered into by the assessee with franchise is not perpetual agreements and is entered into for a period of two years (refer clause 7 of the franchise agreement in page 236 of paper book) and the agreement also has clauses for termination under certain circumstances. Given this it cannot be said that the assessee is deriving an enduring benefit nor can it be said that any capital asset has been created in favour of the assessee. In assessee's case, the expenses are incurred for the purpose of refurbishing the showroom which provides the customers an environment where these products are sold in Dell exclusive stores. In view of these discussion and respectfully following the decision of the coordinate bench of the Tribunal in the case of Nike India (supra) we hold the expenses incurred by the assessee towards fixture and stores interiors expenses is an allowable expenses and the claim made by the assessee is directed to be accepted. This ground is allowed in favour of the assessee."

19.6 In view of the above order of the Tribunal, which is identical to the facts of the instant case, we direct the A.O. to allow the said expenditure as a revenue expenditure. It is ordered accordingly.

19.7 In the result, ground II(5) is allowed.

Disallowance of interest on delayed payment of TDS [Ground II(6)]

20. For the relevant assessment year, the assessee had paid interest of Rs.26,349 u/s 201(1A) of the I.T.Act and claimed the same as an allowable expenditure u/s 37 of the I.T.Act.

The A.O. disallowed the interest holding the same has no connection with the business carried on by the assessee.

20.1 The DRP rejected the contentions / objections of the assessee and upheld the disallowance made by the A.O.

20.2 Aggrieved, the assessee has raised this issue before the Tribunal. The learned AR relied on the following case laws:-

(i) Total Environment Building Systems Pvt. Ltd. v. DCIT in ITA Nos. 45 & 46/Bang/2017 (order dated 29.06.2022).

(ii) Resolve Salvage & Fire India (P.) Ltd. v. DCIT reported in (2022) 139 txmann.com 196 (Mum-Trib.)

20.3 We have heard rival submissions and perused the material on record. We find on identical facts, the Bangalore Bench of the Tribunal in the case of Velankani Information Systems Ltd. v. DCIT reported in (2018) 97 taxmann.com 599 (Bangalore-Tribunal) had decided the issue against the assessee. The relevant finding of the Tribunal reads as follows:-

"21. As far as delay in remittance of tax deducted at source u/s. 201(1A) of the Act is concerned, we find that the Hon'ble Madras High Court in the case of CIT v. Chennai Properties & Investment Ltd. (1999) 239 ITR 435 (Mad) has taken a view that interest paid u/s. 201(1A) is also in the nature of tax and notwithstanding the fact that it is not the tax liability of the assessee, the same cannot be allowed as a deduction. The following were the relevant observations of the Hon'ble Madras High Court:--

"14. As already noticed the payment of interest takes colour from the nature of the levy with reference to which such interest is paid and the tax required to be but not paid in time, which rendered the assessee liable for payment of interest was in the nature of a direct tax and similar to the income-tax payable under the Income-tax Act. The interest paid under Section 201(1A) of the Act, therefore, would not assume the character of business expenditure and cannot be regarded as a compensatory payment as contended by learned counsel for the assessee.

15. Counsel for the assessee in support of his submission that the interest paid by the assessee was merely compensatory in character besides relying on the case of Makalakshmi Sugar Mills Co. also relied on the decision of the apex court in the cases of Prakash Cotton Mills Pvt Ltd. v. CIT [1993] 201 ITR 684; Malwa Vanaspati and Chemical Co. v. CIT [1997] 225 ITR 383 and CIT v. Ahmedabad Cotton Manufacturing Co. Ltd. [1994] 205 ITR 163. In all these cases, the court was concerned with an indirect tax payable by the assessee in the course of its business and admissible as business expenditure. Further liability for interest which had been incurred by the assessee therein was regarded as compensatory in nature and allowable as business expenditure.

16. The ratio of those cases is not applicable here. Income- tax is not allowable as business expenditure. The amount deducted as tax is not an item of expenditure. The amount not deducted and remitted has the character of tax and has to be remitted to the State and cannot be utilised by the assessee for its own business. The Supreme Court in the case of Bharat Commerce and Industries [1998] 230 ITR 733, rejected the argument advanced by the assessee that retention of money payable to the State as tax or income-tax would augment the capital of the assessee and the expenditure incurred, namely, interest paid for the period of such retention would assume character of business expenditure. The court held that an assessee could not possibly claim that it was borrowing from the State, the amounts payable by it as income-tax, and utilising the same as capital in its business, to contend that the interest paid for the

> period of delay in payment of tax amounted to a business expenditure". (emphasis supplied)
>
> *22. The decision cited by the ld. counsel for the assessee of Kolkata Bench of the Tribunal on the issue is contrary to the decision of the Hon'ble Madras High Court. Though the decision of the Tribunal is later in point of time, judicial discipline demands that the decision of the Hon'ble Madras High Court is to be followed. It is also worthwhile to mention that the Kolkata Bench of Tribunal in the case of Narayani Ispat (P.) Ltd. (supra), which was cited by the ld. counsel for the assessee, did not consider or did not have an occasion to consider the decision of the Hon'ble Madras High Court in the case of Chennai Properties and Investment Ltd. (supra). In these circumstances, we follow the decision of the Hon'ble Madras High Court & uphold the order of the CIT(A) insofar as it relates to disallowance of interest on delayed remittance of tax deducted at source u/s. 201(1A) of the Act."*

20.4 Following the above decision of the Tribunal, we hold that the interest on delayed payment of TDS is not an allowable deduction.

20.5 In the result, ground II(6) is dismissed.

Disallowance of unpaid Central Sales Tax (CST) [Ground II(7)]

21. For the assessment year 2013-2014, the assessee had not added back unpaid Central Sales Tax (Rajasthan) amounting to Rs.2,006 as per the provisions of section 43B of the I.T.Act. The same was reflected under clause 21(1)(B)(b) to Form No.3CD. The assessee submitted that it has not added back the same since the amount was not debited in the profit and loss account. The explanation of the assessee was not accepted by the A.O. and the same was added to the total income of the assessee.

21.1 The DRP rejected the contention of the assessee and upheld the addition made by the A.O.

21.2 Aggrieved, the assessee has raised this issue before the Tribunal. It is submitted that CST amount was not routed through the profit and loss account, hence, there is no occasion to make the disallowance on that count. The learned AR relied on the judgment of the Hon'ble Delhi High Court in the case of Noble & Hewlett (I.) (P.) Ltd. v. CIT reported in (2008) 305 ITR 324 (Del).

21.3 The learned DR supported the orders of the AO and the DRP.

21.4 We have heard rival submissions and perused the material on record. We find on identical issue the Tribunal in the case of Smt.Husna Parveen v. CIT(A) reported in (2022) 142 taxmann.com 2 (Varanasi-Trib.) by following the judgment of the Hon'ble Apex Court in the case of Chowringhee Sales Bureau (P.) Ltd. v. CIT reported in (1997) 87 ITR 542 (SC) had decided the issue against the assessee. The relevant finding of the Tribunal reads as follows:-

> *"6. I have considered the submissions of the assessee made before the authorities below as well as the submissions of the learned Sr. DR. There is no dispute that the assessee has not paid the GST within the time limit as prescribed under section 43B and shown in the Balance-Sheet as outstanding. This fact is also evident from the Audit report in Form No. 3CB, balance-sheet as on 31-3-2019 wherein this amount of Rs. 22,21,501/- is shown as outstanding being GST payable. The Auditor has also reported this amount in para 26 in respect of the sum which is referred under section 43B. Even otherwise, the assessee has not disputed this fact that it has not paid the GST. The only contention of the assessee is that it has not debited this amount in the profit and loss account but directly taken to the balance-sheet. This modus operandi of the assessee is not acceptable as the GST is part and partial of the sales and turnover of the*

assessee and it has to be shown as part of the inventory/closing stock. The assessee is required to maintain the books of accounts as per the accounting standards which are notified in the official gazette from time to time as per section 145 of the Act. The method of accounting is required to be regularly followed by the assessee. Even as per the provisions of section 145A, the valuation of the purchase and sales of goods and services and sale of inventory shall be adjusted to include the amount of duty, cess or fee actually paid or incurred by the assessee. Hence, the contention of the assessee that it has not claimed any deduction on account of GST by taking the same directly to the balance-sheet and not taking through the profit and loss account is not acceptable. The assessee cannot be permitted to adopt a modus operandi and giving an accounting treatment to the GST without passing through the profit and loss account to circumvent the provisions of section 43B. The CIT(A) has considered this issue in paras 5 to 6.3 as under:—

'5. FINDINGS AND DETERMINATION:

I have carefully gone through the Grounds of appeal, the findings of AO on each such Grounds of appeal raised by the assessee and the written submissions uploaded by the assessee in support of the Grounds of appeal.

6. All the Grounds involve only one solitary issue, that is AO's action of disallowing u/s 43B, the unpaid GST liability of Rs. 22,21,501/- to the credit of Central Govt, the said liability not being paid to the credit of Central Govt. before the due date of filing ITR u/s 139(1) of I.T. Act.

6.1 The issue involved is that as on the closing day of F.Y. under consideration, there was an unpaid GST liability existing in the balance sheet of the assessee, amounting to Rs. 2221.501/-. The said GST liability remained unpaid even till the due date of filing ITR for the A.Y. under consideration. The auditor reported the same in column 26(1)(b) of tax audit report in form No. 3CD. The AO, CPC, invoked the provisions of s.43B and disallowed the said unpaid GST liability and added to the total income of the assessee.

6.2 In the written submissions, the assessee has objected to the disallowances made by AO, CPC and has submitted that AO has incorrectly invoked provisions of s.43B. The main argument of the assessee has been that the GST liability was not routed through profit and loss account, ie was not debited in profit and loss account, therefore it should not be disallowed as it was never claimed as an allowable expenditure. In this regard, the assessee has explained the manner in which GST collected by him from the customers, which is finally required to be credited/paid to the Central Govt, is accounted for. The assessee has submitted that assessee is maintaining a separate GST account in his ledger book without debiting the amount of the said GST in profit and loss account. As and when the assessee makes any sale of the goods to the customers, the sale amount and GST amount is credited in the ledger account as sales account and GST account respectively. Subsequently, the sale amount net of GST is credited to P & L A/c, while the GST component of the sale, as collected from the customers, is directly taken to balance sheet on the liability side, without first crediting to P & L A/c.

Similarly, as and when the said GST collected from the customers is deposited to Govt A/c, the outstanding GST liability existing in the balance sheet is reduced by that amount, but the P & L A/c remains unaffected as no debit entries are passed in the P & L A/c. In this manner, the amount of GST is neither credited in profit and loss account at time of making collection from the customers, nor the amount of GST is debited in profit and loss account at time of depositing the GST to the Central Govt A/c. According to the assessee, since no debit entries on account of GST are at all passed in the P & L A/c, this means that the assessee has not claimed any GST expenses allowable to it consequently no disallowance u/s 43(b) should be made. In support of these arguments, the assessee has placed its reliance in the case of CIT v. Associated Pigments Ltd. (1973) 71 Taxman 244 (Cal), wherein according to the assessee, it was decided that where the assessee had credited sales tax collection and debited sale tax payment in a separate sales tax account that would not rendered the provision of section 43(b), hence the aforesaid section is inapplicable. The assessee has also relied on the judgments in the case of S. Govind Raja Reddiar v. ITO (1986) 19 TTD (Coch) 177 and also Sri Kakollu subba Rao & Co. v. Union of India (1988) 71 CTR (AP) 34.

6.3. DECISION:
(I) On identical facts, as are involved in the present appeal, Hon'ble ITAT, COCHIN BENCH, COCHIN, in the case of "M/s. Kunnel Engineers & Contractors (P) Ltd." decided in I.T.A. No. 653/Coch/2019 & 04/Coch/2020 vide its judgement dated 19-5-2020, has decided the issue in favour of revenue and against the assessee. The only difference in that, in that case the issue was of "SERVICE-TAX" while in the present case of the assessee the issue is of "GST".

The decision granted by Hon'ble ITAT is reproduced as under:

4. We have heard the rival submissions and perused the record. In this case, the assessee has collected an amount of Rs. Rs. 3,52,69,463/- for the assessment year 2012-13 and Rs. 2,42,72,852/- for the assessment year 2014-15 as service tax and not remitted the same to the Government exchequer, before the due date of filing of the return of income. As such, the issue whether the provisions of section 43B of the I. T. Act applies to service tax, which is not paid before the due date of filing of the return. It was considered by the co-ordinate Bench of the ITAT, Hyderabad Benches in the case of M/s. Bartronics India Ltd. v. ACIT [ITA No. 2188 and 2189/Hyd/2011 vide order dated 31-5-2012 that when the assessee has not paid the service tax as required under the provisions of section. 43B, which is also very much covered u/s 43B of the I. T. Act. The provisions of section 438 of the Act is very clear and it states that "any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force". Therefore, even the service tax is liability which covers u/s 43B of the Act and non-payment of the same within the stipulated time as specified u/s 43B of the Act attracts disallowance. Now the question is that when the assessee has not claimed it as expenditure in the profit and loss account, could it be disallowed u/s 43B of the Act. This was considered by the 1-Hon'ble Apex Court in the case of Chowringhee Sales Bureau (P.) Ltd. v. CIT [1973] 871 TR 542 (SC), in which it was held that the sales tax collected by the

assessee is revenue receipt even if it is shown by the assessee under non-revenue head and such treatment by the assessee is not decisive. Further, in the case of M/s. Jain Christopher v. DCIT in ITA No. 855/Bang/2012- order dated 12-4-2013., it was held as under: —

"7.2 During the course of assessment proceedings, the Assessing Officer observed that a sum of Rs. 29 lakhs representing service tax collected by the assessee had not been paid, but, was shown as 'outstanding liability'. Being queried, it was explained that it had not preferred any claim for deduction and, thus, it was argued, the question of disallowance tr/s 43B of the Act does not arise. The AO took a view that even though the assessee had not claimed the same in its P & L account as an expenditure and, therefore, section 43B has no application. However, he was of the view that the fact remains that service tax collected by the assessee but not paid to the Government account up-to the end of the financial year or even up-to the date of filing of the return of income and, thus, by not including this amount in its service, it had clearly made a claim indirectly. As rightly highlighted by the CIT(A), the assessee's plea that sales-tax was different from service tax cannot be accepted in the present circumstance as what the assessee was a firm of Chartered Accountants is selling is services and not goods, so the tax applicable is service tax which stands on the same bracket as sales tax in terms of services rendered as sales tax holds for goods sold. We have also observed that the AO had pointed out that the said amount has been included as business receipts in its TDS Certificates and as such, the same should have been included in its receipts. This has not been precisely done by the assessee. The case laws relied on by the assessee is dealt with as under:

(1) ACIT v. Real Image Media Technologies (P.) Ltd. (ITAT Chennai):

7.2.1 The assessee was running a recording and dubbing studio, production of advertisement, films and television serials etc., as well as in software development. The amount of service tax included in bills issued but not received. Accordingly, the Hon'ble Tribunal had recorded its findings that As per s. 68 of Finance Act, 1994 read with rule 6 of Service Tax Rules, 1994, the service tax becomes payable only on receipt of service tax from the client. Therefore, the amount of service tax included in bills but not received could not be disallowed under s. 43B'. After analysing the relevant provisions of Income-tax Act as well as Service Tax Act, the Tribunal had, further, recorded its findings as under:

"12. From a plain reading of the above provision it becomes clear that the rigour of this provision would be attracted only in a case where an item is allowable as deduction but because of the failure to make payment such deduction will not be allowed. It can be argued that in the case of ST also the assessee does not claim deduction since it has been held that non-payment of Sales-tax would attract provisions of section 43B, but that is being done on the basis of the principles laid down by the Hon'ble Supreme Court in the case of Chowranghee Sales Bureau Ltd. v. CIT 110 ITR 385 that Sales-tax is part of the trading receipt. Further, section 145A clearly provides that for the purpose of determining income under the head profits and gains of business or profession, the amount of purchase and sales i.e. turnover would include any tax, duty cess or fee.

Therefore, the rigour of section 43B may be applicable in the case of Sales-tax or Excise Duty but the same cannot be said to be the position in case of Service-tax because of two reasons. Firstly, the assessee is never allowed deduction on account of service tax which is collected on behalf of the Govt. and paid to the Govt. accordingly. Therefore, a service provider is merely acting as an agent of the Govt. and is not entitled to claim deduction on account of service tax. Hence, on this account alone addition u/s 43B could not be made and the same has been correctly deleted by the CIT(Appeals)".

However, in the instant case, as admitted by the assessee, service tax has been collected but not paid to the Government account either up-to the end of the financial year or even up-to the date of filing of the return of income. Thus, the case law relied on by the assessee is distinguishable and cannot come to the rescue of the assessee.

(ii) CIT v. Noble and Hewitt India (P.) Ltd. (Del)

7.2.2 The Hon'ble Delhi High Court was predominantly concerned with the disallowance of deduction by invoking the provisions of section 43B of the Act. The Hon'ble Delhi High Court was not considering the issue whether the service tax collected and the remaining unpaid till the due date of furnishing of the return forms the part of the total income for the current year.

(iii) DCIT v. Manish M Chheda 29 SOT 138 - Mumbai ITAT

7.2.3 In the above case, the Hon'ble Mumbai Tribunal was considering the applicability of section 28(iv) of the I T Act. In the instant case, it is an admitted fact that during the course of assessee's profession, a sum of Rs. 29,60,000/- was realised/collected as service tax payable and the same is not capital receipt. The moment the service tax is realised, it becomes payable to the Govt. account and if it is not paid, it partakes the character of income of the assessee, since the assessee could utilise this amount in any manner whatsoever, there is no restriction placed on its utilisation. This is amply clear from the TDS certificate furnished by the assessee and also the credit appearing in the assessee's bank account. Therefore, to arrive at the professional income, the service tax realized should have been included in the gross receipts unless paid to Government exchequer within the due date of filing of return. Since service tax realised is included in the total income, the same is to be allowed as a deduction in the year it is paid to the Government account. In the instant case, this is what has been done by the learned CIT(A). The CIT(A) had allowed the alternative plea of the assessee and had directed the Assessing Officer to deduct the service tax when the payment is made to the Govt. account in the subsequent year. Therefore, we find there is no merit in the contention raised on behalf of the assessee and this issue is decided against the assessee. It is ordered accordingly."

4.1 Further, in the case of M/s. Hemkunt Infratech (P.) Ltd. v. DCIT [ITA No. 6683/De1/2017 - order dated 23-3-2018, the Delhi Benches of the Tribunal held as under: —

"6. After hearing both the sides and perusing the entire material available on record, we observe that there is a credit balance of Rs. 1,16,09,924/- at the end of the year towards expenses payable. The assessee submitted that it is service tax liability, which arose due to crediting the service tax received from the service recipients. The assessee has challenged before us, the disallowance of Rs. 85,26,467/- disallowed u/s. 43B of the Act. We observe that the assessee has recorded his turnover after deducting the service tax received and the service tax has been credited separately. In section 145, of the Act for determining the income chargeable under the head profits and gains of business or profession or income from other sources, the same is to be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. The said provisions were substituted by the Finance Act, 1995 w.e.f. 1-4-1997. Under section 145A of the Act, it is provided that notwithstanding anything to the contrary contained in clause(a) to section 145, the valuation of purchase and sale of goods and inventory, for the purpose of determining the income chargeable under the head profits and gains of business or profession, shall be (i) in accordance with method of accounting regularly employed by the assessee; and (ii) further adjusted to include the amount of any tax, duties, cess or fees, by whatever name called, actually paid or incurred by the assessee, to bring the goods to the place of its location and condition, as on the date of valuation. As per the explanation under the said clause, it is pointed out that for the purpose of this section, any tax, duties, cess or fees, by whatever name called, under any law for the time being in force, shall include all such payments, notwithstanding any right arising as a consequence to such payments. Sub-clause (b) talks of interest received by the assessee on compensation or enhanced compensation, which is not relatable to the issue before us. The aforesaid provisions of section 145A of the Act have been substituted by the Finance (No.2) Act, 2009 w.e.f. 1-4- 2010. Prior to its substitution, which was inserted by the Finance (No.2) Act, 1998 w.e.f. 1-4-1999, the section provided the provision relatable to the valuation of purchase and sale of goods and inventory, for the purpose of determining the income chargeable under the head profits and gains of business or profession and no clause '(b) was provided i.e. in respect of income received by the assessee on compensation or on enhanced compensation. In view of the amended provisions of the Act, which came into effect from 1-4- 1999 for valuing the purchases and sales of goods and also for valuing the inventory, while determining the income chargeable under the head profits and gains of business or profession, it has been provided that the said valuation would be in accordance with the method of accounting regularly employed by the assessee i.e. either mercantile or cash. Further, adjustment is to be made to include the amount of any tax, duties, cess or fees, by whatever name called, actually paid or incurred by the assessee to bring the goods to the place of its location and condition, as on the valuation date. In other words, where any expenditure is actually paid or incurred by the assessee by way of any tax, duties, cess or fees, by whatever name called, then adjustment is to be made both in the valuation of purchase and sale of goods and also in the valuation of inventory to include the aforesaid amounts while determining the income chargeable under head profits and gains of business or .profession. The assessee has separately accounted for the service tax collected is also the indirect part of turnover because it is received along with turnover. The assessee has not shown any invoice raised by him before us as per service tax

Rules, which is mandatory for the service provider to issue invoice to the service recipient. He has also not produced any evidence regarding payment received from service recipients as to how they have paid-separately or inclusive of service Tax. He has also not produced any evidence regarding whether the TDS has been remitted on payment after excluding the service tax. After going through the paper book filed by the assessee, we observe that the assessee has utilized service tax credit towards payment of duty on capital goods and as per Reverse Charge Mechanism. Therefore, it is necessary to discuss the relevant provisions of the Cenvat Credit Rules, 2004 as well as section 43B of the IT Act.

7. Section 43B(a) is as under:

43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or 8.

Rule 4 of the CENVAT Credit Rules, 2004 reads as under:

Rule 4. Conditions for allowing CENVAT credit.

(1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service:

Provided that in respect of final products, namely, articles of jewellery falling under heading 7113 of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.

(2) (a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year:

Provided that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in the same financial year:

Provided further that the CENVAT credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of a manufacturer:

Provided also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT

credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year.

Explanation.—For the removal of doubts, it is hereby clarified that an assessee shall be "eligible" if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification did not exceed rupees four hundred lakhs. (b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, or in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act, are in the possession of the manufacturer of final products, or provider of output service in such subsequent years.

Illustration.—A manufacturer received machinery on the 16th day of April, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit upto a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation under section 32 of the Income-tax Act, 1961 (43 of 1961).

(5) (a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning, or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to,-

(i) another manufacturer for the production of goods; or (ii)a job worker for the production of goods on his behalf, according to his specifications.

(6) The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of the manufacturer of the final products who has sent the input or partially processed inputs outside his factory to a job-worker may, by an order, which shall be valid for a financial year, in respect of removal of such input or partially processed input, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.

(7) The CENVAT credit in respect of input service shall be allowed, on or after the day which payment is made of the value of input service and the service tax paid or payable as is indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

9. As per Rule 6(1) of the Service Tax Rules, 1994, in case of company, service tax is to be paid on a monthly basis by 5th of the following month (in case of e-payment, by 6th of the month immediately following the respective month). However, the payment for the month of March is required to be made by 31st of March itself. As per rule 6(4) of the Service Tax Rules, 1994, the assessee can pay for provisional payment of service tax in case he is not able to correctly estimate the tax liability. In such a situation, he may request in writing to the jurisdictional Assistant/Dy. Commissioner for the same.

10. As per section 73A of the Finance Act, 1994, any person who has collected any sum on account of Service Tax, is under obligation to pay the same to the Government. He cannot retain the sum so collected with him by contending that the service tax is not payable.

11. As per section 173A of the Service Tax Act, in case, the service tax is collected, the provision is as under:

173A. Service Tax collected from any person to be deposited with Central Government.—(1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made there under from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.

(3) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (2) and the same has not been so paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

(4) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (3), determine the amount due from such person, not being in excess of the amount specified in the notice, and thereupon such person shall pay the amount so determined.

(5) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (2) or subsection (4), shall be adjusted against the service tax payable by the person on finalisation of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in sub-section (1).

(6) Where any surplus amount is left after the adjustment under sub-section (5), such amount shall either be credited to the Consumer Welfare Fund referred to in section 12C of the Central Excise Act, 1944 or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 118 of the said Act and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount]

12. We further observe that the point of taxation as per rule 3 of Point of Taxation Rules, 2011 is as under:

RULE 3. Determination of point of taxation.—(Notification No. 18/2011-ST dt. 1-3-2011 as amended).

For the purposes of these rules, unless otherwise provided, point of taxation shall be, -

(a) the time when the invoice for the service provided or agreed to be provided is issued:

Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment:

Provided that for the purposes of clauses (a) and (b), -

(i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service. provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;

(ii) wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a).

Explanation—For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance."

13. After considering the above provisions, it is clear that the assessee has to pay service tax within due date as set out under the above provisions either by way of cash/cheque or by way of availing CENVAT credit as per Rules as stated above, but the assessee did not do so. The liability of service tax had also arisen as per the point of Taxation Rules, as stated above.

14. Now, we have to examine the case of the assessee in the light of the above provisions. During the impugned year, the assessee has credit balance of service tax payable as on 31-3-2013 of Rs. 1, 16,09,924/- which was to be paid up to 31-3-2013 by the assessee, but he did not pay. Further, the assessee had paid a sum of Rs. 30,83,457/- before filing of IT return. As per section 43B(a), the above outstanding payment was to be paid up to the date of filing of return of income. As per method of accounting, the assessee has also not included the service tax received by him in the turnover. In fact, the assessee was legally obliged to declare its turnover inclusive of service tax received. The assessee cannot be exonerated from its liability by saying that he accounted for the service tax received separately. Since the assessee did not pay service tax as contemplated u/s. 43B(a) and as per above provisions of Service Tax Act within the stipulated time, therefore, the Id. CIT(A) has rightly disallowed the same u/s. 43B of the IT Act. The case laws relied by the assessee are based on different footings as in all the decisions it was held that Service Tax was not at all payable because the service Tax was not received from the customer. The 'aw prevailing at that particular time was that Service Tax was to be paid to the L3overnrnent only when Service Tax is received from the service receiver to the service provider. Subsequently, there is change in the law which provides that Service Tax is to be deposited by the service provider even if service tax is not paid by the service receiver to the service provider. Therefore, in all those decisions it was held that service tax outstanding is hit by the provisions of section 43B of the Income-tax Act. 1961. Due to the change in the law now those decisions do not help to the assessee. Moreover, the assessee has filed the service tax returns belatedly, i.e., for April to June on 16-4-2015, for July to September and half yearly from October to March, 2013 on 8-7-2015. In view of all these facts, the Id. CIT(A) has rightly dealt with the issue in question by giving elaborate findings in the impugned order regarding confirmation of addition u/s. 43B of the Act, which

we do not find fit to be interfered with. Accordingly, the appeal of the assessee deserves to be dismissed."

4.2 In view of the above binding precedents, we are of the view that the service tax collected by the assessee and not paid to the Government exchequer before the due date of filing of return, is to be disallowed, though it was not charged to the profit and loss account and it attracts the provisions of section 438 of the Act and the present provisions of section 145A of the Act cannot be applied in view of non obstante clause in section 438 of the Act. Thus, this ground of appeals of the Revenue for both the assessment years is allowed.

(ii) In the above referred decision of Hon'ble ITAT, Cochin Bench, Cochin, in the case of M/s. Kunnel Engineers & Contractors (P) Ltd, the assessee has collected an amount of Rs. Rs. 3.52,69,463/- for the assessment year 2012-13 and Rs. 2.42,72,852/-for the assessment year 2014-15 as service tax and not remitted the same to the Government exchequer, before the due date of filing of the return of income. Hon'ble ITAT first examined the applicability of provisions of s.43B on service tax and observed that the said issue was considered by the co-ordinate Bench of the ITAT, Hyderabad Benches in the case of M/s. Bartronics India Ltd. v. ACIT [ITA No. 2188 and 2189/Hyd/2011 vide order dated 31-5-2012 where it was held that the provisions of section 43B, are very much covered u/s 43B of the I.T. Act. It was held that the provisions of section 43B of the Act is very clear and it states that "any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force", therefore, even the service tax is liability which covers u/s 43B of the Act and non-payment of the same within the stipulated time as specified u/s 43B of the Act attracts disallowance. Afterwards, Hon'ble ITAT considered the second issue, that when the assessee has not claimed it as expenditure in the profit and loss account, could it be disallowed u/s 43B of the Act. Hon'ble ITAT observed that this issue was considered by the Hon'ble Apex Court in the case of Chowringhee Sales Bureau (P.) Ltd. v. CIT [1973] 87 ITR 542 (SC). in which it was held that the sales tax collected by the assessee is revenue receipt even if it is shown by the assessee under non-revenue head and such treatment by the assessee is not decisive.

Thereafter, Hon'ble ITAT relied upon the comprehensive judgement delivered by Hon'ble ITAT, Bangalore in the case of M/s. Jain Christopher v. DCIT in ITA No. 855/Bang/2012 - order dated 12-4-2013, where various previous judgments were considered and distinguished by Hon'ble ITAT, Bangalore. These were:

(i) ACIT v. Real Image Media Technologies (P.) Ltd. (ITAT Chennai):
(ii) CIT v. Noble and Hewitt India (P.) Ltd. (Del)
(iii) DCIT v. Manish M Chheda 29 SOT 138 - Mumbai ITAT

Thereafter, Hon'ble ITAT relied upon the judgement delivered by Hon'ble ITAT, Delhi in the case of M/s. Hemkunt Infratech (P.) Ltd. v. DCIT [ITA No. 6683/Del/2017 - order dated 23-3-2018.

(iii) In the present case of the assessee, the issue is of "GST". As held by Hon'ble Apex Court in the case of Chowringhee Sales Bureau (P.) Ltd. v. CIT [1973] 87 ITR 542 (SC), the sales tax collected by the assessee is revenue receipt even if it is shown by the assessee under non-revenue head and such treatment by the assessee is not decisive. Accordingly, not only the provisions of s.43B are applicable in the case of assessee as GST is a "tax", but also GST collected by the assessee is revenue receipt even if it is shown by the assessee under non-revenue head and such treatment by the assessee is not decisive.

Consequently, in view of judgement of Hon'ble ITAT, Cochin Bench, Cochin in the case of "M/s. Kunnel Engineers & Contractors (P) Ltd as referred above, the non-payment of GST liability into the Govt A/c on or before the due date of filing ITR u/s 139(1) clearly attracted disallowances u/s 43B, irrespective whether the GST component of the sales was credited/debited or not credited/debited to the P&L A/c.

In the case laws relied on by the assessee in the written submissions, none of the judgments are of jurisdictional ITAT or High Court (Assessee being resident of Uttar Pradesh). Besides, the judgment relied upon by the assessee, delivered by ITAT, Cochin Bench, in the case of S. Govind Raja Reddiar v. ITO, reported in 19 TTD (Coch.) 177, the said judgment was delivered in 1986. Besides the copy of any of the judgements have also not been provided by the assessee. As against it, judgment of Hon'ble ITAT, Cochin Bench, Cochin in the case of "M/s. Kunnel Engineers & Contractors (P) Ltd as referred above, was delivered only very recently in year 2020 (judgment dated 19-5-2020). The said view of Hon'ble ITAT, Cochin Bench, Cochin is supported by several other judicial authorities, including the judgment delivered by Hon'ble ITAT. Bangalore in the case of M/s. Jain Christopher v. DCIT in ITA No. 855/Bang/2012 - order dated 12-4-2013, as well as the judgment delivered by Hon'ble ITAT, Delhi in the case of M/s. Hemkunt Infratech (P.) Ltd. v. DCIT [ITA No. 6683/DeI/2017 - order dated 23-3-2018.'

7. The CIT(A) has followed and referred various decisions of this Tribunal as well as decision of Hon'ble Supreme Court. No contrary decisions have been brought by the assessee either to the record of the authorities SANIYA below or to the record of the Tribunal. Accordingly, I do not find any error or illegality in the impugned order of the CIT(A) and the same is upheld."

21.5 In the light of the above order of the Tribunal, which has followed the judgment of the Hon'ble Apex Court, we reject the assessee's contentions and uphold the order of the AO. It is ordered accordingly.

Short credit of TDS [Ground II(8)]

22. For the assessment year 2013-2014, the return of income was filed claiming an amount of Rs.44,01,64,909 as TDS credit. The A.O., however, while passing the draft assessment order, granted only credit of Rs.43,83,48,820. The DRP directed the A.O. to verify the latest Form No.26AS and allow TDS credit as per law. Since the credit was not granted in the final assessment order for the amount sought for, the assessee has raised this issue before the Tribunal. The learned AR submitted that despite the directions of the DRP, the A.O. failed to verify the latest Form No.26AS and allow TDS credit amounting to Rs.43,97,06,585. It is submitted that the assessee has filed rectification application for rectifying the short credit.

22.1 We have heard rival submissions and perused the material on record. The issue raised in Ground II(8) is restored to the files of the A.O. The A.O. is directed to examine the issue afresh as per the directions of the DRP and grant due tax credit as per law. It is ordered accordingly.

23 In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 20th day of January, 2023.

Sd/-	**Sd/-**
(Padmavathy S)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 20th January, 2023.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The DRP-1, Bangalore.
4. The CIT (LTU), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore