IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1002/Mum/2017 (A.Y:2010-11)

ITA No. 4493/Mum/2017 (A.Y:2013-14)

DCIT – 1(1)(2) 579, Aayakar Bhawan, MK Road, Mumbai -400020.	Vs.	Forbes &Company Ltd Forbes Bldg, Charanjit Rai Marg – 1, Fort, Mumbai – 400001.
PAN/GIR No. : AAACF1765A		
Appellant	..	Respondent

ITA No. 1816/Mum/2019 (A.Y:2014-15)

ITA No. 1682/Mum/2021 (A.Y:2016-17)

Forbes & Company Ltd Forbes Bldg, Charanjit Rai Marg – 1, Fort, Mumbai –400001.	Vs.	DCIT – 1(1)(2) 579, Aayakar Bhawan, MK Road, Mumbai 400020.
PAN/GIR No. : AAACF1765A		
Appellant	..	Respondent

Revenue by :	Mr, Ankush Kapoor, CIT &. Ms.Vranda U Matkari.DR
Assessee by :	Mr.Ketan Ved & Mr.Abdulkadir Jawadwala.AR

Date of Hearing	08.03.2023
Date of Pronouncement	20.03.2023

आदेश / O R D E R

PER BENCH:

These are the appeals filed by the assessee and revenue against the separate orders of the Commissioner of Income Tax (Appeals) – 2, Mumbai passed u/s 250 of the Act.

Since the issues are similar and identical, hence are clubbed, heard and consolidated order is passed. For the sake of convenience, we shall take up the revenue appeal in ITA No. 1002/Mum/2017 for the A.Y. 2010-11 as a lead case and the facts narrated. The revenue has raised the following grounds of appeal:

> *1. "Whether on the facts and circumstances of the case, and in law, the ld CIT(A) erred in deleting the disallowance u/s 14A made as per Rule 8D after invoking the section properly.*
>
> *2. Whether on the facts and circumstances of the case, and in law, the ld CIT(A) erred in deleting the disallowance of provision for inventory written off especially when the adjustment made is not tax neutral as the adjustment results in net reduction in profit by Rs 8.06 lac. Further the ld CIT(A) erred in not following the order of CIT(A) for AY 2008-09 and AY 2009-10 wherein identical disallowances were upheld.*
>
> *3. Whether on the facts and circumstances of the case, and in law, the ld CIT(A) erred in deleting the disallowance of provision of interest of Rs 55,001/- without appreciating that the assessee did not establish*

the commercial expedience for extending loans to subsidiaries as required by AO.

4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of provision for foreclosure of trademark license agreement without ascertaining the facts and the provisions under which the same is allowable.

5.Whether on the facts and circumstances of the case and in law, whilst it is true that it is the obligation of Assessing Officer to conduct proper scrutiny of material with regard to disallowance of provision for foreclosure of trademark license agreement, given the fact that the Assessing Officer was prevented by non disclosure of relevant details by assesse and hence could not examine that the lump-sum paid for termination of the agreement, in fact, includes the amount paid for use of know- how and the amount paid for use of trade mark which are to treated as per provisions of section 35AB and 32(1)(ii) of the Act respectively, the obligation to conduct proper inquiry would shift to ld CIT(A) in view of the decision of Hon. Delhi Court in the case of CIT II vs Jansampark Advertising and Marketing P Ltd in ITA NO 525/2014 dated 11.3.2015 which remained discharged.

6. On the facts and circumstances of the case, and in law, the ld CIT(A) erred in deleting the addition of Rs 2,32,82,000 made on account of long term capital gain arising on slump sale without taking cognizance and examining the reasons and findings recorded by the AO in the assessment order"

7. Whether on the facts and circumstances of the case, and in law, the ld CIT(A) erred in allowing bad debts without ensuring that the conditions laid down in section

36(1)(vii) read with Sec 36(2) are fulfilled and the assessee has passed the entries correctly.

2. The brief facts of the case that the assessee company is engaged in the business of manufacturing of engineering tools for automobile industry, manufacturing of electric motors, shipping agencies, investment and rental activities. The assessee has filed the return of income for the A.Y 2010-11 on 30.09.2010 disclosing a total loss of Rs. 40,56,45,048/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and filed the details and the case was discussed.

3. The Assessing officer(AO) on perusal of the financial statements found that the assessee has claimed dividend from Eureka Forbes Ltd., (EFL) of Rs. 12.78 crores as exempt u/s 10(34) of the Act and the assessee has not allocated any expenses towards earning such dividend income and no expenditure was disallowed. The assessee was called to explain the

reasons and the assessee has filed the detailed submissions, whereas the AO was not satisfied with explanations and invoked provisions of sec14A r.w.r 8D(2) of the I T Rules and computed the disallowance of Rs. 63,39,999/-.(ii) The AO found that the assessee has debited Rs.10.11 lakhs in the profit and loss account on account of deduction in inventory write-off. The A.O. has observed that the same amount was reduced from the material debited to the profit and loss account and the assessee has filed the detailed explanations referred at Para 4.2 of the assessment order but the AO is of the opinion that the assessee has claimed double deduction and has disallowed Rs. 10.11 lakhs.

4. (iii) further the AO based on the information and the notes to audit report under the Companies Act found that the assessee has provided interest free loans to its subsidiaries/group/associates referred at Para 5.1 of the order. The assessee was called to explain the commercial expediency for extending the loans/advances to its sister concerns and why proportional interest should not be disallowed. The assessee has filed the reply on 05.03.2013 explaining

that the loans were granted after necessary resolutions and approvals and out of the own funds, but the AO was not satisfied with the explanations and considering the interest debited to the profit and loss account has worked out proportionate disallowance of Rs. 55,001/-.(iv)The AO on verification found that the assessee has debited an amount of Rs. 6,92,94,902/- in the profit and loss account under the head "provision for foreclosure of trade mark license agreement" and the assessee was called for to submit the details and explanations on the claim. In compliance the assessee has filed detailed explanations on 26..02.2013 mentioning that the assessee has entered into agreement with the Savile Row Holdings Company Ltd(SRHL) and the claim was made as per the terms of agreement. The AO has dealt on the issue at Para 6.2 to 6.9 of the order and allowed 1/6 of the total claim as under:

> *.6.2 The submissions made by the assessee have been duly considered and the same have not been found to be acceptable. The assessee entered into an agreement with Savile Row Holding Company Limited (SRHCL) to use Savile Row brand and to share technology and know-how for manufacturing the licensed products. As per the terms of the agreement, inter alia, Savile Row had agreed to*

furnish to the assessee technology and know-how to produce textile products and the right to manufacture and sell textile apparel products and also the license to use the trademarks owned by the Savile Row in the specific territories. The assessee gained exclusive rights to sell Savile Row products in the territories mentioned in the schedule to the agreement. The assessee was required to pay Royalty for the use of Savile Row's trademark @5% of the net wholesale selling price. For the technical know-how and the assistance services the assessee was required to pay Technical Assistance Fee as per the following terms:

1. Second Full Calender Year (2007) US$ 70,000

2. Third Full Calender Year (2008) US$ 1,10,000

3. Fourth Full Calendar Year (2009) US$ 1,50,000

4. Fifth Full Calendar Year (2010) US$ 1,80,000

5. Sixth Full Calendar Year (2011) US$ 2,25,000

6. Seventh Full Calendar Year (2012) US$ 2,50,000

7. Thereafter for each calendar year US$ 2,50,000

6.3 As per the Amendment Agreement dated 15.10.2008 the assessee requested M/s Savile Row to make the earlier agreement non-exclusive for a one-time royalty payment of USS 16,00,000 and to waive all obligations for future payment. Vide this Amendment Agreement the rights given to the assessee to grant sub-licenses stood extinguished and henceforth the assessee was not entitled to grant any sub-license without prior approval of the Savile Row.

As per Clause 3(a) of the amended agreement dated 15.10.2008,

"A non-exclusive License and right to sell in the territories all textile apparel products pursuant to the Trademarks specified in Schedule 2 or as hereafter additionally amended by the Savile Row in writing and manufactured by the Manufacturer pursuant to this agreement, the trademarks listed and designated with respect of the said textile apparel products in Schedule 2 or hereafter additionally amended by the Savile Row in writing"

The Clause 10 reads as follows:

"The Savile Row hereby authorizes, on non-exclusive basis, the Manufacturer to sell in the territories all such Savile Row Products are made to the reasonable standards and specifications which the Savile Row reasonably specifies from time to time for each such Savile Row Product and under the general control and supervision of the Savile Row. All sales of Savile Row Products by the manufacturer shall be to Retailers and any sales to Wholesalers shall be made only on the condition that such wholesalers are approved by the Savile Row, such approval not to be unreasonably withheld or delayed."

As per Clause 18(c) of the aforementioned agreement, both the parties agreed that on the payment of lump-sum royalty of US$ 16,00,000, the royalty payment and technical assistance fee as contemplated in the original agreement would no longer be effective.

As per Clause 21(a) the amended agreement shall be valid for a term of six years and three months,i.e., from 1" January, 2005 to 31st March, 2011 unless sooner terminated under any provisions of the agreement.

6.4 From the aforementioned extracts it can be clearly inferred that the assessee has paid a huge amount of Royalty amounting to US$ 16,00,000 for the termination of agreement on 31" March, 2011. The latest amended agreement has been entered into in July, 2010. As per the original agreement dated 31.08.2004 the agreement was valid for a period of TEN years from 1st January, 2005 and the terms of Technical Assistance Fee payment were are follows:

1. First Full Calendar Year (2005) US$ 15,000

2. Second Full Calender Year (2006) US$ 60,000

3. Third Full Calender Year (2007) US$ 1,00,000

4. Fourth Full Calendar Year (2008) US$ 1,50,000

5. Fifth Full Calendar Year (2009) US$ 2,00,000

6. Sixth Full Calendar Year (2010) US$ 2,50,000

7. Thereafter for each calendar year US$ 3,00,000

The assessee was also required to pay royalty equal to 5% of the wholesale selling price or 2.5% of the retail selling price for the use of Savile Row Trademark. This agreement was valid till the FY 2015.

6.5 Vide the supplemental agreement dated 18.07.2007 the payment of royalty @5% was done away with and the payment of Technical Fees was mandated as follows:

1. Second Full Calender Year (2007) US$ 70,000

2. Third Full Calender Year (2008) US$ 1,10,000

3. Fourth Full Calendar Year (2009) US$ 1,50,000

4. Fifth Full Calendar Year (2010) US$ 1,80,000

5. Sixth Full Calendar Year (2011) US$ 2,50,000

6. Seventh Full Calendar Year (2012) US$ 2,50,000

7. Thereafter for each calendar year US$ 3,00,000

The term of the agreement was also changed from TEN years to a period of THIRTY years beginning 1st January, 2005.

6.6 Vide a further Amendment Agreement dated July, 2010 the term of the agreement was again made SIX YEARS and THREE MONTHS beginning 1st January,2005 till 31st March, 2011. The assessee agreed to paid an amount of USD$ 16,00,000 as one-time payment for getting all the future obligations of payment of Technical Fees waived off.

6.7 From the aforementioned chain of events, it is clear that as per the terms of the original agreement the validity of the agreement was for TEN YEARS. However, the validity of the agreement was increased to THIRTY YEARS only three years after signing of the original agreement with the terms of payment of Technical Fees remaining almost the same and waiving off the Royalty payments based on the sales. This agreement was again amended by the assessee in another three years' time decreasing the validity of the agreement to SIX years and THREE months and making a lump-sum payment of USD$ 16,00,000/-. As per the assessee's submission this business required huge working capital investment and also continued expenditure on advertisement. And as a result there were insignificant contributions to the company's profit from this segment and as a measure to improve economic efficiency, the assessee renegotiated

the terms of agreement to mitigate the onerous binding liability of paying recurring loyalty and fees for technical services for the balance period out of the 30-year agreement with SRHCL. The assessee has stated that based on prolonged negotiations it was mutually agreed that one time royalty of USD$16,00,000 will be paid by the assessee.

6.8 From the above factual matrix it is clear that the amendment agreements entered into by the assessee with Savile Row were merely colorable devices as there was no rationale behind increasing the term of the agreement from TEN years to THIRTY years after only three years of operation since as per assessee's own submission this business required huge working capital investment and continued expenditure on advertisement. First the assessee amended the agreement which originally would have lasted only till 2015 and increased its validity to 30 years and then paid a huge amount of money as compensation for the balance period out of the 30 year term to end the agreement. Supreme Court in Vodafone International dated 20.01.2012 considered its decisions in the matters of McDowell reported in (1985) 3 SCC 230, Azadi Bachao reported in (2004) 10 SCC 1 and the Mathuram Agarwal reported in (1999) 8 SSC 67 and concluded that where the transaction is not genuine but a colorable device there could be no Bench question of tax planning. The SC held that a sham and non-genuine transaction cannot be considered to be a part of tax planning or legitimate avoidance of tax liability.

6.9 In this case the amendment agreements entered into by the assessee with Savile Row are merely colorable devices as there was no rationale or reason behind increasing the term of the original agreement from 10 to 30 years in the first place. Then the assessee again

entered into an ' amendment agreement and agreed to pay a lump-sum amount of USD$ 16,00,000 for reducing the term of the agreement from 30 years to 6 years and 3 months and waiving of the balance payments on account of royalty and fee for technical services for the remainder of the 30 year agreement term. As per the original agreement the assessee was to pay an amount of USD$ 3,00,000 for each calendar year till 2015. Thus, the total outstanding payments as on the date of the second amendment agreement were USD$ 15,00,000, i.e., USD$ 3,00,000 per year from 2011 to 2015. Clearly, the first amendment agreement was merely a colorable device so that the huge amount of one-time lump-sum payment can be justified. Thus, the assessee's claim for allowance of the entire amount of USD$ 16,00,000 in the current AY under consideration is rejected. Since as per the terms of the original agreement, the validity of the agreement was till 2015, the amount of USD$ 16,00,000 is allowed to be amortized over the remaining period of the agreement till 2015. Thus, only 1/6th of the total payment amounting to USD$ 16,00,000 (Rs. 6,92,94,902/-) can be allowed as an expenditure in the current AY under consideration, i.e., an amount of Rs. 1,15,49,150/- is being allowed as deduction and the remaining amount of Rs. 5,77,45,752/- is being disallowed and added back to the total income of the assessee. Penalty proceedings u/s. 271(1)(c) of the I.T. Act, 1961 are also being initiated against the assessee for furnishing inaccurate particulars of income leading to concealment of income.

5.(v) During the year, the assessee has demerged an undertaking and offered the capital gains under provisions of Sec. 50B of the Act and the assessee was called to explain why the negative net worth of

the undertaking transferred should not be added to the total long term capital gains. Incompliance, the assessee has filed explanations vide letter dated 26.02.2013 considered at Para 7.1 of the order. The AO dealt on the Report in Form, 3CE,provisions of the Act and finally is of an opinion that the transactions are not tax compliance and colorable device and the transfer of undertaking of BAG unit as LTCG of RS.232.82 lakhs.(iv)The last disputed issue that the assessee has debited an amount of Rs.88.05 lakhs under the head bad debts/advances written. The assessee has filed the explanations referred at Para 8.2 of the order explaining the nature of the transactions, whereas the AO was not satisfied with the explanations and disallowed claim observing at Para 8.3 of the order as under:

> *8.3 From the computation of income furnished by the assessee it is seen that although the assessee has added back the amount of Rs. 81.52 Laks on account of refund receivable from the income tax department, the assessee has also reduced an amount of Rs. 9,35,16,380/- under the head 'Bad Debts Written off against provision held' and Rs. 4,74,631/- under the head 'Advances Written off against provision held'. Thus, effectively, the assessee has claimed Bad Debt and Advance W/off amounting to Rs. 1023.22 Lakhs. However, the assessee has claimed in*

its reply that only the amount of Rs.6.53 Laks has actually been written off and thus allowable as per the provisions of Sec 36(1)(vii) of the IT Act. Thus, the amount of Rs. 9,39,91,011/- is being disallowed and added back to the total income of the assessee as the assessee has not furnished any proof regarding its allowablility as per the provisions of Sec 36(1)(vii) read with Sec 36(2) of the IT Act, 1961. Penalty proceedings u/s. 271(1)(c) of the I.T. Act are separately initiated for furnishing inaccurate particulars of income thereby concealment of income.

Finally the AO has assessed the total loss of Rs. 22,32,20,285/- and passed the order u/s 143(3) of the Act dated 18.03.2013.

6. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and has granted partial relief to the assessee on the disputed issues and partly allowed the assessee appeal. Aggrieved by the CIT(A)order, the revenue has filed an appeal before the Honble Tribunal.

7. At the time of hearing the Ld. DR submitted that the CIT(A) has erred in not considering the various facts and figures in respect of the transactions of claim and the evidences and took a unilateral view in

allowing the claim and the Ld.DR relied on the A.O. order on the disputed issues. Contra, the Ld. AR submitted that the CIT(A) has considered the facts , provisions of the Act and appellate decisions in the assessee's own case for the earlier years and granted the relief and relied on the CIT(A) order.

8. We heard the rival submissions and perused the material on record. On the first disputed issue, the Ld.DR submitted that the CIT(A) has erred in deleting the disallowance u/s 14A of the Act overlooking the provisions of the Act, transactions and emphasized on the various investments pattern of the assessee. We find that the CIT(A) has observed at Para 5.2 of the order as under:

> *5.2 I have considered the facts and circumstances of the case, submissions and stated that no expenditure has been actually incurred for earning tax free income and that the A.O. has neither given any finding in the assessment order nor has identified any expenditure. Further, the A.O. has not established any nexus between the tax free income and expenditure incurred for that which is debited to profit & loss account of the year. It has also been categorically stated that the investment is held for more than 25 years, which fact has not been disputed.*

Further, it has been observed that, on an identical issue for assessment year 2009-10, [CIT(A)-2/IT-144/2011-12]and assessment year 2008-09, [CIT(A)-1/IT-776/2010-11], the issue has been adjudicated in appellant's favour. After considering the facts and circumstances of the case, for assessment year 2008-09, the CIT(A) had held that:

"The appellant has relied on the decision of Hon'ble tribunal bench 'J' Mumbai in case of Justice S.P.Barucha vs. Addl.CIT in ITA No. 3889/Mum/2011 where it has been decided that -

"In view of the above discussion and facts and circumstances of the case, we are of the considered opinion that no disallowance under section 14A is called for when the assesse has not incurred and claimed any expenditure for earning exempt income. Needless to say the provisions of Rule 8D are not applicable for the assessment year under consideration as held by the honourable jurisdictional High Court in case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT 328 ITR 81."

For assessment year 2009-10, considering the decision of the Hon'ble Tribunal referred above as well as decision of my learned predecessor for A.Y. 2008-09, I had allowed the appcal in favour of the appellant with the following observation:

"In view of the above decision of the Hon'ble Tribunal, applicable to the facts and circumstances of the case, the disallowance u/s 14A of the IT. Act is deleted because even when the A.O. has recorded the appellant's contention before him that Rule 8D is applicable to assessment year under review, no nexus of expenditure

has been pointed out to the income earned and the only basis taken by the A.O. is that "no amount is earned in vaccum". Under the facts and circumstances and considering the decision of the Hon'ble Tribunal, referred above, and the decision of my learned predecessor for AY 2008-09, Ground No. 5 to 8 of the appeal is allowed. Ground No. 9 being alternative and without prejudice thus becomes infructuous, hence same is dismissed."

I find that there is no change in the facts and circumstances of the case of the Appellant during the year under consideration. In view of the aforesaid, the disallowance u/s 14A of the I.T. Act is deleted because (a) on facts, there does not appear to be any expenditure incurred by the appellant for earning the exempt income; (b) the A.O. has not stated the basis on which the claim of the appellant that no expenditure has been incurred, is not correct. Under the facts and circumstances and considering the decision of the Hon'ble Tribunal, referred above, the order of the CIT (A) for AY 2008-09, and A.Y. 2009-10; Ground No. 1 of the appeal is allowed.

We find that the CIT(A) has relied on the assessee's own case for the A.Y 2008-09 and grated the relief. Further the Ld. AR suppored the submissions with the chart and judicial decisions mentioning that the recording of satisfaction is a pre-requisite for invoking the disallowance u/s 14A and relied on the decisions of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT (2018) 402 ITR 640 (SC) and Pr. CIT Vs. Reliance Capital Asset Management Ltd., [2017] 86 taxmann.com 200 (Bombay). Further the AO has not

established any nexus between the exempt income and the expenditure incurred and Ld. AR submitted that on the similar issue, the Hon'ble Tribunal in the assessee's own case for the A.Y 2008-09, 2009-10 and 2010-11 has set aside the issues to the file of the AO.The assessee's own case in ITA No. 5797 & 6853/Mum/2016, A.Y 2009-10 and the observations at Para 12 to 14 of the order read as under:

12. In grounds 2 and 2(a) the revenue has challenged the deletion of disallowance of expenditure made under section 14A r.w.r. 8D for earning exempt income.

13. We have heard rival submissions and perused materials on record. It is a common point between the parties that while deciding revenue's appeal in assessment year 2008-09 (supra), the Tribunal has restored the issue to the assessing officer with the following observations:-

19. In ground 2, the revenue has challenged the deletion of disallowance made under section 14A r.w.r.8D.

20. Briefly the facts are, in course of assessment proceedings, the assessing officer noticed that the assessee had earned income by way of dividend and from mutual fund which were claimed as exempt. Therefore, he called upon the assessee to explain why disallowance under section 14A r.w.r.SD should not be made. Though, the assessee made submissions objecting to the proposed disallowance; however, the assessing officer, ultimately computed disallowance u/r 80 for an amount of Rs.66,47,380/-. Assessee contested the aforesaid disallowance before learned Commissioner of Income-tax

(Appeals). Following his predecessor's order on Identical Issue in assessee's own case for assessment year 2007-08, learned Commissioner of Income-tax (Appeals) deleted the disallowance.

21. Before us, the learned Counsel for the assessee fairly submitted that in assessee's own case for assessment year 2007-06, the Tribunal has restored the issue back to the assessing officer for adjudication while deciding revenue's appeal. Thus, he submitted, the issue has to be restored back to the assessing officer.

23. Having considered rival submissions, we find that while deciding identical OF LAWissue in assessee's own case for assessment year 2007-08, the Tribunal, in the order referred to above, has restored the issue to the file of the assessing officer, holding as under:-

8. Presently, in A. Y. 2007-08, the case set up by the assessee is that the Satisfaction of the Assessing Officer mandated by sub section (2) of section 14A of the Act has not been recorded to permit the Assessing Officer to compute the disallowance u/s. 14A of the Act. In support of such proposition, reliance was placed on the decision of Hon'ble Supreme Court in the case of Godrej & Boyce Mfg Co. Ltd 3391TR 449. It is also the say of the assessee that own interest free funds available with it at the beginning of the year as well as the closing of the year ore enough to cover the investments which have yielded the exempt income and therefore, following the ratio of Hon'ble Bombay High Court in the case of OT vs. Reliance Utilities 313 ITR 340, no interest expenditure can to attributable to such investments.

9. On this aspect, the learned OT-DR appearing far the Revenue contended that the language by which the

Assessing Officer is required to record the satisfaction mandated u/s. 14A of the Act is not prescribed under the statute and the some has to be gathered from the discussion in the assessment order. In that context, it has been explained that the satisfaction has been arrived by the Assessing Officer where he refers to the fact that certain expenditure would be attributable to the earning of the tax free income on account of finance and managerial costs. In this regard, he has also mentioned to the observations of Hon'ble Allahabad High Court in the case of Dhampur Sugar Mills Ltd. vs. OT51 taxmann.com 508 "Whether or not, the Assessing Officer is not satisfied with the correctness of the claim of the assessee has to be deduced from the assessment order and there is no straight jacket formula requiring the Assessing Officer to use any particular language or form. So long as the order of Assessing Officer indicates that he is not satisfied with the correctness of the claim of the assessee or claim of the assessee that no expenditure has been incurred, the Assessing Officer has to proceed in the manner indicated Rule 8D(2)."

10. We have carefully considered the rival submissions. We are conscious that each assessment year is an independent unit of assessment and is liable to be decided on a unit basis. So far as certain facts for more than one assessment year ore definitely required to be adjudicated in a uniform manner. We are saying this for the reason that though the factual assertions of the assessee having substantial own funds which are more than the investments that yielded interest free income, we are conscious of the facts that out of total investments of Rs. 132.24 crore, nearly Rs. 2.5 crore have been made during the year whereas the balance are brought forward from earlier years. So the earlier years are 51576

concerned, fact as to whether or not the expenses are to the income earned is still open before the Assessing Officer, since such matters have been set aside to his file for adjudication afresh right from assessment 35 to 2006-07. Therefore, in the fitness of things, we deem it fit and proper to set aside the issue to the file of the Assessing Officer to re-compute the disallowance out of the interest expenditure in terms of section 14A of the Act If the facts and law so warrants.

11. Even the issue raised by the assessee with regard to absence or otherwise of the requisite satisfaction of section 14A of the Act is concerned, the same shall also be restored to the Assessing Officer to be dealt afresh as per law.

12. Be that as it may, following the precedence, we keep the disallowance u/s, 14A open before the Assessing Officer as per law. Needless to mention., the Assessing Officer shall afford the assessee reasonable opportunity to support its stand as manifested in the return of income.
13. Now we may come to the disallowance made by the Assessing Officer towards general and administrative expenses amounting to Rs, 67,454,402/- by applying Rule 8D(2)(iii) of the Rules, Since it is found to be inconsistency with the proposition of law the disallowance is not maintainable. The learned CIT(A) has. rightly set aside the same. Since the disallowance of interest u/s 14A has been set aside to the AO as done by the CIT(A)for adjudication afresh as per law, accordingly, the ground of appeal of the assssee is partly allowed as above and that of the Revenue is dismissed."

24. Consistent with the view taken by the Tribunal in assessment year 2007- 08, as noted above, we restore the issue to the assessing officer for fresh adjudication,

keeping in view the observations of the Tribunal as reproduced above. This ground is allowed for statistical purpose."

We find the facts of the present case are identical to earlier years, the Hon'ble Tribunal has considered the facts, submissions and the information. Accordingly, We restore the disputed issue to the file of the AO with the similar directions and allow the ground of appeal for the statistical purpose.

9. The second disputed issue is with respect to disallowance of provision for inventory written off claimed by the assessee in profit and loss account. The Ld. DR submitted that the CIT(A) has erred in deleting the provision of disallowance of inventory written off as there is tax neutral adjustment. The CIT(A) has observed at Para 6.4 of the order as under:

6.4. During the course of the hearing the authorized representative (AR) of the appellant company further contended that there is no double deduction that has been claimed. It was explained that due to disclosure requirement under schedule VI of the Companies Act the amount of provision for write off of inventory was reduced from amount of material consumed. The AR further confirmed that due to appellant's policy on inventory valuation, the appellant is required to value the stock at

cost or net realizable value (NRV) whichever is less. Accordingly, to the extent of amount of write off, the value of closing stock has been reduced. Therefore, it was submitted that though the value of material consumed was arrived at after considering the reduced value of inventory, provision for write off of inventory was added back to enable the appellant to disclose such amount separately under the profit and loss account.

6.5. The AR further contended that it is an actual write off of inventory though the nomenclature used is provision for write off. It has been further argued by the AR that that in absence of any specific provision under the I.T.Act for disallowance of provision for write off of the inventory, the same should be allowed as deduction under section 37 of the I.T.Act.

6.6. I have considered the facts and circumstances of the case, submissions and arguments of the appellant and assessment order. I find that due to the peculiar method of accounting followed by the appellant company, the A.O. has inadvertently recorded an observation that that there is a double deduction so far as provision for write off of inventory is concerned.

After considering the explanations furnished by the AR, I am of the opinion that there is no double deduction that has been claimed by the appellant. The reduction in the inventory consumption and the amount shown separately in the profit and loss account under the head "provision for write off of inventory" have the contra effect. The closing inventory is considered at reduced value both at the time of arriving material consumption as well as the amount shown under the head inventories in balance sheet. With respect to the reliance placed by the AO on decision in case of Herdilla Chemicals, in view of the

reliance placed by the appellant to the decision of the Apex Court in case of Alfa Laval India Limited, I am inclined to follow the decision of the Apex Court. Further, I uphold the appellant's argument that there is no specific provision under the I.T. Act under which the provision for write off of inventory may be 'disallowed and that the same should be allowed as deduction under section 37 of the I.T.Act. For the reasons cited above, the appellant's Ground No. 2 of the appeal is allowed.

The Ld. AR has brought to the knowledge that in the assessee's own case in ITA No. 5397 & 6853/Mum/2016 for the A.Y 2009-10, the Hon'ble Tribunal has observed at Para 3 to 7 of the order read as under:

3. In ground 1 to 4, the assessee has challenged disallowance of inventory written off amounting to Rs.2,97,43,272/-.

4. Briefly the facts are, the assessee, a resident company is engaged in the business of engineering tools for automobile industry, electric motors, shipping agencies, investment activities, etc. For the assessment year under dispute, filed its return of income on 05-08-2009 declaring loss of 48,90,18,989/-. Subsequently, assessee filed a revised return of income declaring loss of Rs.49,27,58,866/-. In course of assessment proceedings, the assessing officer noticing that the assessee has claimed deduction of Rs.2,97,43,272/- towards inventories written off, called for necessary details and also asked the assessee to justify the claim. After perusing the details furnished by the assessee and

submissions made, the assessing officer ultimately rejected assessee's claim by observing that the assessee has claimed double deduction, once by a contra entry for provision of reduction in the value debited to the profit and loss account and again on reduction of consumption and reduction in the total value of closing stock of raw material. While doing so, he observed that in the earlier assessment year also, the assessing officer has made similar disallowance. Accordingly, he disallowed the amount of Rs.2,97,43,272/-. Assessee contested the disallowance before learned Commissioner (Appeals). Having found that his predecessor sustained similar disallowance in assessee's own case in assessment year 2008- 09, learned Commissioner (Appeals) confirmed the addition.

5. We have considered rival submissions and perused materials on record. It is an agreed factual position before us that while deciding identical issue in assessee's own case for assessment year 2008-09 in ITA No.4960 & 4685/Mum/2014 dated 01-04-2021, the Tribunal, following its earlier order has deleted the disallowance made by the assessing officer. The observations of the Tribunal in this regard are as under:-

"9. Having considered rival submissions, we find that while deciding similar disallowance made by the assessing officer and confirmed by learned Commissioner of Income-tax (Appeals) in assessee's own case in assessment year 2007-08, the Tribunal, in its order dated 25-07-2019 in 1TA 5536/Mum/2011, has ddeted the disallowance with the following observations:-

17: We have considered the submissions of both the parties and gone through the orders of authorities below. We have also deliberated on the Various case laws relied

by ld. representative of the parties and by lower authorities. We have noted that the Assessing Officer disallowed the inventory written off by relying on the decision of CIT vs. Herdilla Chemicals Ltd. (supra). We have further noted that the Han'ble jurisdiction! High Court by considering the decision of Herdilla Chemicals Ltd. held that write o// claimed is essential on the basis of obsolesces of any particular equipment that claimed as write off, which is essentially on account of deterioration of various material including raw-material aver a period of time due to wear and tear and that assessee would be entitled to write off in Profit & Loss Account. We have further noted that the assessee's similar claim for A. Y, 2010-11 and 2011-12 has been allowed by First Appellate Authority in order dated 17.11,2016 and 20.03.2017 respectively. Therefore, considering the peculiarity of fact for the year under consideration, we are of the view that the assessee is entitled for inventory written off, however for limited purpose, the issue is restored to the file of Assessing Officer to verify the fact, if equivalent provision thereof had been made in the books and there is no impact: on profit and Loss Account and allow the relief to the assessee in accordance with law. In the result, this ground of appeal is allowed for statistical purpose." 10. There being no material difference in the factual position and considering' learned Commissioner of Income-tax (Appeals) has confirmed the disallowance following his predecessor's order for assessment year 2007-08, we Follow the above referred order of the co-ordinate bench in assessee's own and delete the disallowance made by the assessing officer. This ground is allowed."

6. Facts being identical, respectfully following the decisions of the Tribunal in assessee's own case as

referred to above, we delete the disallowance made by the assessing officer and sustained by learned Commissioner (Appeals). These grounds are allowed.

In the result, appeal is allowed

We follow the judicial precedence and do not find any infirmity in the order of the CIT(A) on the disputed issue and the LD.DR could not controvert the findings of the CIT(A)with any new cogent material or information to take a different view and accordingly this ground of the appeal is dismissed.

10. On the third disputed issue, the CIT(A) has deleted the disallowance of interest on loans to the subsidiary companies. The Ld.AR submitted that in the earlier years, this issue was decided in favour of the assessee company by the Honble Tribunal and placed the copy of the order for A.Y.2009-10 and in particular Para15 to 18 of the order. We respectfully fallow the judicial precedent and uphold the decision of the CIT(A) on the allowability of interest claim and dismiss the ground of appeal .

11. On the fourth disputed issue, the Ld. DR submitted that the CIT(A) has erred in deleting the disallowance of provision for foreclosure of trade mark

license agreement without ascertaining the facts and provisions. The contention of the Ld. DR that the CIT(A) has overlooked information on the know-how and the projects. The AO has conducted proper enquiry with regard to provisions for foreclosure of trademark license agreement. Further the amount includes the amount paid for use of know-how. Whereas the Ld.AR submitted that the CIT(A) has considered the facts and granted the relief. We find the CIT(A) has dealt on this issue at Para 8.3 as under:

> *8.3 I have considered the facts and circumstances of the case, submissions and arguments of the appellant and assessment order. During the course of hearing, the AR of the appellant has explained that the revisions / amendments to the agreement carried out between the appellant company and Savile Row Company Limited were carried out during the assessment year. The revisions were made based on business decision taken by the appellant. Further, it has been submitted that the present transaction is between two unrelated parties as Savile Row Company Limited is not a related party. It was vehemently argued by the appellant that question of transaction being regarded as colourable device cannot arise where two unrelated parties are involved. The AR submitted that "Personal Wear Segment (Up Market Brand Division)" has been discontinued which it had to incur the said expenditure. The appellant submitted that the expenditure incurred for foreclosure of trademark license*

agreement is allowable under section 37. In this regard the appellant placed reliance on decision of Apex court in case of Udaipur Distillery Co. Ltd. v. CIT (314 ITR 188) (SC).The appellant further submitted that compensation paid for premature termination of services is an allowable expense u/s.37(1) of the Act and placed reliance on Apex court decision in case of Ashok Leyland Ltd. (86 ITR 549) (SC).The appellant also placed reliance on Apex court decision in case of Taparia Tools Ltd. v. JCIT (55 taxmann.com 361) and submitted that there is no concept of deferred revenue expenditure under the Income tax Act. In view of its aforesaid submissions the appellant contended that the said expenditure ought to be allowed entirely in the assessment year under consideration.

After considering the explanations furnished by the AR, arguments put forth by AR as well as the reliance placed on settled positions of law and also AO had already accepted the contention of the appellant that by allowing under deferred expenditure, I am inclined to hold that the A.O. has erred in allowing only 1/6 of the expenditure as deduction for assessment year under consideration.

12.The Ld. AR contentions are that the CIT(A) decided the issue considering the fact that the entire expenditure should be allowed in the same year and the AO has having accepted the claim of expenditure has allowed only 1/6th of the expenditure as deferred expenses. The transaction between the assessee and Saville Row Company Ltd being unrelated parties, and is not a colorable device and genuineness cannot

be doubted and it is purely a business decision having a commercial rationale. The Ld. AR mentioned that these facts were brought on record before the CIT(A). We considering the facts and submissions find that the CIT(A) has made reasonable observations and cannot be overlooked. Further the AO has not doubted the geninuneness of expenditure incurred but has granted 1/6th of the claim without valid reasons. Therefore we do not find any infirmity in the order of the CIT(A) on this disputed issue and uphold the same and dismissed the ground of appeal of the revenue.

13. The Ld.DR submitted that the CIT(A) has erred in deleting the addition of long term capital gains on slump sale without considering the factual aspects in the claim. We found that the CIT(A) has decided the issue considering that the negative net worth should not be added while computing the capital gains u/s 50B of the Act and the capital gains cannot be higher than the sale consideration and per the sale consideration agreed between the parties. We find that the CIT(A) has dealt on the issue observed at Para 9.2 of the order as under:

9.2 During the course of the hearing the AR of the appellant company stated that the capital gains cannot be more than the sale consideration. The AR has further drawn attention to the fact that an appeal has been filed and admitted by the Bombay High Court against the order of Special bench of Tribunal in case of Summit Securities Ltd., the decision relied by A.O. with an observation that the constitution of the special bench itself was questionable.

The AR further explained and invited attention to clause j of agreement dated 9 September 2009 regarding the negotiations with respect to the reduction in sale consideration from Rs. 2crore to Rs. 10 lakh. The AR emphasized that the full value of consideration cannot be substituted. It was submitted that the sale consideration as finally and commercially agreed between the parties needs to be respected. The AR also submitted that out of original sale consideration of Rs. 2 crore that was already received, Rs. 1.90 crore has been refunded back. The appellant further submitted that the transfer of BAG division was carried out as the appellant wanted to focus on its core businesses such as Shipping, logistics, Engineering and Energy.

9.3 I have considered the facts and circumstances of the case, submissions and arguments of the appellant and assessment order. The appellant has submitted that the transfer of BAG division was carried out as the appellant wanted to focus on its core businesses such as Shipping, logistics, Engineering and Energy. The appellant further submitted that reduction in sale consideration from Rs. 2 crore to Rs. 10 lakhs was part of business decision. The appellant also submitted that that the differential amount of Rs. 1.9 crore was refunded by the appellant. Further the AR has pleaded that the negative networth cannot be

added in computing capital gains on the basis that capital gain cannot be more than sale consideration.

I am inclined in agreement with the AR that the A.O. has considered the transaction as a colourable devise. In my considered opinion, the amount of Rs. 32.82 lakh being negative networth should not be added while computing capital gain under section 50B considering the legal framework as well as the basic principle that capital gain is always a portion of sale consideration, and, therefore, portion can never be higher than the whole.

Further, I agree with the appellant that the sale consideration as agreed between parties is to be considered for computing capital gains. In light of the fact that the appellant company has demonstrated that it has returned the excess consideration received by it, I am of the opinion that the value of sale consideration of the BAG undertaking for the purpose of computing capital gains is Rs. 10 lakhs, and this amount should be considered by the A.O> in computing capital gain.

Under the facts and circumstances and considering the discussions referred above, the addition of Rs. 2.32 crore is not warranted, Ground No. 5 of the appeal is allowed.

We find the various new facts and submissions are emerged in the course of hearing and the agreement was filed for the first time. Therefore considering the facts, submissions and the principles of natural justice the AO should be provided reasonable opportunity to verify the various factual aspects and there is no remand report was called for.

Accordingly, for limited purpose we restore this issue to the file of the AO for examination and allow the ground of appeal of the revenue for statistical purpose.

14. The Ld. DR submitted that the assessee has claimed bad debts in the profit and loss account and the CIT(A) has overlooked the findings of the A.O and allowed the claim. We find the CIT(A) has considered the provisions of the Act and the submissions and has observed at Para 10.3 of the order as under:

> *10.3 I have considered the facts and circumstances of the case, submissions and arguments of the appellant and assessment order. During the course of hearing, the AR of the appellant has explained and evidenced that the appellant had disallowed the provision for doubtful debt created earlier i.e. in A.Y. 07-08 and A.Y. 08-09 in the respective assessment years and thus, there is no double deduction claimed by the appellant. The AR of the appellant has further substantiated its argument along with judicial precedence that if an amount is transferred to 'provision for bad and doubtful debt account' then it shall not be taken as bad debt written off.*
>
> *After considering the explanations furnished by the AR, arguments put forth by AR as well as the reliance placed on judicial precedence, I am of the opinion that the addition of Rs. 939.91 lakhs again made by the A.O. is not found to be in order or otherwise it will lead to double*

addition as the appellant had already disallowed the provision in earlier years.

Further, the said issue was adjudicated in the appeal for A.Y. 2008-09 by my learned predecessor in appeal No. CIT(A)- 1/IT- 776/2010-11 who in his order dated 26.04.2014 has decided this issue on the basis of the decision relied upon for AY 2006-07 in the following manner:

"6.3. I have considered the A.O's order as well as the appellant's A/R submission. Having considered both, I find that this issue is covered as per the decision of Apex Court in the case of TRF Ltd. vs. CIT reported in 323 ITR 397 (SC). In view of the same, I consider it proper and appropriate to delete the additions so made by the A.O. following the decision of the Apex Court referred as above. Thus this ground of appeal is allowed."

For A.Y. 2009-10 on the similar issue, based on favourable orders in favour of appellant, I have adjudicated the ground in favour of the appellant for appeal No. CIT(A)-2/IT-144/2011-12.

Considering the facts and circumstances of the case and in view of the above referred decisions on this issue in favour of the Appellant in its own case, I find that the Ground of appeal is in favour of the Appellant. Accordingly Ground No.6 of the appeal is allowed for the reason as discussed above as well as in detail, in the earlier Appellate orders.

We find that the Hon'ble Tribunal in assessee's own case for the A.Y 2009-10 has observed at Para 19 to 23 read as under:

> *19. In ground 4, the revenue has challenged deletion of disallowance made towards bad debts written off.*
>
> *20. Briefly the facts are, in course of assessment proceedings, the assessing officer noticing that the assessee has debited an amount of Rs.1,24,93,214/- towards bad debt written off, called for the necessary details. After verifying the details, the assessing officer observed that similar claim made by the assessee in assessment year 2008-09 was also disallowed by the assessing officer. Further, he observed, the assessee failed to prove that amount representing such bad debts was offered as income in any previous assessment year. Accordingly, he disallowed the claim of bad debt. While deciding the issue in appeal, learned Commissioner (Appeals), following his predecessor's order passed in assessment year 2008-09, deleted the disallowance.*
>
> *21. We have considered rival submissions and perused materials on record. It is a common point between the parties that while deciding identical issue in assessment year 2008-09 (supra), the Tribunal has upheld the decision of learned Commissioner (Appeals). Having perused the materials on record, we find that identical issue came up for consideration in assessee's own case for assessment year 2008-09 in an appeal filed by the revenue. While deciding the issue, the Tribunal has held as under:-*
>
> *"29. Having heard the parties and perused materials on record we find that the amount written off by assessee is*

on account of TDS amounts for which TDS certificates were not received and towards some advances such as municipal taxes, travel expenses, freight payable to the parties which were beyond recovery. It is also noted from the order of learned Commissioner of Income-tax (Appeals), similar disallowance made in assessment years 2005-06 and 2006-07 were also deleted by the learned first appellate authority. Considering the aforesaid factual position, we decline to interfere with the decision of learned Commissioner of Income-tax (Appeals) on the issue. Accordingly, ground is dismissed."

22. Facts being identical, respectfully following the aforesaid decision of the co- ordinate bench, we uphold the decision of learned Commissioner of Income-tax (Appeals) in deleting the disallowance.

In the result, revenue's appeal is partly allowed for statistical purpose.

We respectfully follow the Honble tribunal decision and upheld the decision of the CIT(A) in allowing the claim of bad debts as discussed above and dismiss the ground of appeal of the revenue.

15. In the result, the revenue appeal is partly allowed for statistical purpose.

ITA No. 4493/Mum/2017, A.Y 2013-14

16. The revenue has raised the following grounds of appeal:

1. "Whether on the facts and circumstance of the case and in law, the Ld.CIT(A) eared in holding that amount of liquidated damages is 2,64,00,000/- whereas as per assessee's own Rs.2,06,00,000/-?"

2. "Whether on the facts and circumstance of the case and in law, the Ld.CIT(A) eared in deleting the disallowance of liquidated damages by failing to appreciate that the payment is contractual payment as per submission it is

terms and conditions of the agreements entered into between assessee and other parties and liable for TDS which had not been done by the assessee. ?"

3. "Whether on the facts and circumstance of the case and in law, CIT(A) was right granting relief of Rs. 46,80,133/- to assessee u/s 40(a) of the Act after admitting additional/ new evidence without examination by AO as per sub rule 3 of rule 46A."

4. "Whether on the facts and circumstance of the case and in law, the CIT(A) eared in restricting the disallowance, without conducting proper enquiry, to 10% of disallowance made by AO."

5. Whether on the facts and circumstance of the case and in law, the CIT(A) eared in deleting the disallowance made by AO u/s 14A of the Act read with rule 8D of the rules."

6. "Whether on the facts and circumstance of the case and in law, the CIT(A) was right in granting relief of Rs. 23,58,33,200/- added in terms of section 50C of the Act without making any reference to the Stamp Authority's valuation and indulging in estimate based on stamp duty

paid thereby giving a favourable outcome to the assessee who also failed to discharge its onus of providing the Stamp Authority's valuation."

The appellant craves leave to add to, amend or withdraw the aforesaid ground of appeal.

17. We heard the rival submissions and perused the material on record. On the first disputed issue the Ld. DR submitted that the CIT(A) erred in deleting the disallowance of provision for estimated expenses on account of liquidated damages without appreciating that the payment is a contractual payment as per the terms and conditions and there is no compliance of TDS provisions. Whereas the CIT(A) has considered the facts and submissions of the assessee and dealt exhaustively at page 4 to 11 of the CIT(A) order and the provisions of Sec.40(a) and 37(1) of the Act and granted the relief. Whereas the Ld. AR submitted that the assessee has made a provision for liquidated damages for failure to deliver on due date and liability to pay damages arose due to breach of terms and the deduction should be allowed in the year of incurrence of liability and there is no provisions under Chapter XVII-B that obligates deduction of tax at source on liquidated damages and relied on the judicial

decisions. The Ld.DR could not convert the findings of the CIT(A) on this disputed issue and we uphold the decision of the CIT(A) and dismiss the ground of appeal.

18. The second disputed issue is with respect to disallowance u/s 40(a) of the Act. The CIT(A) has considered the submissions of the assessee and observed at Para6.3 of the order and granted relief as under:

> *6.3 It is understood that the appellant company has deducted TDS u/s. 194C, however, the AO took a view considering the nature of the payment TDS should have been deducted u/s. 194J. I have gone through the submission of the appellant wherein it is found that Equalise Solutions had rendered services of the description of train analysis of 2MW TG set and static and dynamic analysis of base plate of 132kw turbine Project (AD-1098).*
>
> *Similarly in the case of Jameks Engineering rendered services relating to PLC Control Panel Up gradation.*
>
> *Considering the above facts, I am in agreement with the AO that it may fall u/s. 194J being a technical one and therefore the addition made by the AO is confirmed in the above two cases.*
>
> *In the case of BNS Consultant, Deloitte Haskins & Sells LLP and TSR Darashaw Limited, the AO is of the opinion that no TDS is deducted properly and therefore*

disallowed the amount but the AR of the appellant explained that in the case of BNS Consultant TDS of Rs. 33090/- has been deducted on 06.02.2013 and transferred to the Government account. No further disallowance is required.

While in the case of Deloitte Haskins & Sells, an amount of Rs. 75,843/- has been deducted as against Rs. 6,75,000/- and deposited in the government account on 06.2.2013 as per TDS traces and similarly another sum of rs. 13,14,612/- inclusive of service tax, the AO filed TDS copy of Rs. 131462/- has been paid to government account on 14.05.2014. Another sum of Rs. 49361/-, TDS of Rs. 4936/- @ 10% paid on 07.11.2012 on TDS traces. No further disallowance is required.

In the case of TSR Darashaw Limited, the AO has disallowed Rs. 498138/- for short deduction whereas the AR of the appellant explains that TDS traces dtd. 06.02.2013, 11.02.2013 and 14.05.2013 shows deduction of Rs. 1,58,194/- and therefore no further disallowance is needed. I am in agreement with the AR that no further disallowance is needed as enough TDS is deducted.

In the case of Genius Consultants Ltd., the AO is of the opinion that 10% TDS should have been deducted and has disallowed Rs. 225067/- for want of TDS deduction. The AR has explained the disallowance is made on the basis of lower TDS certificates. Accordingly they have deducted Rs. 2,701/- slightly higher than the required amount and hence addition to be deleted. I am in agreement with the AR that lower deduction certificate issued by ITO, TDS Ward 157(3), Kol dtd. 01.05.2012 which has to be honoured. No further disallowance is justifiable.

In the case of Kishore Bhatia & Associates, for a sum of Rs. 561500, the AO has disallowed a sum of Rs. 232200/- for want of TDS deduction, however, the AR explained that copy of TDS traces of a total sum of Rs. 59785/- dtd. 06.02.2012, 11.02.2012 and 18.11.2013 wherein TDS deduction made is more than required of Rs. 56,150/-, hence no more addition is needed.

Similarly with regard to Puri Crawford Insurance Supervisors, the AO has disallowed Rs. 1,25,000/- for want of deduction of TDS, however, the AR filed copy of TDS traces evidencing amount of Rs. 25,281/- has been deducted and paid to the government account on 14.05.2013 and 22.08.2013. The TDS deduction made is Rs. 25,281/- is more than required amount of Rs. 22500/-, no further addition is needed.

With regard to OYRGTA Premium, the AO has disallowed a sum of Rs. 351703/- u/s. 194J for want of TDS deduction on the premium paid to One Year Group Team Assurance. The AR argues that deducted TDS premium amount paid to LIC is not being required as per provisions of Chapter XVIIB. I have gone through Chapter XVIIB, nowhere it is mentioned that TDS to be deducted on premium payment on LIC therefore this addition is not warranted and hence AO is directed to delete the same.

With regard to Gokak Textiles Ltd., the AO has disallowed a sum of Rs. 109490/-for want of TDS deduction u/s. 194J. The AR argues to be deducted for reimbursement of expenditure relying in the case of Siements Aktiongesellschaft v. CIT [2009] 177 Taxman 81(Bombay HC) and Watson Wyatt India (P) Ltd. v. ACIT [2011] 11 taxmann.com 456 (Mumbai Trib]. Respectfully following the jurisdiction ITAT's decision and High Court decision, the addition made by the AO is to be deleted.

Another addition of Rs. 1,61,161/- under the head "Others' is disallowed by the AO for want of deduction u/s. 194J of the Act. The AR argues that provisions and charges are not identified and therefore TDS is not deducted. I am in agreement with the AR and AO is directed to delete the addition.

Another sum of Rs. 3,51,110/-, the AO has disallowed for want of TDS deduction u/s. 194A @ 10%. The AR explained that the above interest of Rs. 3,51,110/- paid towards statutory dues to government departments only and therefore it does not require TDS deduction and I am in agreement with AR that TDS not to be deduction and statutory interest payment. The AO is directed to deleted.

In case of Birla Sunlife Trust, the AO has disallowed Rs. 1369863/- for want of TDS deduction which was made to Birla Sunlife Trust. The AR argued that as Birla Sunlife Trust is covered by clause (ix) of Section 193 of the Act, TDS is not to be deducted as per proviso of section 193 of the Act. I am in agreement with the AR and hence the AO is directed to delete the addition.

In view of the above, submissions of the AR of the appellant and relying on the jurisdictional ITAT and High Court decisions, this ground of appeal is partly allowed.

We find the CIT(A) has considered the facts in respect of the non deduction of the tax and short deduction of TDS. Whereas on perusal of the information and submissions, we found that there is no observations on these facts in the assessment order, accordingly in the interest of the justice we restore this issue to the

file of the AO to examine and adjudicate on merits and the ground of appeal is allowed for statistical purposes.

19. The Fourth disputed issue, the Ld. DR submitted that the CIT(A) has erred in restricting the disallowance without proper enquiry. The CIT(A) has observed at Para 7.4 of the order as under:

> *7.4 I have considered the facts and circumstances of the case, submissions and arguments of the appellant and assessment order. I understand that the data/information requested by the learned DCIT for all the expenses comprises of voluminous data with each head of expenditure having more than 50,000 entries. I understand that it practically impossible to furnish the name and details of all the parties for all the expenditure heads.*
>
> *The AO is of the opinion that the appellant company has not produced details for various expenses such as staff welfare expenses, other borrowing costs, processing charges, power and fuel, operating cots for shipping and logistics division, rboekrage, comm.., discount and other selling exp., printing and stationery, communication, outsourced contract expenses, miscellaneous expenses etc. On the other hand, the AR of the appellant has give comparative figure for AY 2012-13 and year under question 2013-14 and 2014-15 wherein it shows that in the year 2012-13, turnover come to 11.96% increased by 13.64% in the AY 2014-15 turnover reduced of 8.65% and expenses have reduced 4.3%. I have also gone through*

the turnover for AY 2012- 13 of Rs. 286.94 lakhs whereas expenditure comes to Rs. 283.74 giving a profit of 3 crores. In the current year, turnover of Rs. 321 crores expenditure of Rs. 322 crores of marginal loss of Rs. 1.17 crores. Similarly 2014-15, turnover is Rs. 293.46 crores and the expenses is Rs. 308.56 and loss Rs. 15.7 crores

The end result in AY 2012-13, there is profit of Rs. 3.19 crore for current year, Rs. 1.17 crores and for AY 2014-15 is Rs. 15.7 crore. explained that loss is due to the market conditions in general in field of shipping and The AR of the appellant logistics in particular year A.Y. 2013-14 is not doing well. The AO has mentioned the some of the details were not filed and explained and other details is so voluminous whatever commission, omission done by the company, 10% of the addition made i.e. Rs. 10,00,000/- is retained and for balance of Rs. 90,00,000/ assessee gets relief u/s. 50C. This ground of appeal is partly allowed.

We find the CIT(A) has considered the submissions and information and partly allowed the relief. The Ld.DR could not convert the findings of the CIT(A) on this disputed issue and we uphold the decision of the CIT(A) and dismiss the ground of appeal of the revenue.

20.The next disputed issue with respect to disallowance u/s 14A of the Act, the Honble Tribunal has decided this issue in ITA No.1002/M/2017 for A.Y. 2010-11 at Para 8 above and the similar

directions are applicable to this ground of appeal also and accordingly restore this issue to the file of the AO and the ground of appeal of revenue is allowed for statistical purposes.

21. On the last disputed issue, the Ld. DR submitted that the CIT(A) has erred in granting relief u/s 50C of the Act. We find the assessee has contested the addition u/s 50 C of the Act on stamp valuation rate applicability. The CIT(A) has considered the facts and submissions observed at Para 9.1 of the order as under:

> *9.1 The appellant has submitted on this issue that:*
>
> *"1.123... The appellant provided the copy of purchase deed and sale deed vide Annexure 13 and 14 of letter dated 28 January 2016.*
>
> *1.124. However, the learned DCIT, without providing an opportunity of being heard or calling for any additional submissions, in the impugned assessment order, considered stamp duty paid by the appellant of Rs. 4,12,73,310 (being 5% of stamp valuation) as a basis to compute the stamp valuation of land at Rs. 82,54,66,200 (4,12,73,310/5%). The difference of Rs. 23,58,33,200 (Rs. 82,54,66,200 less 58,96,33,000) between the stamp valuation so computed and the sale consideration was considered by the learned DCIT as addition under Section 50C of the Act.*

Basis adopted for computing disallowance is adhoc and incorrect 1.125. Stamp duty is tax on property that is required to be paid to State Government where the property is situated. In the instant case, the property purchased by the appellant is situated in Chennai and accordingly stamp duty is payable as per stamp duty laws of Tamilnadu.

1.126. Stamp duty is payable at x% of the property value. Property value refers to Guideline value which depends on the zone in which the property lies.

1.127. With respect to understanding the meaning of the term 'Guideline Value', reference can be made to Q7 of the FAQS published on the website of Government of Tamilnadu Registration department (http://www.tnreginet.net/faq.asp). The relevant extract is reproduced below for ease of reference:

"Q.7 What is Guideline Value? How to ascertain?

Guideline value of any land should truly reflect the market value. Guideline values have been fixed for all the areas in the State. Well established residential areas have only street based guideline values. The guideline values have been fixed for each survey number. This will remain unchanged till the next revision. This guideline value help the registering officer in the detection of prima facie under valuation of property.In most of the places, the guideline value is lower than the prevailing market value. In a few places, the guideline value may be unreasonably higher than the market value. Such cases should be brought to the notice of the Inspector General of Registrations for correction of anomalies. There is a committee at State level which finally approves reduction

in such issues after perusing the recommendation of the Sub Committee headed by concerned District Collectors"

1.128. The appellant would like to bring to your honor's notice that page 6 of the sale agreement indicates the sale consideration at Rs. 58,96,33,000 (Rs. 58.96 crore) which is also the market value of the property as indicated on page 10 of the agreement and Annexure 1A at page 12. Copy of the said agreement has been enclosed at page 709 of the compilation.

It is important to note here that the agreement value i.e. sale consideration agreed by the appellant is same as the market value.

1.129. As per the stamp on the top right corner on page 18 of the agreement, stamp duty amount of Rs. 4,12,73,310 (Rs. 4.12 crore) is paid by the appellant. The stamp duty is payable on higher of the guideline value or market value agreement value (i.e. sale consideration).

1.130. Here, the appellant would like to draw attention of your honors to Q18 of the FAQS published on the website of Government of Tamil Nadu Registration department

1.131. Form the above, your honors would appreciate that as per the stamp regulations in Tamil Nadu, stamp duty is payable on market value on sale. The appellant would further like to draw attention of your honor to Q5 of the FAQS.

Though the question is not directly relevant, it provides guidance and adds persuasive value to appellant's contention. The relevant extract is reproduced Q.5 Invariably, all documents presented for registration are returned after a long wait. The delay in returning

documents causes hardships to public and also leads to other malpractices.

Ans. Only a few documents, which require charging of stamp duty on market value are normally kept pending for fixing of market value. These documents are sale, exchange, release of benami right, settlement or gift. Even these documents can be registered and returned on the same day provided the value set forth in the document is equal to or higher than the value arrived at by using guideline value. If building is there inspection is required to measure plinth area and to calculate the value using P.W.D. norms for buildings. If no deficit is there it will be returned after building inspection otherwise after collection of the deficit the document will be returned. Agricultural land is converted to house site value fixation is required and it needs inspection also.

1.132. From the above, your honor will appreciate that the stamp duty authorities are responsible to ascertain and collect the correct stamp duty leviable on sale. In the process of ascertaining the stamp duty amount payable on registration, the stamp duty authorities also ascertain the market value. This is evident from the guidance provided in response to Q5 of the FAQ, wherein it is specified that the document on which stamp duty on market value is to be levied may be kept by the authorities for fixing the market value. It is further mentioned that if the value set forth in the registration document is equal to higher than the value arrived at by using the guideline value, the document may be returned on the same day. The aforesaid clearly indicates that the stamp authorities determine the market value or agree / approve the market value arrived at by the seller (appellant in the instant case).

1.133. Thus, in the instant case the amount of stamp duty of Rs. 4,12,73,310 (Rs. 4.12 crore) paid by the appellant can be said to be determined by the stamp authorities after ascertaining and comparing the market value with guideline value. The appellant would like to reiterate here that the agreement value (sale consideration agreed by the appellant) is same as the market value. 1.134. The amount of Rs. 4,12,73,310 (Rs. 4.12 crore) has been computed applying rate of 7% on market value of Rs. 58,96,33,000 (Rs. 58.96 crore) which is nothing but the market value of the land.

1.135. The appellant therefore submits that learned DCIT has erred in his noting in the assessment order wherein he has stated that

"...Therefore, the assesse has failed to disclose the stamp duty valuation of property sold.

(Para 9.3 of the Assessment order)

1.136. Your honor will appreciate and agree with the appellant that the stamp duty valuation is the market value which has been determined by the Stamp Authorities to be Rs. Rs. 58,96,33,000 (Rs. 58.96 crore). The learned DCIT cannot challenge the same without any basis and material on record merely on the basis of his suspicion. 1.137. The appellant further submits that the learned DCIT has erred in computing the Stamp duty value at Rs. 82,54,66,200 (Rs. 82.54 crore). The appellant submits that the very basis adopted by the learned DCIT in arriving at the stamp duty value based on his computation is erroneous. The appellant wishes to highlight that the learned DCIT in his assessment order has adopted rate of 5% stating that:

In any case, the said deed contains a noting of Stamp duty paid on the deed at Rs. 4,12,73,310 (Rs. 4.12 crore) and stamp duty is generally 5% of the stamp valuation, hence the stamp valuation can be derived at Rs. 4,12,73,310/ 5% = 82,54,66,200/. As against this, the sale consideration shown in the deed of sale is at Rs. 58,96,33,000/-, hence the balance amount of Rs. 23,58,33,200/- is assessable u/s 50C of the IT Act..... (Para 9.3 of the Assessment order) 1.138. Your honors will appreciate that the learned DCIT has not done fact finding and has arbitrarily computed the stamp duty value by adopting adhoc rate of 5% which is evident from his noting is generally'. The appellant wishes to draw attention of your honors to para 1.93 above wherein the stamp duty rate of 7% has been specified. The learned DCIT cannot therefore adopt any arbitrary rate. If rate of 7% is adopted, as per the computation mechanism adopted by the learned DCIT, the stamp duty value would be arrived at Rs. 58,96,33,000/-,(Rs. 58.96 crore) Rs. 4,12,73,310/5% -58,96,33,000/-.

1.140. Your honors would thus appreciate that the act of the learned DCIT is arbitrary without any basis or material on record, in addition thereto the rate of stamp duty adopted for the purposes of computation is adhoc.

1.141. In view of the aforesaid, the appellant submits that the addition made by the learned DCIT of Rs, 23,58,33,200 by substituting the sale consideration of Rs. 58,96,33,000/- with Rs. 82,54,66,200/-(erroneously arrived at by him) ought to be deleted.

1.142. The appellant would further like to reiterate that the Stamp authorities in the guidance provided in form of FAQS have taken cognizance of the difference between market value and guideline value and noted that In most

of the places, the guideline value is lower than the prevailing market value. (Refer para 1.90 above) 1.143. Without prejudice to its aforesaid submission, the appellant further wishes to discuss the framework of operation of provisions of section 50C of the Act as well as the legislative intent for introduction of the aforesaid provisions.

Section 50C can be invoked only in specified situation

1.144. Section 50C comes into play only when the consideration declared to be received or accruing as a result of transfer of land or building or both is less than the value adopted or assessed by Stamp Valuation Authorities for the purpose of payment of stamp duty in respect of transfer.

Only if a case falls under the above scenario, then the stamp duty value so adopted or assessed for payment of stamp duty shall be deemed to be the full value of consideration. 1.145. In the instant case, the sale consideration is equal to the market value of the land which is Rs. 58,96,33,000 on which stamp duty is paid at the rate of 7% which is Rs. 4,12,73,310.

1.146. Thus, in the appellant's case, there is no question of application of Section 50C of the Act.

1.147. In accordance with the provisions of section 50C, the full value of consideration may be substituted where the sale consideration is less than the stamp duty value. However, as discussed in detail above, the stamp duty value is same as market value and incidentally the sale consideration. The stamp duty has been appropriately paid by the appellant on such value as determined and approved by the Stamp authorities. In view thereof there is no question of challenging the same. Without prejudice

to above, where the learned DCIT is of the view/ opinion that the guideline value is higher than the market value he ought to have referred the matter to the valuation officer to determine the value of the property.

1.148. Without prejudice to the above, the appellant invites attention of your honor to the legislative intent of introduction of provisions of section 50C of the Act.

In view of the above discussions, the appellant submits that the learned DCIT be directed to delete the impugned addition under section 50C of the Act."

9.3 I have gone through the assessment order and submissions given by the appellant. During the year under question, the appellant company sold property at Chennai for Rs. 58.96 crores. As per the agreement, the stamp duty found to be paid of 7% whereas the AO took 5% as stamp duty and reworked sale value at Rs. 82.54 crores. The AR objected that the provisional stamp duty rate in Chennai is 7% therefore difference cannot be accepted and therefore addition of Rs. 23.56 crores be deleted. I have gone through the submission of the appellant and also agree with the AR that 5% stamp duty may be applicable in Mumbai and Maharashtra but in Chennai the stamp duty rate is 7%, therefore, the addition of Rs. 23.58 crores made by the AO is not found to be justifiable and I direct the AO to delete the same. Hence this ground of appeal is allowed.

We find that the AO has applied an ad-hoc basis and estimated the stamp duty valuation and the procedure adopted by the AO is not in accordance with the law. The Ld. AR substantiated with the information and

judicial decisions and CIT(A) has observed that the A.O. has arbitrarily applied the rate of stamp duty @5%instead of applicable rate @7%. We find that the CIT(A) has considered the stamp valuation procedure and provisions of the Act and took a reasonable view. Accordingly, we do not find any infirmity in the order of the CIT(A) on this disputed issue and uphold the same and dismiss the ground of appeal of the revenue.

22. In the result, the revenue appeal is partly allowed for statistical purposes.

ITA No. 1816/Mum/2019, A.Y 2014-15

23. The assessee has raised the following grounds of appeal:

> *1. The learned CIT(A) erred in holding that provisions of Section 50C of the Income Tax Act, 1961("Act") would be applicable in computing capital gains on sale of land at village Veshvi.*
>
> *2. Without prejudice, the learned CIT(A) ought to have directed the learned DCIT to consider sales consideration of Rs.7,48,172/- being the stamp duty value on 16 November 2006, when the appellant agreed to sell the plot of land for the purpose of computing capital gains.*

Disallowance under section 14A read with Rule 8D(2)(iii) of the Act

3. The learned CIT (A) erred in confirming disallowance under section 14A read with Rule 8D.

4. The learned CIT(A) erred in law and on facts in directing the learned DCIT to re- compute the disallowance made under section 14A read with Rule 8D(2)(iii) by disallowing expenditure related to investments which had Nil balance as on the first day and the last day of the previous year.

General

5. Each of the above grounds is independent and without prejudice to the other grounds of appeal preferred by the Appellant.

6. The Appellant prays for leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal.

24. On the first ground of appeal, the Ld. AR submitted that the CIT(A) has erred in applying the provisions of Sec. 50C of the Act in computing the capital gains on sale of plot of land and the assesee has filed the submission in the assesseement proceedings on this issue as under

The assessee has disclosed Long Term Capital gain at Rs 39,471/-. During the assessment proceedings, the assesssee furnished the factual details of the said transaction. The assessee sold a plot of land at village

Veshvi for a consideration of Rs 7,00,000/-. The copy of registered Deed of sale dated 31.12.2013 which was registered on 4.2.2014 was also furnished. The stamp duty value of the said plot of land is Rs 25,38,500/-. The stamp duty valuation is not disputed.

The assessee was show caused as to why provisions of sec 50C should not be invoked considering that the stamp duty valuation of the said land sold during the year is Rs 25,38,500 and the sale consideration considered for the purpose of computing capital gain is Rs 7,00,000/-.

In this regard, the assessee vide leter dated 13.12.2016 made detailed submissions. The same are reproduced below for ready reference:

We refer to the ongoing assessment proceedings in respect of the above year. In connection with the transaction of sale of immovable property at village Veshvi during the year under consideration, the assesse submits as under: During the year under consideration the assessee had sold a plot of land at village Veshvi for a consideration of Rs. 7,00,000. A copy of the "Deed of sale" has been furnished with your goodself vide letter dated 1 December 2016 at Annexure 1.

The assesse had computed Long term capital gains for the year under consideration considering the sale price of the said plot at Rs. 7,00,000. The Deed of sale was executed

on 31 December 2013 and registered on 7 February 2014. The stamp duty value on the date of registration was Rs. 25, 38,500. The stamp duty and registration charges as applicable were paid considering the stamp duty value.

During the course of assessment proceedings, your goodself have asked the assesse to ubmit winy provisions of section 50C should not be invoked whereby value adopted by stamp duty authorities be considered as deemed sales consideration. In this connection, we submit as under:

Brief factual background:

1. The assessee has set up a Container Freight Station (CFS) near JNPT. For the purpose of setting up CFS it acquired a plot of land from Trident Shipping and Services Ltd. at village Veshvi near JNPT in the FY 2005-06.

2. The assessee owned another plot of land admeasuring 16.7 gunthas (hereinafter referred to as small plot) which was outside the plot to be used for setting up CFS.

3. There was a plot of land admeasuring 1.06 acres adjacent to the land purchased by assessee for setting up CFS. The said adjacent plot of land was owned by Mr. V. Mumbaikar.

4. The assessee therefore approached Mr. V. Mumbaikar and he agreed to sell the adjacent plot of land. It was further agreed then that assessee will sell a small plot of land admeasuring 16.7 gunthas to him.

5. Accordingly as per agreement dated 16 November 2006 the adjacent plot of land was purchased by assessee from Mr. V. Mumbaikar for Rs.19,00,000. A copy of the said agreement is already submitted with your goodself vide letter dated 1 December 2016 at Annexure 2. Please note that valuation of the said plot for the purpose of stamp duty paid by the assessee was Rs. 19,00,000.

6. Further assesse agreed to sell small plot to Mr. V. Mumbaikar for a consideration not less than Rs. 7,00,000. The said consideration of Rs. 7,00,000 was agreed on the basis of purchase price paid by assessee for adjacent plot of 1.06 acres.

1.06 acres = 42.41 gunthas

Sale price for 16.7 gunthas = 19,00,000/42.41 x 16.70

= 7,48,172

7. Subsequently during the year under consideration the assesee sold the small plot of land for a consideration as agreed previously at Rs. 7,00,000.

8. The sale price agreed between the parties while entering purchase agreement was a contractual obligation and it was imperative for the assessee to sell the small plot at agreed price to Mr. V. Mumbaikar. The sale price of Rs. 7,00,000 was agreed on the basis of market rates/stamp duty valuation rate prevalent then.

9. As stated above, the assessee was bound to transact at the consideration mutually agreed between the parties in terms of the resolution passed by the Board of Directors dated 26 October 2006. 10. The assessee would like to draw attention of your goodself to Clause B at page 2 of the Deed of sale dated 31 December 2013 registered on 7 February 2014. The relevant extract is reproduced below for ease of reference:

B) Pursuant to the resolution passed by Board of Directors of M/s Forbes & Company Limited, the seller company has decided to sell said property bearing survey/Gat No.10, Hissa No.4, admeasuring area about 0-167 Ara, equivalent to 1670 Sq. mtr lying and situated at Village - Veshvi, taluka - Uran, Dist.- Raigad, more particularly described in the schedule written hereunder as also authorized Mr. Ajay Shivram Sahastrabuddhe, a Senior Manager of the seller company for execution and registration of this Deed of sale. The certified copy of the Board Resolution is annexed with this Deed of Sale as annexure B.

The said resolution is at Pg.14 of the Deed of Sale.

11. The assesse would further like to draw attention of your goodself to extract of minutes of meeting of Board of Directors of the Company held on 26 October 2006 which also forms part of the purchase agreement dated 16 November 2006 executed between the assesse and Mr. V. Mumbaikar.

12. In view of the aforesaid factual background, the assesse contends that the consideration agreed for sale of plot of land was based on the stamp duty value of the property prevalent then. The assesse further submits that it is a listed company and has always been compliant

with the provisions of the Act. The consideration for the transaction of purchase and sale of the plot of land was entered into by the assessee at stamp duty value prevalent in 2006. The purchase agreement was executed in November 2006. However, due to certain unforeseen circumstances, the sale agreement was only executed and registered in February 2014. Thus, the assesse had agreed to sell the said plot at an agreed price, which was fixed at the time of entering into purchase agreement itself i.e. in 2006. The actual consideration received by the assesse was Rs. 7,00,000 as agreed in 2006.

13. The assessee submits that as the sale consideration for sale of the said plot was agreed between the asessee and Mr. V.Mumbaikar in 2006 itself at the time of executing purchase agreement. Further, the transfer had to take place at the price which was fixed by the assessee and Mr. V. Mumbaikar in 2006 itself. In such an event, the assessee submits that it would not be appropriate to consider the stamp duty value at the time when the property was actually transferred in 2014.

14. The asseessee is of the belief that the provisions of section 50C should not be invoked in the present case. To support its aforesaid contention the assessee invites attention of

We find that the CIT(A) has also confirmed the action of the AO. The Ld. AR could not substantiate the information and the facts with respect to changes. The only contention of the Ld. AR that the transaction was entered earlier by agreement in the year 2006 therefore the same value has been adopted and these

facts are to be examined,therefore in the interest of justice, We restore this issue to the file of the AO to examine and decide on merits and allow the ground appeal for statistical purpose.

25. The last disputed issue is with respect to the disallowance u/s 14A r.w.r 8D(2)(iii) of the Act. The contentions of the Ld.AR that the disallowance u/s 14A r.w.r Rule 8D considering the investments yielding exempt income only. We find the submissions are realistic and accordingly restore this disputed issue to the file of the A.O. to recompute the disallowance considering the ratio of special bench decision of ACIT vs Vireet Investment Pvt Ltd (ITAT Delhi)165 ITD 27 and allow the ground of appeal for statistical purpose.

26. In the result, the appeal is allowed for statistical purpose

ITA No. 1682/Mum/2021, A.Y 2016-17

27.As the facts and circumstances in the grounds of appeal is identical to ITA No. 1816/Mum/2019 on the disputed issue (except variance in figures) and the decision rendered in above paragraph no 25 will

apply mutatis mutandis to this appeal also. Accordingly, the grounds of appeal of the assessee are allowed for statistical purposes.

28. In the result, the appeals filed by the revenue are partly allowed for statistical purposes and the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 20.03.2023.

Sd/-	Sd/-
(GAGAN GOYAL)	(PAVAN KUMAR GADALE)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated 20.03.2023

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//(

(Asst. Registrar)
ITAT, Mumbai