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

BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NOs. 2540, 2541, 2542, 6964/MUM/2019
(A.Ys: 2012-13, 2013-14, 2014-15 & 2015-16)

DCIT – 6(2)(1) Room No. 504, Aayakar Bhavan M.K. Road, Mumbai - 400020	*v.*	M/s. Cleartrip Pvt. Ltd., {Formerly known as M/s. Cleartrip Travel Services Pvt. Ltd.,} Unit No. 0001, Ground Floor DTC Building, Sitaram Mills Compound N.M. Joshi Mar, Lower Parel Mumbai - 400011 **PAN: AACCC6016B**
(Appellant)		**(Respondent)**

ITA.No. 780/MUM/2022 (A.Y. 2017-18)

DCIT, Central Circle – 2(4) Room No. 802, 8th Floor Pratishtha Bhavan M.K. Road, Churchgate Mumbai - 400020	*v.*	M/s. Cleartrip Pvt. Ltd., Godrej Plant No. 6 Godrej Business District Pirojshanagar, Vikhroli Mumbai - 400079 **PAN: AACCC6016B**
(Appellant)		**(Respondent)**

ITA NOs. 2530, 2531, 2532 & 6349/MUM/2019
(A.Ys: 2012-13, 2013-14, 2014-15& 2015-16)

M/s. Cleartrip Pvt. Ltd., {Formerly known as M/s. Cleartrip Travel Services Pvt. Ltd.,} Unit No. 0001, Ground Floor DTC Building, Sitaram Mills Compound N.M. Joshi Mar, Lower Parel Mumbai - 400011 **PAN: AACCC6016B**	*v.*	DCIT – 6(2)(1) Room No. 504, 5th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		**(Respondent)**

ITA.No. 657/MUM/2022 (A.Y. 2017-18)

M/s. Cleartrip Pvt. Ltd., Godrej Plant No. 6 Godrej Business District Pirojshanagar, Vikhroli Mumbai - 400079 **PAN: AACCC6016B**	*v.*	DCIT, Central Circle – 2(4) Room No. 802, 8th Floor Pratishtha Bhavan M.K. Road, Churchgate Mumbai - 400020
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Ms. Fereshte Sethna & Shri Mrunal Parekh**
Department Represented by	**:**	**Shri K.C. Salvamani & Shri Rajesh Meshram**
Date of Hearing	**:**	**19.01.2023**
Date of Pronouncement	**:**	**13.04.2023**

O R D E R

PER S. RIFAUR RAHMAN (AM)

1. These appeals are filed by the revenue and assessee against different orders of the Learned Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 15.01.2019, 15.01.2019, 15.01.2019, 10.07.2019 and 14.02.2022 for the A.Ys.2012-13, 2013-14, 2014-15, 2015-16 and 2017-18 respectively.

2. Since the issues raised in all these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order.

ITA.NO. 2540/MUM/2019 (A.Y. 2012-13) (DEPARTMENT APPEAL) & ITA.No. 2530/MUM/2019 (A.Y. 2012-13) (ASSESSEE APPEAL)

3. First we proceed to deal with the appeal of the revenue in ITA.No.2540/Mum/2019 for the A.Y. 2012-13.

4. Brief facts of the case are, assessee filed its return of income for A.Y. 2012-13 on 27.09.2012 declaring total income at a loss of ₹.47,99,68,689/-. The case was selected for scrutiny under CASS and

notices u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response Authorised Representative of the assessee attended and submitted the relevant information as called for.

5. The assessee company is engaged in online travel booking agents for domestic and international tourists and travel houses. During the course of assessment proceedings Assessing Officer noticed that assessee had received a sum of ₹.36,02,07,500/- as share capital and premium in two tranches from M/s Cleartrip Inc, Mauritius. The assessee issued 1,44,08,300 shares at face value of ₹.10 and share premium of ₹.15 share. Thus, the assessee received ₹.21,61,24,500/- as share premium and ₹.36,02,07,500/- as total Share Capital. Assessing Officer noticed that the company was constantly incurring losses and therefore ordinary business prudence suggests that none would like to invest in a company after paying a premium which is 150% of the face value. Since the nature of transaction was suspicious, a reference was made to FTTR to ascertain the real nature of this transaction and actual source of the sum invested into the assessee company because though the transaction was shown in the colorable and garb of share premium, the

ordinary business prudence suggested otherwise. Part reply was received therefrom. It was ascertained that the Mauritus entity was not the real owner of the funds invested and the funds had in turn flown in to Mauritius entity from Cayman Island. The money trail, however, did not stop at Cayman Island. Assessing Officer, noticed that, considering the nature of transactions and the role played by Mauritius Company as a conduit, it was likely that the Cayman Island company would also be nothing but a shell company. The assessee was asked to explain the source of the money in the hands of Cayman Island Company and also to furnish the actual investors of the sum. In response assessee submitted a list of names who had invested in Cayman Island company vide its letter dated 04.03.2016.

6. Assessing Officer rejected the submissions made by the assessee and find that assessee did not furnish any details of their creditworthiness. Since all of them are prima facie outside parties, they do not come under the jurisdiction of Indian taxation system and the Assessing Officer cannot seek their financial details except through FTTR. FTTR reference has a limitation of time before which the assessment needs to be completed. Further, Assessing Officer noticed

that assessee has merely submitted the names of the alleged foreign investors. In none of the cases, there is any comment on creditworthiness. It is clear that the assessee failed to furnish the primary onus imposed by statute u/s. 68 of the Act and could not discharge the onus of creditworthiness placed u/s. 68 of the Act.

7. Further, Assessing Officer observed that the assessee had used DCF method for valuation of shares. It is trite to state that a company which has been constantly incurring loss and has negative EPS would not receive such huge premium unless it projects itself as profitable in future. In order to show this, the companies generally adopt the DCF method which gives a huge leeway to the assessee to adopt any figure as its projected profit. Since the assessee had negative intrinsic value of share as per NAV method, it is imperative to verify as to whether the DCF valuation was done bona fide and whether it reflected the true state of affairs of the assessee company. Therefore, assessee was asked to furnish the DCF valuation used by the assessee by replacing the projected figures by actual figures till 31.03.2015 for which the actual audited figures are available. In response assessee furnished the same.

8. Assessing Officer observed that assessee computed the value at 23.16 to show that it was in conformity with the original valuation of 23.31. The same has been considered. It is noticed that the original valuation report was a cryptic two-page report which did not categorically state the basis of projected figures. It narrated that the figure of ₹.23.31/- was based on the examination of books of account and other relevant documents and information and explanation furnished to valuer provided by the assessee. Assessing Officer noticed that no basis of projected figures was given. Further, the DCF valuation incorporating the actual figures should have been negative. However, the assessee incorporated non-cash and residuary item, which was not there in the original valuation, to somehow arrive at the same figure. This is not in accordance with the accepted principles. The assessee was required to furnish the DCF computation by using the actual figures and not incorporate a new head therein to arrive at similar figure. The assessee, in the original valuation, had shown a projected profit for F.Y.2013-14, F.Y 2014-15 and F.Y 2015-16 as ₹.18.38 crores, ₹.52.54 crores and ₹.83.19 crores whereas the actual figures are losses of ₹.40.67 crores and ₹.29.37 crores for F.Y 2013-14 and F.Y 2014-15. For F.Y 2015-16 too, loss is anticipated by the assessee. In this background,

it is clear that the figures used in estimation were imaginary and fictitious coined in order to arrive at a premeditated figure of ₹.23.31/-, It is a matter of fact that the DCF uses estimation of future cash flows. While genuine estimation can certainly qualify as a valid valuation, note needs to be taken of imaginary and fictitious estimation having no correlation with actual affairs of the assessee for arriving at premeditated figures of share value. It goes without saying that such estimation cannot be a fictitious figure invented and coined only to arrive at a premeditated figure of share value. The assessee has arrived at a value of ₹.23.31/- per share which is at huge variance with NAV method which comes to a negative value. In view of this, it is held that the DCF valuation used by the assessee is bogus and sham and has no connection with the real figures. The valuation was done with fictitious figures having no correlation with actual affairs of the assessee. The valuation was done using imaginary figures to arrive at a premeditated value of ₹.23.31/- per share. Accordingly, the same is rejected. The same is further supported by fatal deficiency due to the fact that the valuer has not done any due diligence and has no given no basis of the projected figures. It made a cryptic two-page valuation report which reveals nothing but clerical calculation. In view of this, it is clear that the

sum received in the form of share issue consideration is not what it is being shown as. The real pith and substance of the transaction is something else and the assessee could not discharge the onus imposed upon it to prove the genuineness of the transaction. It is clear that though the transaction is being shown as share issue and share premium, the nature of the transaction is not that. Invoking the McDowell case, the contention of the assessee is rejected. Since the transaction is not that of share issue in its substance, the decision of Hon'ble Bombay High Court in the case of Vodafone and the Instruction of CBDT do not apply to the instant case. The intrinsic value of shares is negative. Accordingly, he proceeded to add the entire sum of ₹.36,02,07,500/- received by the assessee is taxable u/s. 68 of the Act to the income of the assessee.

9. Further, it was noticed by the Assessing Officer that assessee had incurred advertisement and sales promotion expenses of ₹.39,92,88,779/-, he observed that Cleartrip is a global brand and this expense has correlation with both the assessee as well as Cleartrip brand which is a global brand. In view of this, the assessee was asked to show cause as to why a proportionate amount on the basis of

turnover of the assessee vis-à-vis the consolidated turnover should not be disallowed and added back to the total income of the assessee. In response, the assessee submitted its reply however did not submit anything on merit.

10. Not convinced with the submissions of the assessee the Assessing Officer observed that there has been addition on this ground in A.Y.2011-12 also. Accordingly, Assessing Officer proceeded to disallow twenty percent of the advertisement and sales promotion expenditure u/s. 37 of the Act. Accordingly, a sum of ₹.7,98,57,756/- is added in total income of the assessee.

11. In addition to the above, Assessing Officer noticed that assessee had claimed expenses of ₹.24,16,78,130/- on credit card collection charges. However, there was no disallowance made by the assessee u/s.40(a)(ia) of the Act. Accordingly, the assessee was asked to show cause as to why disallowance of ₹.24,16.78.130/- should not be made. In response, the assessee submitted its response on 28.03.2016 and relied on the order of CIT(A) in the A.Y 2010-11. Assessing Officer observed that Department has filed appeal thereon and it is a recurring

question of law and similar disallowance was made by the Assessing Officer in the assessment order for AY 2011-12. Since there is no change in facts, relying on the detailed reasons mentioned in the assessment order for AY 2011-12, disallowance u/s. 40(a)(ia) of the Act was made of a sum of ₹.24,16,78,130/- in this assessment year.

12. Aggrieved assessee preferred appeal before Ld.CIT(A) and before Ld CIT(A) assessee filed detailed submissions. With regard to addition u/s. 68 of the Act, assessee filed its submissions as under: -

> *"Ground No.1: Share capital (including premium) received considered as unexplained cashcredit taxable under Section 68 of the Act.*
>
> *3.1 As mentioned above, the Appellant is a wholly owned subsidiary of Cleartrip Inc. (Mauritius), which in turn is a wholly owned subsidiary of Cleartrip Inc. Cayman Islands.*
>
> *3.2 During FY 2011-12, the Appellant issued certain equity shares, having face value of Rs. 10 per share, to its holding company Cleartrip Inc., (Mauritius), at a premium of Rs. 15 per share. Monies towards issue of such shares were received by the Appellant through normal banking channels. A statement providing details of such issue (of shares) during the period under consideration is attached herewith as Annexure 10 part of Paperbook 'A'.*
>
> ***3.3 Overview of assessment proceedings***
>
> *3.3.1 In the course of the assessment proceedings, the learned AO, vide notice dated 6 January, 2015 issued under Section 142(1) of the Act asked the Appellant to inter alia furnish:*

a. Details of the increase in share capital of the Appellant during FY 2011-12 (Refer Point No. 3 of Annexure to the Notice);

b. Copy of the Form 2 filed with the Registrar of Companies (RoC'), Le. the return of allotment of sharesRefer Point No. 3(1) of the Annexure to the Notice);

c. Justification for premium received on issue of such shares (Refer Point No. 3(iii) of the Annexure to the Notice).

A copy of the said notice dated 6 January, 2015 (alongwith annexure) is attached herewith as Annexure 11 part of Paperbook 'A'.

3.3.2 The Appellant accordingly, vide its letter dated 22 January, 2015, furnished the aforesaid details, as requested by the learned AO. A copy of the said submission is attached herewith as Annexure 12 partof Paperbook 'A'.

3.3.3 Further, the Appellant vide its letter dated 22 February, 2016, furnished the details of monies received towards issue of shares by it from Cleartrip Inc., (Mauritius) during the FY alongwith relevant extracts of Appellant's bank statements evidencing receipt of such monies. The Appellant vide the said letter further submitted to the learned AO, copy of certificate issued by an independent Chartered Accountant justifying issue of shares at a premium. A copy of the relevant extract of the letter dated 22 February, 2016 is attached herewith as Annexure 13 part of Paperbook 'A'.

3.3.4 Thereafter the Appellant, further vide its letter dated 4 March, 2016, submitted its shareholding pattern. Through the said letter, the Appellant further explained that all its shares are held by Cleartrip Inc., (Mauritius). The shares of the Mauritian Holding Company in turn are held byCleartrip Inc., Cayman Islands. Further, the Appellant also provided details and brief Wikipediaprofiles of the ultimate investors of Cleartrip Inc., Cayman Island. A copy of the relevant extract of the letter dated 4 March, 2016 is attached herewith as Annexure 14 part of Paperbook 'A'.

3.3.5 However, the learned AO on being dissatisfied with the submissions made by the Appellant challenged the genuineness of the transaction and proposed to make additions towards the share premium received. Accordingly, the learned AO issued a show

cause notice, dated 14 March 2016, wherein he asked the Appellant to show cause as to why additions on account of share premium should not be made, given the fact that the Appellant has not submitted DCF valuations and also failed to establish the genuineness of the transaction and creditworthiness of the investor. A copy of the said show cause notice dated 14 March, 2016 is attached herewith as Annexure 15 part ofPaperbook 'A'.

3.3.6 In response to the above, the Appellant vide its letter dated 17 March, 2016 submitted to the learned AO the fact that the said monies received by it from Cleartrip Inc. (Mauritius) were computed in accordance with DCF valuation arrived at by an independent Chartered Accountant in compliance with the extant Foreign Exchange Management Act, 1999 and the rules and regulations framed thereunder. A copy of the relevant extract of the letter dated 17 March, 2016 is attached herewith as Annexure 16 part of Paperbook 'A'.

3.3.7 The Appellant further making reference to its earlier letter (dated 4 March 2016 - referred above),wherein details and Wikipedia profiles of the shareholders of the Cleartrip Inc., Cayman Islands andthe amount-wise breakup of the funds utilized were provided, submitted before the learned AO byplacing reliance on certain judicial precedents, the fact that since complete details of the shareapplication money and share premium received have been furnished, the same should not beconsidered as unexplained cash credits under Section 68 of the Act.

3.3.8 Ignoring the Appellant's contentions the learned AO, in the impugned assessment order, held that Appellant has failed to discharge the primary onus imposed on it by the statute under Section 68 of the Act, and made an addition of the share capital received (including premium) amounting to Rs. 36,02,07,500, under Section 68 of the Act.

3.4 Appellant's contentions with regard to non-applicability of provisions of Section 68 of theAct

3.4.1 As per provisions of Section 68 of the Act, where any sum is found credited in the books of accounts maintained by the assessee, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory in the opinion of the AO, the sum so credited may be charged to income-tax as the income of the assessee of that previous year

3.4.2 A distillation of the provision of Section 68 of the Act yields that to fall outside the ambit of Section 68of the Act, an Assessee has to prima facie prove:

a. The identity of the investor;

b. The genuineness of the transaction;

c.The creditworthiness or financial strength of the investor.

3.4.3 In light of the above, the Appellant submits that a bare reading of the provisions of Section 68 of the Act suggest that it applies only to such amounts as are received by the Appellant from its immediate shareholder(s), in whose name monies received towards share capital (including premium) are credited in the books of accounts of the Appellant. Accordingly, in the instant case, all that the Appellant has to establish is the identity of the investor i.e. Cleartrip Inc., (Mauritius) alongwith its creditworthiness and the genuineness of the transaction of share investment made by Cleartrip (Mauritius) and not that of ultimate investors as contemplated by the learned AO.

Identity of the Investor

3.4.4 At the outset, the Appellant would like to submit that nowhere in the assessment order is there even a whisper challenging the existence of Cleartrip Inc. (Mauritius). 3.4.5 Nonetheless, apart from the information and documents referred above, the Appellant would also liketo submit that Cleartrip Inc., (Mauritius) is a Company incorporated under the laws of Mauritius on23 September, 2005 with File Number 58711 C1/GBL. Its registered office address is:

IFS Court,
Bank Street,
28, Cybercity, Ebene 72201,
Mauritius.

3.4.6 To substantiate the above, the Appellant would like to submit:

a. A copy of 'Certificate of Incorporation of Cleartrip Inc., (Mauritius) as Annexure 17 part ofPaperbook 'A'.

b. A copy of the 'Certificate of Incumbency of Cleartrip Inc. (Mauritius) as Annexure 18 part of Paperbook 'A

c. Copies of the TRC issued by the Mauritian Revenue Authority, evidencing the fact that Cleartrip Inc.(Mauritius) is a tax resident of Mauritius (attached as Annexure 2 part of Paperbook 'A').

3.4.7 Further, the Appellant submits that, Cleartrip Inc. (Mauritius) holds a valid Indian Permanent Account Number i.e. AAFCC6679P.

3.4.8 In view of the above, the Appellant would like to emphatically submit that there is no doubt regardingthe existence of the investor te. Cleartrip Inc., (Mauritius).

Without prejudice, Section 68 of the Act does not mandate the Appellant to prove source of source

3.4.9 Momentarily and for the sake of argument, even if it is assumed (without admitting) the fact that the Appellant has not been able to substantiate the identity of the investor to the satisfaction of the learned AO, the Appellant wishes to draw your Honour's attention to the undernoted judicial precedents wherein respective judicial foras, including the Hon'ble Supreme Court of India, has held that even if share application money is received by the company from alleged bogus shareholders, the department is free to proceed to reopen their individual assessments in accordance with the law but such amount of share application money cannot be regarded as undisclosed income under Section 68 of the assesse- company. Further, all that the recipient company is required to do is 'provide details ofshareholders/investors'.

a. CIT v. Stellar Investment Ltd. [2001] 251 ITR 263 (SC) copy of the said judgment is attachedherewith as Annexure 19 part of Paperbook 'B'

b. CIT v. Lovely Exports (P) Ltd [2008] 216 CTR 195 (SC) copy of the said judgment is attachedherewith as Annexure 20 part of Paperbook 'B'

c. CITD. M/s Creative World Telefilms Ltd. - [2011] 333 ITR 100 (Bom.)- copy of the said judgment is attached herewith as Annexure 21 part of Paperbook 'B'

d. *Gagandeep Infrastructure Pot Ltd (Bom) copy of the said judgment is attached herewith asAnnexure 22 part of Paperbook 'B'*

e. *Goa Sponge & Power Ltd. - ITA No. 16 of 2012 (Bombay HC)- copy of the said judgment herewith as Annexure 23 part of Paperbook 'B'*

f. *Bhat Shakti Steel Mines (P.) Ltd. v. CIT (2010) 320 ITR 619 (Delhi)*

g. *CIT. Dwarkadish Investment (P) Ltd. [2010] 194 taxman 43 (Delhi)*

h. *CIT v. Value Capital Services (P) Ltd. (2008) 307 ITR 334 (Del)*

i. *CIT. Ganheshwari Metal (P) Ltd. [2013] 361 ITR 10 (Delhi)*

3.4.10 In this regard, the Appellant wishes to submit that in the instant case, it has discharged its onus of providing details of the investor viz., Cleartrip Inc., (Mauritius). Not only that, the Appellant has in fact provided the details of its ultimate shareholders vide its letter dated 4 March, 2016, provided the details of its ultimate shareholders (submitted as Annexure 14).

Identity of Cleartrip Inc. Cayman Islands

3.4.11 Having said which, the Appellant without prejudice to its aforesaid contentions would like to submitthe following to substantiate the existence CleartripInc, Cayman Islands, and that it is the source ofCleartrip Inc. (Mauritius):) 4 Certificate of incorporation; andShareholder's register of Cleartrip Inc. (Mauritius) evidencing issue of shares to Cleartrip Inc. Cayman Islands A copy of these documents is attached herewith as Annexure 24 part of Paperbook "A".

Identity of ultimate shareholders

3.4.12 In this regard, for substantiating the identity of the ultimate shareholders the Appellant wishes to submit copies of the Share Certificates issued to them by Cleartrip Inc., Cayman Islands (on sample basis) attached herewith as Annexure 25 part of Paperbook 'A'. This would beyond doubt establish the identity of the ultimate investors as well.

Genuineness of the Transaction

3.4.13 The Appellant, at the outset, reiterates in this context the fact that the transactions of investing in theAppellant's shares have been concluded through normal banking channels.

3.4.14 The Appellant, at the outset, reiterates in this context the fact that the transactions of investing in the Appellant's shares have been concluded through normal banking channels. This is evidenced by the following:

> *a Copies of Foreign Inward Remittance Certificate (FIRCs) issued by its Authorized Dealer Bank,pursuant to monies received from Cleartrip Inc., (Mauritius) attached herewith as Annexure 26A part of Paperbook 'A'.*
>
> *b Copies of the relevant extracts of its own bank statements, attached as Annexure 13 part of PaperbookA*
>
> *c. Copies of the relevant extracts of bank statements of Cleartrip Inc. (Mauritius), attached herewith as Annexure 268 part of Paperbook 'A'.*

Submissions regarding receipt of monies through normal banking channels - genuineness cannot bequestioned

3.4.15 Given the above, the Appellant would like to, by placing reliance on the judgment of Hon'ble jurisdictional Mumbai Tribunal in the case of Green Infra Ltd (ITA 7762/Mum/2012), submit that since the entire transaction was done through the banking channels and duly recorded in the books of accounts of the Appellant, the genuineness of such transaction could be safely concluded. This judgment has been subsequently affirmed by the Hon'ble Bombay High Court in January 2017 (ITA 1162 of 2014), Copy of the aforesaid decision of the Hon'ble Mumbai Tribunal is attached herewith as Annexure 27 part of Paperbook "B".

3.4.16 A similar view has also been upheld by the Jurisdictional Mumbai Tribunal in case of Wannamo Marketing P. Ltd. v. DCIT-ITA No. 7361/Mum/2016 and by the Hon'ble Delhi High Court in the case of CIT v. Oasis Hospitalities (P) Ltd. [2011] 198 TAXMAN 247 (Delhi).

3.4.17 Given the above, the Appellant would like to submit copies of the following documents furnished to various regulatory authorities in India at the time of allotment of shares to Cleartrip Inc.(Mauritius);

a. Form FC-GPRs filed with the Reserve Bank of India; and

b. Form 2 filed with RoC (alongwith copy of the board resolution passed by the Appellant and list ofallottees).

Copies of these documents, is attached herewith as Annexure 28 part of Paperbook 'A'. The Appellant submits that these documents clearly establish the fact that the transaction is genuine.

Submissions against allegations pertaining to valuation of shares

3.4.18 The learned AO has contended that since the Appellant has been incurring losses, none would like to invest in the Appellant's business after paying a premium which is equivalent to 150% of the face value. Further, the learned AO has also questioned the adoption of DCF method for the valuation of shares, by stating that the estimation used by the Appellant is imaginary, fictitious and has no correlation with the business of the Appellant.

3.4.19 In this context, the Appellant would respectfully like to submit that issuance of shares at a premium is a commercial decision taken by the investor/management of the company. Also, the Companies Act, 1956 does not prescribe any limit on the premium at which shares are to be issued. Nevertheless, the Appellant has submitted all the relevant documents, including a copy of the valuation report certifying the price of the shares, to the learned AO.

3.4.20 For the above, the Appellant would like to rely on the judgment of Hon'ble jurisdictional MumbaiTribunal in the case of Green Infra Ltd (supra) wherein the assessee had issued shares at apremium, which was computed as per the valuation undertaken using the DCF method in connectionwith which, the assessee contended that the share premium is decided by the Board of Directors and there is no prohibition under the Companies Act so far as the amount of premium is concerned. The Tribunal resonated the Appellant's contention and held that the Revenue authorities cannot question the charging of huge premiums, in the absence of any bar from any legislated law of the land.

3.4.21 Infact on the contrary, FEMA regulations provide that price of shares issued to persons resident outside India under the FDI Policy, shall not be less than the fair valuation of shares done by a SEBI registered Merchant Banker or a Chartered Accountant as per any internationally accepted pricingmethodology on arm's length

basis, where the shares of the company are not listed on any recognizedstock exchange in India. Therefore, the Appellant submits that to comply with the provisions of theFEMA law, it was duty bound to issue shares at premium.

3.4.22 In view of the above and in light of facts of the present case and documents submitted, your Honour would appreciate that the transaction at hand is a genuine one and the contention of the learned AO, that it is bogus and sham does not hold good. Creditworthiness of the Investors

3.4.23 At the cutset, the Appellant submits that the investment in Cleartrip Group has been made indirectly, by the reputed private equity funds ('PE investors). Such PE investors inter alia include the following venture capital funds:

a. Sherpalo LLC, USA

b. Draper Fisher Jurvetson Fund IX, LP, USA

c. Draper Fisher Jurvetson Partners IX, LLC, USA

d. KPCB Holdings, Inc., USA

e. DAG Ventures II-QP, LP. USA

f.DAG Ventures II, L.P., USA

g. DAG Ventures GP Fund II, LLC, USA

h. Gund Investment LLC, USA

i. Gem India Advisors, USA

3.4.24 Given the above, the Appellant submits that as far as the source of monies in hands of CleartripInc.,(Mauritius) is concerned (for investment in shares of the Appellant), the same can ultimately be traced back to such PE investors of the Group, who are persons of repute and means. In this regard, the Appellant would like to reiterate that it has already furnished the brief Wikipedia profiles of such PE investors vide its letter dated 4 March, 2016 to the learned AO.

3.4.25 As far as creditworthiness or financial strength of the investor is concerned, the Appellant would liketo submit before your Honour, copies of the financial statements of Cleartrip Inc., (Mauritius), alongwith a copy of its bank statements. Copies of the

financial statements of Cleartrip Inc., (Mauritius) forFY 2011-12 are attached herewith as Annexure 28A part of Paperbook 'A' while that of the bankstatements have been attached as Annexure 268 part of Paperbook 'A' respectively

Identity proved, no further requirement

3.4.26 Having said which, the Appellant submits that once existence of the investor is proved, it is notfurther the burden of the Appellant to prove whether that person itself has invested the said money or some other person has made the investment in name of that person. Instead, it is for the department to show that even if applicant did not have the means to make investment, investment made actually emanated from the coffers of the Appellant. Reliance in this regard is placed on the undernoted judicial precedents:

a. CIT v. Value Capital Services (P) Ltd. (supra) - copy of the said judgment is attached herewith as Annexure 29 part of Paperbook "B

b. CIT v. Dwarkadish Investment (P.) Ltd. (supra)

c. Shree BarkhaSynethetics Ltd. v. ACIT [2006] 283 ITR 377 (Rajasthan) d. Nemi Chand Kothari v. CIT [2003] 264 ITR 254 (Gauhati)

3.4.27 Nonetheless, based on the review of above documents, the Appellant submits that your Honour would be satisfied that the creditworthiness of Cleartrip Inc., (Mauritius) cannot be a question of doubt.

3.5 Without prejudice, the learned AO erred in applying the provisions of Section 68 of the Act in respect of the ultimate shareholders i.e. the investors in Cleartrip Inc., Cayman Islands

3.5.1 As pointed out earlier, provisions of Section 68 of the Act would apply only to the extent of monies received by the Appellant from its immediate shareholder viz. Cleartrip Inc., (Mauritius). The learned AO has however, proceeded to interpret the provisions of Section 68 to his discretion and erred in holding that the Appellant has failed to discharge its primary onus of establishing the creditworthiness of its ultimate shareholders, being the shareholders of the Cayman Island entity when infact no such obligation has been casted upon the Appellant by the provisions of Section 68 of the Act.

3.5.2 Further, the learned AO has merely concluded that Mauritius and the Cayman Islands entities are shell companies, and that the investments received by the Appellant is not genuine. If that be so, the Appellant would like to submit, emphatically, that in case the learned AO harbored doubts of the legitimacy of the subscription, he was always empowered, nay duty bound to undertake, thorough investigations of the investors. List of such investors alongwith their Wikipedia profiles were provided by the Appellant to the learned AO, during the course of the assessment proceedings. Despite making available the data pertaining to the investors, the learned AO made additions in the hands of the Appellant under Section under Section 68 of the Act, which is bad in law and against the letter and spirit of the law.

3.5.3 In view of the above, the Appellant requests your Honour to delete the additions made in its hands amounting to Rs.36,02,07,500 under Section 68 of the Act."

13. Further, during the appellate proceedings assessee was asked to provide clarification with respect to details of investors, the method adopted by the assessee for valuing its shares during the period under consideration and also to justify the valuation report for the purpose of issue of shares. In response assessee furnished its reply vide letters dated 18.12.2017, 06.06.2018 and 14.03.2018 contents of the letters are reproduced in Page Nos. 11 to 18 of the appellate order. For the sake the brevity the same are not reproduced.

14. After considering the detailed submissions of the assessee, Ld.CIT(A) allowed the ground raised by the assessee by deleting the

addition of ₹.36,02,07,500/- made by the Assessing Officer u/s. 68 of the Act with the following observations: -

> *"3.7 I have gone through the assessment order of the AO, submissions of the assessee company extracted above and perused the material available on the record. The appellant submitted following details and documents before the AO for establishing the identity and creditworthiness of its immediate investor i.e. Cleartrip Inc., (Mauritius) and the genuineness of the transaction, as required under the provisions of Section 68:*
>
> *Evidence regarding identity of Cleartrip Inc., (Mauritius), being the immediate shareholder:*
>
> *a. A copy of 'Certificate of Incorporation' of Cleartrip Inc., (Mauritius)*
>
> *b. A copy of the 'Certificate of Incumbency' of Cleartrip Inc., (Mauritius)*
>
> *c. Copies of the TRC issued by the Mauritian Revenue Authority, evidencing the factthat Cleartrip Inc., (Mauritius) is a tax resident of Mauritius*
>
> *d. Details of Indian Permanent Account Number of Cleartrip Inc., (Mauritius)*
>
> *Evidence regarding genuineness of the transaction and creditworthiness of CleartripInc. (Mauritius):*
>
> *a. Copies of the relevant extracts of the appellant's own bank statements evidencing flow of money*
>
> *b. Copies of the relevant extracts of bank statements of Cleartrip Inc., (Mauritius),*
>
> *c. Copies of Form FC-GPRS filed with the Reserve Bank of India*
>
> *d. Copies of Foreign Inward Remittance Certificate (FIRCs') issued by the Authorized Dealer Bank, pursuant to monies received from Cleartrip Inc., (Mauritius)*

e. Copies of Form 2 filed with the RoC (alongwith a copy of the Board resolution: passed by the appellant and list of the allottees)

f. Copy of the audited financial statements of Cleartrip Inc., (Mauritius) for FY 2011- 12 which reflects the investment made by Cleartrip Inc. (Mauritius) in the sharesof the appellant.

The appellant also furnished the following details w.r.t. the investors in CleartripInc., (Mauritius) viz., Cleartrip Inc., Cayman Islands and its ultimate shareholders:

a. Certificate of incorporation of Cleartrip Inc., Cayman Islands

b. Shareholder's register of Cleartrip Inc., (Mauritius) evidencing issue of shares toCleartrip Inc., Cayman Islands

c. Copies of share certificates issued by Cleartrip Inc., Cayman Islands to the ultimate shareholders

d. Brief Wikipedia profiles of the ultimate investors.

3.8 It is seen from the above that the appellant had filed extensive documents to substantiate not only the identity of its immediate investor i.e. Cleartrip Inc., (Mauritius), but also the identity of the ultimate investors in Cleartrip Inc., Cayman Islands. In this regard Hon'ble Delhi Tribunal in case of Bycell Telecommunications India (P) Ltd. V. PCIT (supra) held that the AO was not required to verify the source of source, except under exceptional circumstances where there is a strong prima facie material to demonstrate that the source itself is not genuine. In the instant case, nothing has been brought on record by the AO to challenge the genuineness of the source. As a result, the action of the AO in questioning the source of source is not warranted. Thus, it is seen that the focus during the assessment proceedings was on ascertaining the justification for share premium in the background of the issue price, contending that DCF valuation was not an appropriate method for valuation of shares and the entire amount received towards issue of shares represented unexplained cash credits under Section 68.

3.9 It is seen that the said monies received by it from Cleartrip Inc., (Mauritius) were computed in accordance with DCF valuation arrived at by an independent Chartered Accountant in compliance with the Foreign Exchange Management Act and the rules and

regulations framed there under. This being an approved method for the purpose of FEMA, was an acceptable method for the valuation of shares. In the case of Hon'ble Mumbai Tribunal (jurisdictional) in case of Finproject India Private Ltd. v. PCIT (supra), the DCF technique of valuation was considered to be appropriate method for determining the value of shares, given that the same was in accordance with the FEMA provisions. Thus, the appellant cannot be considered to be in default for compliance with something that was merited by law.

3.10 Further, on examination of the submissions filed by the appellant, it is seen that the genuineness of the transaction of receipt of share capital had been duly established by the appellant by furnishing the copy of the Foreign Inward Remittance Certificate ('FIRC) issued by the Authorised Dealer Banks and Form-2 submitted to the Registrar of Companies. In the said FIRC's, the authorised dealers have certified the receipt of inward remittance of USD 74,99,955 from Cleartrip Inc., (Mauritius) on various dates, the Rupee equivalent of which amounting to Rs. 36,02,07,500 has been credited to the Bank Account of the appellant. Further, it is certified in the FIRC that the purpose of remittance is "FDI for purchase of equity shares of Cleartrip Private Limited". Apart from the genuineness of the transaction, the Foreign Inward Remittance certificate also served the purpose of establishing theidentity of Cleartrip Inc., (Mauritius), as it mentions the name of the remitter and the name of the remitting bank in Mauritius and the purpose of the remittance. In this connection, it is pertinent to point out that Cleartrip Inc., (Mauritius), which is headquartered in Mauritius, is the holding company of the appellant.

3.11 Further, it is seen that the appellant has informed the RBI regarding the Foreign Inward Remittance from Cleartrip Inc., (Mauritius) towards subscription to the shares of the appellant company at Rs.25 per share comprising of face value of Rs.10 per share and premium of Rs.15 per share, along with the KYC form in respect of the non-resident investor. It is further seen that the RBI has allotted Unique Identification Number (UIN) for the said Foreign Inward Remittance and intimated the same to the appellant vide letter dated 14.03.2012. Thus, it is seen that the investment made by Cleartrip Inc., (Mauritius) in the share capital of the appellant company during the year, which comprised of paid up share capital of Rs. 14,40,83,000 and share premium of Rs. 21,61,24,500, has duly complied with the FEMA provisions and RBI regulations.

3.12 It is also seen that the creditworthiness of Cleartrip Inc., (Mauritius) has also been duly established by the appellant by furnishing the consolidated financial statement of Cleartrip Inc., (Mauritius). In the said Financial statement, the investment made in the shares of the appellant company has been duly reflected in the "Significant accounting policies - Basis of consolidation" and Note No.14 to the same under the head "Investments in subsidiaries". In fact, the Appellant has also furnished copies of its bank statements and also that of its holding company, Cleatrip Inc. (Mauritius) that categorically reflect the fact that investment has been made by Cleatrip Inc. (Mauritius) into the shares of the appellant through normal banking channels.

3.13 Thus, it is seen from the above discussion that the evidences filed by the appellant have established the identity of the shareholder, the genuineness of thetransaction and the creditworthiness of the shareholder in respect of the share capital of Rs. Rs. 36,02,07,500 received from Cleartrip Inc., (Mauritius) during the year. In view of the same, it is held that the share capital (including share premium) received from Cleartrip Inc., (Mauritius) cannot be treated as unexplained cash credit and consequently, no addition is warranted u/s.68 of the Act in respect of the said share capital (including share premium). Hence, the AO is directed to delete the addition of Rs. 36,02,07,500 made in the assessment order u/s.68 of the Act. Assessee gets relief. This ground of appeal is therefore allowed."

15. With regard to adhoc disallowance of advertisement and sales promotion assessee filed submissions before Ld.CIT(A) as under: -

"Ground No.2: Adhoc disallowance of advertisement and sale promotion expenses:

3.6 As mentioned in the background, the Appellant is a wholly-owned subsidiary of Cleartrip Inc., (Mauritius) which in turn is a wholly owned subsidiary of Cleartrip Inc., Cayman Islands. Further, it has a fellow subsidiary called Cleartrip MEA FZ LLC which is a direct subsidiary of Cleartrip Inc. (Mauritius).

3.7 Overview of Assessment Proceedings

3.7.1. During the FY 2011-12, the Appellant debited to its profit and loss statement for the said period, an amount of Rs.

39,92,88,779 towards 'advertisement and sales promotion expenses'.

3.7.2. In the course of the assessment proceedings, the learned AO, vide notice dated 6 January, 2015 issued under Section 142(1) of the Act, asked the Appellant to inter alia furnish details of advertisement and sales promotion expenses incurred tride Point 17 of the said notice. A copy of the said notice has been attached herewith as Annexure 11 part of Paperbook "A".

3.7.3. The Appellant accordingly, vide its letter dated 19 February, 2015, furnished party-wise details of such advertisement and sales promotion expenses, as requested by the learned AO. A copy of the relevant extract of the said letter is attached herewith as Annexure 30 part of Paperbook 'A'

3.7.4 In the course of the assessment proceedings the learned AO alleged that the Appellant being a global brand, the advertisement and sales promotion expenses has co-relation with both the Appellant as well as Cleartrip brand which is a global brand. In view of this, the learned AO vide show cause notice dated 14 March, 2016 (attached as Annexure 15 part of Paperbook 'A') askedthe Appellant to show cause as to why a proportionate amount on the basis of the turnover of theAppellant vis-à-vis the consolidated turnover should not be disallowed and added back to the totalincome of the Appellant under Section 37 of the Act. I

3.7.5 n response, the Appellant vide letter dated 17 March, 2016 submitted before the learned AO that it has incurred advertisement and sales promotion expenses in the normal course of its business. The Appellant vide the said letter further submitted that the advertisement and sales promotion expenses that it has incurred are solely for the business activities of the Appellant in India and not for its global brand. Further, it did not incur any expenses for promoting the brand image of the Appellant at the global level. Hence, the contention of the learned AO that proportionate amount of the expenditure incurred by the Appellant should be disallowed and added back to the total income of the Appellant under Section 37 of the Act on the basis of the turnover of the Appellant vis-à-vis its consolidated turnover is not justifiable. A copy of the relevant extract of the letter dated 17 March, 2016 is attached herewith as Annexure 31 part of Paperbook 'A'.

3.7.6. Thereafter, the Appellant vide letter dated 18 March, 2016 further submitted that it hasoperations only in India. However, Cleartrip Inc., (Mauritius) has during the FY 2011-12 started a

Subsidiary Company in Dubai, namely Cleartrip MEA FZ LLC, whose turnover is marginal as compared to that of the Appellant. Thus, the question of apportionment of the advertisement and sales promotion expenses on the basis of turnover shall have marginal impact. Having said which, the Appellant relying on various judicial precedents including those of the Hon'ble Supreme Court of India submitted before the learned AO the fact that merely because foreign entities have benefited as a result of advertisement and sales promotion expenses incurred by the Appellant, does not entail denial of deduction to the Appellant under Section 37 of the Act. The Appellant further submitted that expenditure incurred on the ground of commercial expediency should be treated as normal business expenditure even if somebody other than the Assessee has benefited from such expenditure. A copy of the relevant extract of letter dated 18 March, 2016 is attached herewith as Annexure 32 part of Paperbook 'A'.

3.7.7. The Appellant further vide letter dated 28 March, 2016 again submitted the nature of various advertisement and sales promotion expenses incurred by it during the period under consideration alongwith party-wise details of the same. A copy of the relevant extract of the letter dated 28 March, 2016 is attached herewith as Annexure 33 part of Paperbook 'A'.

3.7.8. The learned AO however, failed to appreciate the submissions made by the Appellant and in the impugned assessment order made an adhoc disallowance Rs. 7,98,57,756 being 20 per cent of the total advertisement and sales promotion expenditure incurred by the Appellant during the period under consideration under Section 37 of the Act on the premise that such expenditure is attributable to Appellant's foreign operations. In relation to the above, the Appellant submits as under:

3.8 Appellant's contention regarding allowance of deduction under Section 37 of the Act

3.8.1 As per the provisions of Section 37 of the Act, any expenditure (not being expenditure of the nature described in Sections 30 to 36 of the Act and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession.

3.8.2. Paraphrasing the provisions of Section 37 of the Act, leads us to the requirement of satisfaction ofthe following conditions that

can be said to be necessary for claiming deduction under the head Profits and gains of business or profession:

> *a. Expenditure should not be in the nature described in Sections 30 to 36 of the Act;*
>
> *b. It should not be capital in nature; c. It should not be a personal expenditure; and*
>
> *d. It should be expended 'wholly and exclusively' for the 'purpose of business'.*

3.8.3. Given the above, the Appellant submits that it is not in dispute as to whether the impugned advertisement and sales promotion expenditure falls under Para (a) to (c) above. Accordingly, it is imperative to evaluate as to whether the impugned expenditure can be said to be 'expended wholly and exclusively for the purpose of Appellant's business' so as to be eligible for deduction under Section 37 of the Act. In this context, the Appellant submits as under:

Commercial Expediency

3.8.4. The two main criteria laid down by Point (d) above is that the amount expended should be 'whollyand exclusively' and it should be for the purpose of business".

3.8.5. It is further pertinent to note that the expression for the purpose of business' is wider in scope than the expression for the purpose of earning income'. The same has been upheld by the Hon'ble Supreme Court in case of CIT v. Rajendra Prasad Moody (115 ITR 519).

3.8.6. Having regard to such judicial decisions enumerated hereinafter, following principles may be drawn as regards the expression for the purpose of business":

> *a. that it includes expenditure voluntarily incurred on account of 'commercial expediency forfurtherance of business; and*
>
> *b. that the expression 'commercial expediency' is an expression of wide import and includes suchexpenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, yet it is allowable as business expenditure if it was incurred on grounds of commercial expediency.*

3.8.7. In the aforesaid context, the Appellant would like to draw your Honour's attention to decision of the Hon'ble Supreme Court in the case of Gordon Woodroffe Leather Manufacturing Co. v. CIT [1962] 44 ITR 551 wherein the Hon'ble Supreme Court specified that the correct approach which has to be taken in all such cases is to see 'whether was the sum of money expended on theground of commercial expediency and in order to indirectly to facilitate the carrying on of thebusiness'. A copy of the said decision is attached herewith as Annexure 34 part of Paperbook "B"."

3.8.8. Again, in Sassoon J. David & Co. (P.) Ltd. v. CIT [1979] 118 ITR 261 the Hon'ble Supreme Court reiterated the principle laid down by Gordon Woodroffe Leather Manufacturing Co. v. CIT (supra) on commercial expediency. A copy of the said decision is attached herewith as Annexure 35 part of Paperbook 'B'. Further, this well-settled legal position has been recapitulated by several

decisions, stated hereunder:

a. S.A. Builders Ltd. v. CIT(A) [2007] 158 Taxman 74 (SC)

b. CIT v. Chandulal Keshavlal & Co. [1960] 38 ITR 601 (SC)

c. CIT v. Reliance Communications Infrastructure Ltd (207 Taxmann 219) (Bom)

d. Tata Sons Ltd. v. CIT [1950] 18 ITR 460 (Bom.)

3.8.9. Thus, in order to justify deduction the sum must be given up for the reasons of commercialexpediency; it may be voluntary, but so long as it is incurred for the Appellant's benefit, deduction ought to be allowed as business expenditure.

Benefit to third party

3.8.10. The Appellant would like to submit that even in cases where the whole and exclusive purpose of the Assessee's trade and the object which the expenditure serves is the same, the mere fact that to some extent the expenditure endures to a third party's benefit or that the Assessee incidentally obtains some advantage in some character other than that of a trader, cannot in law defeat the effect of the finding as to 'whole and exclusive purpose. In simple words, an expenditure incurred for the purpose of Assessee's business is allowable even if it results in an advantage to a third party. In this context, the Appellant wishes to place reliance on the following judicial precedents:

a. Sassoon J. David & Co. (P.) Ltd. v. CIT (supra)

b. CIT v. Chandulal Keshavlal & Co. (supra) (Attached as Annexure 36 of Paperbook 'B');

c. CIT v. Royal Calcutta Turf Club [1961] 41 TTR 601 (SC);

d. Eastern Investment Ltd. v. CIT [1951] 20 ITR 1 (SC);

e. Viacom 18 Media Pvt. Ltd. v. Addl CIT [ITA No. 5057/Mum/07 (Mum) affirmed by theHon'ble Bombay High Court in the case of CIT v. Viacom 18 Media Pvt. Ltd.[ITA No. 4599 of 20101 (copy of the said judgment is attached herewith as Annexure 37 and 38part of Paperbook 'B')

f. CIT v. N.G.C. Network (India) Pvt Ltd (Bom HC) [2014] 368 ITR 738 (Bom.)

g. Countrywide Auto Financial Services Pvt Ltd (2011-TIOL-283-ITAT-Del)

The necessity for lack of the impugned expenditure) is not something which income tax guthorities can go into

3.8.11. The Appellant submits that the expression 'wholly and exclusively used in Section 37 ofthe Act does not mean 'necessarily.

3.8.12. In this context of 'necessity' of expenditure, the Appellant would like to bring to your Honour's attention the Income-tax Bill, 1961 wherein an attempt was made to lay down 'necessity of the expenditure as a condition for claiming deduction under Section 37 of the Act. Section 37(1) of the Bill read 'any expenditure... laid out or expended wholly, necessarily' and 'exclusively for the purposes of the business or profession shall be allowed'. The introduction of 'necessarily in the above Section resulted in public protest. Consequently, when Section 37 of the Act was finallyenacted into law the word 'necessarily came to be dropped. 3.8.13. Your Honour would appreciate that the action of the Hon'ble Parliament to exclude the word 'necessarily while enacting Section 37 of the Act aptly justifies the Appellant's contention that necessity (or lack of the impugned expenditure) is not something which income tax authorities can go into.

3.8.14. This is further fortified by the decision of the Hon'ble Delhi High Court in the case of CIT v. Adidas India Marketing (P.) Ltd. [2010] 195 Taxman 256 (Delhi) wherein it has recognized that brand promotion exercises undertaken through media campaigns,

schemes, programmes, etc. are essential for propagation of the brand. The necessity (or lack of it) is not something which income tax authorities can go into; as long as it is voluntarily undertaken by the business enterprise for profit earning, it would be entitled to claim deduction under section 37(1) of the Act. A copy of the said decision is attached herewith as Annexure 39 part of Paperbook "B" Similar view has been upheld by the Hon'ble Punjab and Haryana High Court in the case of Jamna Auto Industries v. CIT [2008] 167 Taxman 194 (P&H HC)(FB).

3.8.15.From the above discussion, it can be observed that the expression 'wholly and exclusively used in Section 37(1) of the Act does not mean 'necessarily'. Ordinarily, it is for the Assessee to decide whether any expenditure should be incurred in the course of its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the Assessee can claim deduction under section 37 of the Act even though there was no compelling necessity to incur such expenditure.

Conclusion

3.8.16. It is, thus, submitted that the nature of the expenditure or outgoing must be adjudged in the light of accepted commercial practice and trading principles applicable to the business of the Assessee. Further, if the expenditure is incurred for the purpose of business of the Assessee even if voluntarily on the principle of commercial expediency it is immaterial if a third party also benefits thereby.

Application of the aforesaid provision to the facts of the instant case

3.8.17. The Appellant submits that with the growing business opportunities in India, the travel business has become a highly competitive arena. In order to stay relevant in this dynamic environment, it is imperative and necessary for various companies including Appellant to spend large volumes of funds on various advertising and promotional campaigns.

3.8.18. The expenditure incurred on advertisement and publicity create awareness about the brand and the business of the Appellant which are necessary ingredient in marketing strategies. The expenditure incurred is to essentially maintain the corporate image of the Appellant which facilitates business and may have a direct impact on the sales and profitability of the Appellant. The

Appellant submits that advertising enhances the visibility of the given products or services, and are often perceived as conferring a competitive advantage on those who adopt those strategies or schemes. Expenditure towards this end, according to the Appellant, is based on pure commercial expediency, which the learned AO in this case, ought to have recognized and allowed.

3.8.19. In the present case, the learned AO was conscious of the fact that advertisement and promotion expenses are a necessary ingredient in marketing strategies. Therefore, he allowed 80 per cent of those expenses. However, the reasoning for disallowance of the balance expenditure, i.e. that the Appellant could claim only a proportion of such expenses, since advertising expenses were to benefit the global brand, and that the proportion was in respect of territory other than India, ought not to be upheld since it is not open to the learned AO to determine the necessityor otherwise of the expenditure incurred by the Appellant.

3.8.20. Given the principle laid down by various judicial precedents at para 3.8.10 above, the Appellant submits, without prejudice to aforesaid submissions that, if it were to be considered that the advertisement and sales promotion expenditure incurred by the Appellant is not incurred solely for the business activities of the Appellant in India but for its global brand, even in such a scenario, expenditure incurred marginally for global operations ought not to be disallowed.

3.8.21. Accordingly, the expenses in question were in the business interest of the Appellant to be at par or surpass its competitors. Hence, it can be concluded that the said expenses are incurred wholly and exclusively for the purpose of its business and should be allowed as a deduction in terms of the provisions of Section 37(1) of the Act, and the adhoc disallowance of Rs. 7,98,57,756 ought to bedeleted."

16. During the appellate proceedings, assessee was asked to file copies of the agreements entered into with various parties for the advertisements done online along with sample copies of invoices for the same. In response to the above, the assessee filed a detailed submission dated 18.12.2017, providing various copies of the agreements entered

into with various parties and also the copies of invoices received from such parties. The assessee also stated that as per such agreements it was evident that it had entered into advertising arrangements that specifically target only the Indian audience. It was further stated that the population of Dubai is miniscule as compared to the population of India, and so even if for a moment it is assumed that the advertisement and sales promotion expenses benefited the population in Dubai then it would hardly result in any disallowance. The above submission dated 18.12.2017 was subsequently forwarded to the Assessing Officer vide letter dated 08.01.2018, with a request to examine the same and furnish a remand report. The Assessing Officer furnished her remand report vide letter dated 13.02.2018. In her remand report, the AO stated as under: -

> *"On going through the enclosure to your above referred letter viz., agreement entered between the assessee company and Webitude it has been mentioned therein that -The assessee company is engaged in the on line business of providing facilities for booking of air tickets and hotels in India and abroad and operates through its website www.cleartrip.com that allows used to search/or travel related fare and to book Hotel and tickets from variety of hotels/airline. Further on perusal of the sample copies of agreements submitted before the ld.CIT(A) it is seen that assessee company is making payments to Google, Facebook, Twitter etc., w.r.to its online activity.*
>
> *The benefit of assessee company's activities is derived internationally i.e. by its subsidiary company/es but the cost of which is beared by the assessee company, Therefore, the assessee contention that it has not entered into any advertising*

arrangements that specifically target the gulf audience thereby benefiting its Dubai Fellow Subsidiary as alleged by the AO in the impugned assessment order, is not acceptable as the Dubai Subsidiary has a direct benefit of these costs incurred by the Indian assessee company in India. Hence, the AOs observation that Cleartrip is a global brand and the expenses have correlation with both assessee as well as Cleartrip brand, is right. And therefore, apportionment of the expenses is necessary as the business is carried out exclusively through the website www.cleartrip.com internationally including India.

Therefore, in the impugned assessment order the AO is right in invoking provisions of section 37(1) and in holding that the expenses are including that of incurred on behalf the global brand. As such, there is no merit in submission of the assessee filed before your goodself."

17. In rebuttal to the remand report submitted by the Assessing Officer, Ld. AR of the assessee submitted its rebuttal vide letter dated 11.04.2018 which is as under before the Ld.CIT(A): -

"Submission against the remand report

3.1 Given the above, the Appellant would like to submit its rebuttal as under On the allegation that the Appellant makes payments to Google, Facebook, Twitter, etc. with respect to advertisement of its online activities

3.2 The learned AO in her remand report has categorically stated that the Appellant makes payments to Google, Facebook, Twitter, etc. with respect to its online activities.

Advertisement targeting only the Indian audience

3.3 In this regard, the Appellant would like to, at the very outset, submit that upon perusal of the documents that it has provided vide letter dated 18 December, 2017, your Honour would appreciate that no advertisement expenses have been incurred by it targeting any audience in any region other than India, leave alone the GCC region, so as to result in any benefit to Cleartrip MEA

3.4 The same is amply evident from the spreadsheet capturing a summary of the sample agreements entered by the Appellant during the year (including a column on the target audience), which was annexed to the submission dated 18 December, 2017. The same is attached herewith as Annexure 2for your Honour's easy reference.

Cleartrip MEA operates through a specific website www.cleartrip.ar

3.5 At the outset, the Appellant would like to submit that business operations of the Appellant arecarried out in India through its website www.cleartrip.com, and that of Cleartrip MEA in Dubai and other GCC countries through a separate website viz, www.cleartrip.ae, which is managed by Cleartrip MEA. Accordingly, the observation of the learned AO regarding business of the Appellant being carried out through website www.cleartrip.com internationally including India is incorrect.

3.6 In view of the above, the Appellant reiterates that the advertisement expenses paid to Google Facebook, Twitter, etc. are solely for the purpose of exhibiting advertisement in respect ofwww.cleartrip.com on the website of the social media platforms ie. to the customers located in India and not in the GCC region or worldwide.

3.7 Accordingly, the Appellant reiterates that no part of its advertisement and sales promotion expenses paid to social media platforms highlighted above by the learned AO can be said to be targeted to the customers located in GCC region thereby benefiting Cleartrip MEA, and thus, the impugned disallowance ought to be deleted

On the allegation that benefit of the expenses incurred by the Appellant is derived internationally

3.8 The learned AO in her remand report has alleged that benefits of Appellant's activities derived internationally inter alia by its fellow subsidiary in Dubai namely, Cleartrip MEA, whilst cost of such expenses in borne by the Appellant in India

No expenses targeting any international audience

3.9 The Appellant would like to reiterate basis the documents submitted vide letter dated 18 December, 2017 before your Honour that no advertisement and sales promotions expenses have been incurred by it targeting any audience in any region other than India so as to result in any benefit to Cleartrip MEA.

Without prejudice, expenditure must be allowed even if it results in a benefit to third party

3.10 Without prejudice to above, the Appellant submits that even if for a moment it is assumed (without admitting) that the advertisement and sales promotion expenses incurred by the Appellant is not in furtherance of the business activities of the Appellant but have benefited Cleartrip MEA, the Appellant would like emphatically to submit that even then the same cannot form the basis for making disallowance of advertisement and sales promotions expenses in hands of the Appellant.

3.11 Reliance in this regard is placed by the Appellant inter alia on the decision of Hon'ble Supreme Court in case of Sassoon J. David & Co. (P.) Ltd. v. CIT [1979] 118 ITR 261 wherein the Apex Court observed that even if the expenditure benefits a third party, the same was allowable. For detailed discussion refer Para 3.8.10 of our letter dated 11 September, 2017.

On allegation of apportionment of impugned advertisement expenses being necessary

3.12 The learned AO in her remand report has alleged that apportionment of the impugned advertisement expenses between Appellant and Cleartrip MEA is necessary as business is carried out exclusivelythrough Appellant's website www.cleartrip.com internationally including India. Business is not conducted internationally through www.cleartrip.com

3.13 As stated above, the Appellant would like to reiterate that business operations of the Appellant are carried out in India through its website www.cleartrip.com, and that of Cleartrip MEA in Dubai andother GCC countries through a separate website viz., www.cleartrip.ae. Accordingly, the observation of the learned AO regarding business of the Appellant being carried out through website www.cleartrip.com internationally, including India, is incorrect.

<u>Cleartrip MEA has incurred advertisement expenditure independently</u>

3.14 Given the above, the Appellant would like to draw your Honour's attention to Note 7: Administrative and General Expense to the financial statements of Cleartrip MEA, clearly depicting the fact that Cleartrip MEA has incurred 'Advertisement Expenses of AED 14,92,605 in its independent capacity, during the period ended

31 March, 2012. A copy of the relevant extracts of financial statements of Cleartrip MEA evidencing the same is attached herewith as Annexure 3.

3.15 Accordingly, the Appellant submits that separate legal entities have incurred advertisement andsales promotions expenses in their independent capacity for their respective businesses Appellant eligible for deduction of the expenditure in entirety

3.16 In light of the aforesaid discussion, the Appellant would like to submit that the impugned advertisement expenditure was wholly and exclusively incurred by the Appellant for the purpose of its business. Accordingly, apportionment of such expenses between the Appellant and Cleartrip MEA is not necessary, more so given that Cleartrip MEA has also incurred advertisement expensesin its independent capacity 3.17 The Appellant thus on the basis of commercial expediency submits that the expenditure ought to be allowed to the Appellant under Section 37 of the Act in entirety. For detailed discussion refer Para 3.8.4. to Para 3.8.9. of our letter dated 11 September, 2017.

3.18 Accordingly, the Appellant reiterates that no part of its advertisement and sales promotion expenses can be attributed to the operations of Cleartrip MEA and the learned AO's allegation that the samehas correlation with the Appellant as well as the global brand is inappropriate. Therefore, the impugned disallowance ought to be deleted."

18. After considering the submissions of the assessee as well as remand report of the Assessing Officer, Ld.CIT(A) dismissed the ground raised by the assessee in respect of disallowance of 20% made by the Assessing Officer towards advertisement and sales promotion expenses amounting to ₹.7,98,57,756/-, observing as under: -

"4.6 I have gone through the assessment order, Remand Report of the AO, submissions of the assessee company extracted above and perused the material available on the record. It is the argument of the assessee company in the submissions that the

expenditure incurred towards advertisement and sales promotion was in fact for its business operations in India. Whereas the AO in the assessment order as well as in the remand report contended that the Cleartrip.com is global brand and expenses have correlation with both assessee company in India as well as Cleartrip brand, therefore, apportionment of the expenses is necessary as the business is carried out exclusively through the website www.cleartrip.com internationally including India. It is a fact that the assessee is Web based company as against land or fixed address based company. In the case of a fixed address based businesses the advertisements are given in print media, radio or television. As the company is a website based company, it is not possible to say that it caters to only the Indian citizens. It is not that only Indian residents or citizens can book tickets or hotels in India. The website of the company can be accessed from any corner of the World.

The website is not a 'in' website but a '.com' website. A search on the google gives all the leads. The home page of www.Cleartrip.com has two options on the right hand top corner for choosing (1) the currency and (2) the country. Currency pull down option gives choice of making payment for bookings made on the website in 30 currencies of various countries including INR. The pull down menu of Country gives option of selecting the countries UAE, Oman, Qatar, Bahrain, Kuwait, Saudi Arabia and United States. A customer can select the country on the cleartrip.com website. Except for the UAE where the website is cleartrip.ae for all other countries the website is 'cleartrip.com' only when the country is selected. Therefore the argument of the assessee that the cleartrip.com is operating in India and the expenditure is targeted only for Indian citizens is not correct. The Wikipedia describes the Cleartrip as "Cleartrip is a global online travel company. The company operates an online travel aggregator website for booking flights and train tickets, hotel reservations, and activities in India and the Middle East countries. It has offices across India, UAE, Saudi Arabia and Egypt. Therefore, the expenditure incurred by the assessee company for Search engine marketing, Page management, creating content strategy, creating the feed, ideation of social media campaign, social media competition tracking, Brand planning, creative development and delivery of brand communication as mentioned in the agreements (tabulated above) does not exclusively serve the Indian clientele. As the company is web based global online travel company, the search engine, webpage, content etc is seen all over the world. It is also a fact that not only the Indian citizens but anybody from any country or

corner of the globe can access the website and book flight tickets from any city to any city as the tag line says Fly anywhere. Fly everywhere to and book in any of the 600,000 hotels in the world cities as can be seen from the website of the company.

4.7 Therefore the argument of the assessee company that the AO did not substantiate his claim that the advertisement expenses incurred by the appellant benefited its global brand of the appellant is bereft any merit. The argument that agreements and invoices and summary of contracts furnished by the appellant showthat sales promotion expenses were incurred solely for the purpose of promoting the business operations of the appellant in India does is not correct in view of the facts arising out of the actual website of the company as described in the above paragraph. Arguments of the AO in the remand report that the assessee is making payments to global companies like Google, facebook and twitter also supports that the accessibility of the website is global and the benefit of the expenditure made by the assessee based in Mumbai, India is also derived by the citizens and travellers of the other countries travelling to or from Dubai. Assessee Company argued that compared to India, the population of Dubai is very small and proportion of expenditure would be very low. Assessee may be right in saying that the population of Dubai is very low but Dubai Airport is an International hub for flights. The size and the volume of air traffic and passengers handled by Dubai Airport (DXB) and Abu Dhabi Airport(AE) is many more times higher than the major airports in India. Further it is not the case that the company Cleartrip MEA FZ LLC was not incorporated during FY 2011-12 relevant to the assessment year under scrutiny.

4.8 Further the appellant company relying on the principles of commercial expediency contended that even if the expenditure incurred for the business operations benefited the third party incidentally (read Dubai Fellow Subsidiary or the global brand), the same being incurred for the purpose of appellant's business is an allowable expenditure. Reliance in this regard is placed on the decision of the Hon'ble Apex Court in case of Sassoon J. David & Co. (P.) Ltd. v. CIT [1979] 118 ITR 261 (SC). In this connection with due respect to the decision of the Apex Court, it is stated that the principle laid down in the said case may not ipso fact apply to the present case. The situation at the time of the decision was different where the third party was an Indian entity and the benefit accrued to an Indian company. In view of the website based global nature of the business of the appellant company, the benefit

accrues to a company outside India on which taxes are not paid in India. The expenditure is incurred by an Indian company and the benefits are accruing to company stationed outside India. The profits of UAE based company are not taxablein India and not any portion of income of that company is taxable in India. It is an age of transfer pricing, where every country asserts to get its portion of tax. Therefore, in view of the detailed discussion made in the above paragraphs, I find no merit in the arguments of the appellate company and the disallowance of 20% made by the AO towards advertisement and sales promotion expenses amounting to Rs. 7,98,57,756, out of the advertisement and sales promotion expense of Rs.39,92,88,779 debited by the appellant is found to be in order and confirmed. This ground of appeal is dismissed."

19. With regard to disallowance of credit card collection charges for non-deduction of tax at source u/s. 40(a)(ia) of the Act, the assessee made detailed submissions before Ld.CIT(A), which is reproduced in Page Nos. 35 to 41 in the order of the Ld.CIT(A), for the sake of brevity it is not reproduced. After considering the submissions, Ld.CIT(A) deleted the disallowance of ₹.24,16,78,130/- made by the Assessing Officer u/s.40(a)(ia) of the Act with the following observations: -

"5.2 In the written submission, the appellant at the outset highlighted the fact that the issue has already been decided in the favour of the appellant in its own case for earlier years i.e. AY 2009-10, AY 2010-11 and AY 2011-12, by the Hon'ble Mumbai Tribunal. Accordingly, no disallowance should have been made on the said issue. Having said so, the appellant also filed its contentions on merits and stated that the transactions with the banks were on a principal to principal basis and hence, in the absence of an element of agency, the provisions of Section 194H would not apply.

Further, placing reliance on various judicial precedents, the appellant proceeded to state that the said charges were normal banking charges and could not be equated with commission or brokerage as contemplated under Section 194H of the Act. Accordingly, it was prayed that the disallowance of credit card collection charges be deleted.

5.3 It is seen from the submissions made above that the issue is already decided in favour of the appellant for earlier years, by the Hon'ble Mumbai Tribunal, both in case of quantum proceedings as well as TDS proceedings. Since, the facts in instant case are identical with the earlier years, it would be judicious on part of this office to consider the order binding and not reassess the matter. Accordingly, it is held that the provisions of Section 194H are not applicable to the instant case and hence, the disallowance under Section 40(a)(ia) would not hold good.

5.4 In view of the above discussion, it is held that the payments made to various banks towards credit card collection charges are not in the nature of commission and hence, the provisions of Section 194H do not apply. Accordingly, disallowances under Section 40(a) (ia) are not warranted in respect of such charges incurred during the year. Hence, the AO is directed to delete the disallowance of Rs. 24,16,78,130 made in the assessment order u/s. 40(a)(ia) of the Act. Assessee gets relief. This ground of appeal is allowed."

20. Aggrieved with the above order of the Ld.CIT(A), revenue as well as assessee are in appeal before us. Revenue has raised following grounds in its appeal: -

1. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the section 68 addition of Rs 36,02,07,500/- without appreciating the fact that genuineness and creditworthiness of foreign entities were not properly established by the assessee and further erred in not appreciating that the assessee had failed to discharge its onus to prove the genuineness of these transactions and had failed to explain the source of these

investments as M/s. Cleartripine (Mauritius) did not have its own fund to invest and that the money trail revealed that main source of these funds were routed through various accounts,

2. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is right in holding that the assessee was not liable for deduction of tax at source on the payments for credit card services."

2.1 "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has failed to appreciate the fact that Notification no. 56/2012 (F.no. 275/53/2012-IT(B) dated 31/12/2012) was applicable from 1/01/2013, which implied that prior to the said Notification payment to Banks for amount received through credit cards was in the nature of commission, which should have been subject to TDS u/s.194H. Since the assessee has failed to deduct the TDS, the amount comes within the ambit of provision of section 40(a)(ia) r.w.s. 194H."

3. The Appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored.

4. The Appellant craves leave to amend or alter any ground or to submitadditional new ground, which may be necessary.

21. With regard to Ground No. 1 which is in respect of addition u/s. 68 of the Act, Ld.DR heavily relied on the order of the Assessing Officer. Ld.DR submitted that the genuineness and creditworthiness of foreign entities were not properly established by the assessee. Further, Ld.DR submitted that assessee had failed to discharge its onus to prove the genuineness of these transactions and had failed to explain the source of these investments as M/s. Cleartrip Inc (Mauritius) did not have its own fund to invest and that the money trail revealed that main source of these funds were routed through various accounts. Ld.DR prayed that

the order of the Ld.CIT(A) be set-aside and that of order of the Assessing Officer be restored.

22. On the other hand, Ld. AR of the assessee reiterated the submissions made before the Ld.CIT(A) and submitted that assessee provided supporting documents such as certificate of incorporation, certificate of incumbency, etc. to establish the identity of Cleartrip Inc, Mauritius and Cleartrip Inc, Cayman Island. Ld. AR submitted that to prove "Source of Source" assessee has submitted documents to establish identity of immediate and ultimate investors. It's not required to establish source of source. Further, Ld. AR submitted that transactions are genuine as they have been undertaken through normal banking channels. Copies of FIRCs and bank statements of Assessee and Mauritian entity submitted. Copies of FC-GPR and Form 2 filed before regulatory authorities submitted to establish genuineness. Ld. AR further submitted that issuance of shares at a premium is a commercial decision. Companies Act, 1956 also does not prescribe any limit on premium. Financial statements of Cleartrip Mauritius submitted to establish its Creditworthiness.

23. Considered the rival submissions and material placed on record. We observe from the various documents and submissions made before us that the assessee has received Share Capital alongwith Share premium from its holding company based in Mauritius. The Holding company in turn received the relevant funding from its related concern in Cayman Island. The assessing officer doubted the sources of these funds with the allegation that these funds are routed funds came back to the assessee company. The assessing officer has no proof of such allegation merely based on his suspicion and nothing on record. On the other hand, the assessee has brought on record to submit that these funds are received through proper banking channels and it has filed the relevant documents before RBI and ROC. It has submitted relevant documents like Copies of FIRCs and bank statements of Assessee and Mauritian entity, Copies of FC-GPR and Form 2 filed before regulatory authorities to establish genuineness of the transaction.

24. Further, we observe that the assessing officer proceeded to evaluate the valuation method adopted by the assessee and tried to evaluate the difference between the projected financials with the actual financials. The assessing officer made the disallowance u/s 68 and there

are no such procedures laid down to evaluate the share valuations. It is fact on record that the assessee has received the share capital from its Holding Company and there is no doubt of its existence, the assessing officer cannot reject the whole legal and proper documentation submitted before him about the existence of holding company. The receipts were all routed through the proper banking channels. Therefore, we do not see any reason to interfere with the findings of Ld CIT(A). Accordingly, the ground raised by the revenue in this regard is dismissed.

25. With regard to Ground Nos. 2 and 3 which are in respect of non-deduction of tax u/s. 40(a)(ia) r.w.s. 194H of the Act, Ld.DR referring to CBDT notification 56/2012 (F.no. 275/53/2012-IT(B) dated 31/12/2012) submitted that Ld.CIT(A) failed to appreciate that the above notification is applicable from 1/01/2013, which implied that prior to the said Notification payment to Banks for amount received through credit cards was in the nature of commission, which should have been subject to TDS u/s.194H. Accordingly, Ld. DR relied on the order of the Assessing Officer.

26. On the other hand, Ld. AR of the assessee reiterated the submissions made before the Ld.CIT(A) and relied on the order of the Ld.CIT(A).

27. Considered the rival submissions and material placed on record. We observe from the submissions that this issue is already considered by the coordinate benches in assessee's own case both in the quantum proceeding and TDS proceedings and held that the contract between the assessee and contracting banks are principal to principal basis and there is no direct connection with the credit card agencies like Visa or Master. Since this issue is covered in favour of the assessee by the various decision of other ITAT benches and also decision of coordinate benches, we do not see any reason to interfere with the findings of the Ld CIT(A). Accordingly, the ground raised by the revenue in this regard is dismissed.

28. In the result, appeal filed by the Revenue is dismissed.

29. Now we take up the appeal of the assessee in ITA.No. 2530/Mum/2019 for the A.Y. 2012-13.

30. Aggrieved with the order of the Ld.CIT(A) in sustaining the disallowance of advertisement and sales promotion expenses, assessee has raised following ground in its appeal: -

> *1. Disallowance of advertisement and sales promotion expenses*
>
> *On the facts, and in the circumstances of the case, and in law, the learned Commissioner of Income-tax (Appeals) 12, Mumbai ['the CIT(A)'] erred in disallowing advertisement and sales promotion expenses on an adhoc basis of Rs. 7,98,57,756 as being attributable to Appellant's foreign operations.*
>
> *1.2. Without Prejudice, on the facts, and in the circumstances of the case, and in law, the learned CIT(A) erred in not appreciating the fact that merely because to some extent the expenditure may endure benefit to a third party, the same would not defeat the fact that the advertisement and sales promotion expenses have been incurred 'wholly and exclusively for the purpose of business' of the Appellant, and hence, should be an allowable deduction.*
>
> *1.3. Without Prejudice, on the facts, and in the circumstances of the case, and in law, the learned CIT(A) erred in not appreciating that the necessity (or lack) of an expenditure is not something which Income-tax authorities can look into.*
>
> *The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.*

31. The solitary issue raised by the assessee is with respect to disallowance of advertisement and sales promotion expenses, Ld. AR of

the assessee brought to our notice submissions made vide letters dated 18.12.2017, 11.04.2018 and 05.10.2018 before appellate proceedings and relied on the same. Ld. AR further submitted that conditions for allowance of expenditure u/s. 37 qualified in the case of assessee and expenditure incurred on account of commercial expediency. Ld.AR further submitted that Incidental third-party benefit will not result in characterization of expenditure as not incurred 'wholly and exclusively for business' of the Assessee and 'Wholly and exclusively for business' does not mean 'necessarily' for business.

32. On the other hand, Ld. DR relied on the orders of the lower authorities.

33. Considered the rival submissions and material placed on record. We observe that the assessee is web based service provider and all its services are rendered through website: www.cleartrip.com and it is not meant to service only the Indian customers. It is a global web site and unlike territory based "sites" which provides the services only to the extent of Indian territory. We also observe that anybody would like to use the facility anywhere in the world has to book through the common

web site as stated above. It was also informed and submitted that the services are provided mainly to the customers in India and UAE. For UAE customers, there is separate website called www.cleartrip.ae. We observe that even to use the above said site the customers has to utilize the main site www.cleartrip.com and it will reroute the customers to other sites. Therefore all the services are rendered through main web platform i.e., www.cleartrip.com. It is also observed that all the cost relating to the above platform are recorded in the books of the assessee. It was also submitted that the relevant cost of advertisement made in the UAE are separately booked in the subsidiary entity in the UAE. There is no connection for the services offered in the Indian platform. However, we observe that the business of the entire group concerns are carried through this one platform for which the whole cost of advertisement and maintenance are recorded and charged to the profit and loss account of the assessee. We also observe that the assessee has shared the financial statement of the holding company and never shared the financial statement of the other group concerns based in "UAE". It is the duty of the assessee to share the information and disclose that the profit of the Indian entity are not shifted to the other

subsidiaries, considering the fact that the subsidiary in the UAE are tax heaven and the profits of these entities are tax exempt.

34. Further, it was submitted that even if some benefit may endure to the third party still the eligibility of claim of the expenses should not be disturbed in the case of assessee. However, the benefits are enjoyed by the sister concern which is existing in the tax exempt country and relevant benefit of the sister concern which is not resident in India, cannot be ignored, the submissions and plea of the assessee cannot be entertained. The case law relied on this aspect is not relevant to the present fact on record.

35. Further it was submitted Ld CIT(A) has not followed the twin test and commercial expediency. Further relied on the various case law on this issue which was submitted before CIT(A) and before us. After considering them, in our view these are distinguishable to the facts under consideration. With the above observation, we are incline to accept the findings of the Ld CIT(A) however, we are not incline to accept the adhoc disallowances made by the assessing officer and sustained by the Ld CIT(A). The disallowance has to be made on certain

basis. Therefore, we direct the Assessing Officer to lift the corporate veil and collect all the information relating to Advertisement and sales promotion expenses including the expenses incurred by the sister concerns based in other countries and apportion the same on the basis of revenue (on the basis of Turnover) of the group. Accordingly, we are remitting this issue back to the file of Assessing Officer to disallow the above said expenses based on the above direction and we direct assessee to provide all the relevant information to the assessing officer to apportion the expenses. For abundance caution, in case assessee fails to provide the informations within the time provided by the assessing officer, the addition may be sustained as per the direction of the Ld CIT(A).

36. In the result, appeal filed by the assessee is allowed for the statistical purpose.

ITA.No. 2541/Mum/2019 (A.Y. 2013-14)
ITA.No. 2542/Mum/2019 (A.Y. 2014-15)
ITA.No. 6964/Mum/2019 (A.Y. 2015-16)
ITA.No. 780/Mum/2022 (A.Y. 2017-18)

37. Coming to the appeals of the revenue relating to A.Ys. 2013-14, 2014-15, 2015-16 and 2017-18, since facts and grounds raised by the

revenue in these cases are mutatis mutandis, except for variance in figures, therefore the decision taken in A.Y. 2012-13 in the case of revenue is applicable to these Assessment Years also. Accordingly, these appeals of the revenue are dismissed.

ITA.No. 2531/Mum/2019 (A.Y. 2013-14)
ITA.No. 2532/Mum/2019 (A.Y. 2014-15)
ITA.No. 6349/Mum/2016 (A.Y. 2015-16)

38. Coming to the appeals of the assessee relating to A.Ys. 2013-14, 2014-15 and 2015-16, since facts and grounds raised by the assessee in these cases are mutatis mutandis, except for variance in figures, therefore the decision taken in A.Y. 2012-13 in the case of assessee is applicable to these Assessment Years also. Accordingly, these appeals of the assessee are allowed for statistical purpose.

39. Further, in ITA.No. 2531/Mum/2019 for the A.Y. 2013-14 assessee has raised additional ground relating to short grant of interest by the Assessing Officer u/s. 244 of the Act.

40. In view of the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited *v.* CIT 229 ITR 383 (SC), we admit the said additional ground of appeal raised by the assessee.

41. Considered the rival submissions and material placed on record. Considering the overall merits on the submissions made by the assessee we are inclined to remit this issue back to the file of Assessing Officer with a direction to verify the records submitted by the assessee on merit and allow the claim as per law. It is needless to say that assessee may be given a proper opportunity of being heard. In the result the issue under consideration is remitted back to the file of Assessing Officer for statistical purpose.

ITA.No. 657/MUM/2022 (A.Y. 2017-18) (Assessee Appeal)

42. Assessee has raised following grounds in its appeal: -

> *"1. Disallowance of advertisement and sales promotion expenses-23,11,57,006/-*
>
> *1.1 The learned Commissioner of Income-tax (Appeals) - 48, Mumbai ['CIT(A)'] has erred in affirming the findings of the Ld. Assessing Officer ['AO'] disallowing the advertisement and sales promotion expenses of 23,11,57,006/- on an adhoc basis, as being attributable to Appellant's foreign operations.*
>
> *1.2 Without prejudice to the above, the learned CIT(A) should have appreciated that merelybecause the disputed expenditure may endure some incidental benefit to a third party, the samewould not defeat the fact that the advertisement and sales promotion expenses have been incurred 'wholly and exclusively for the purpose of business' of the Appellant, and hence, should be an allowable deduction.*

1.3 Furthermore, and without prejudice to the above, the learned CIT(A) erred in not appreciating that the necessity (or lack) of an expenditure is not something which Income-tax authorities can look into.

2. Disallowance of ESOP expenses-2,46.30,000

2.1 The learned CIT(A) has erred in disallowing ESOP expenses of ₹.2,46,30,000/- under Section 37(1) of the Income Tax Act, 1961 ['Act'] by affirming the findings of the Ld. AO and treating the said expenses to be capital in nature on mere assumptions and conjectures and further contrary to the evidence on record.

2.2 The learned CIT(A) has completely ignored the facts and records of the present case reflecting that the ESOP expenses have been incurred for employees of the Appellant and are, therefore,part of employee cost and accordingly, so reflected in the books of accounts of the Appellant. Therefore, satisfies all the conditions stipulated in Section 37(1) of the Act.

2.3 The learned CIT(A) has erred in not following the law laid down in several binding judgments of the Hon'ble High Courts and orders of the Hon'ble Tribunal, including in CTT vs Biocon Limited, (2021) 430 ITR 151 (Karnataka), PCIT vs Lemon Tree Hotels (P) Ltd. [2019] 104 taxmann.com 26 (Delhi), CIT vs PVP Ventures Ltd., [2012] Taxman 554 (Madras), etc., wherein it is categorically held that ESOP expenditure is an allowable revenue expenditure in terms of Section 37(1) of the Act.

2.4 The learned CIT(A) has erred by ignoring that the Appellant has consistently been treating and claiming the ESOP expenses as revenue expenditure, and the said treatment has been accepted by the Ld. AO in earlier Assessment Years. Thus, following the principles consistency as laid down by the Hon'ble Supreme Court in RadhasoamiSatsang vs. CIT, [1992] 193 ITR 321 (SC), CIT vs. Excel Industries Ltd., [2013] 358 ITR 295 (SC) and Godrej & Boyce Manufacturing Company Ltd. vs DCIT, [2017] 394 ITR 449 (SC), the ESOP expenditure could not have been disallowed under Section 37 of the Act solely for the present relevant AY.

2.5 Without prejudice to the above, any expense cannot be recharacterized as capital expenditure without identifying an asset or advantage of enduring nature for which an expense has been incurred by the Appellant. In absence of any such finding, assumption in the Impugned Order cannot be sustained.

2.6 In any event and without prejudice to the above, in absence of any finding disputing the records regarding ESOP expenses and the books of accounts of the Appellant, recharacterization of a revenue expenditure as a capital expenditure cannot be sustained.

The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing."

43. Ground No. 1 which is in respect of disallowance of advertisement and sales promotion expenses, this ground is similar to Ground No. 1 of grounds of appeal raised by the assessee in its appeal for the A.Y.2012-13 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2017-18. We order accordingly.

44. With regard to Ground No. 2 which is in respect of disallowance of ESOP expenses, brief facts relating to this ground are, Cleartrip Inc. Cayman Island is the ultimate holding company of the Assessee, from time to time grants share based awards in the form of ESOPs to employees of its subsidiaries, including those of the assessee Company. Costs towards such ESOPs are recorded as expense in the Profit and Loss ('P&L) account in terms of the Indian Generally Accepted Accounting Policies. Accordingly, ESOP cost of ₹.2,46,30,000 were charged to the Profit & Loss Statement of the Assessee for the FY 2016-17.

45. During the course of assessment proceedings, the Assessing Officer vide notices dated 18.02.2021, 14.04.2021 and 21.04.2021 asked the Assessee to submit details of the ESOP expenses claimed by it and justify as to why the said expenses shall not be disallowed u/s. 37 of the Act, given that the same is capital in nature.

46. In response to the above, the assessee filed a detailed submission dated 23 April 2021, explaining the fact that the ESOP's under question were granted by the ultimate parent entity i.e, Cleartrip Inc. to the employees of the assessee, in order to compensate them and ensure continuity of their services to the Assessee. Further, given that the same was incurred wholly and exclusively for the purpose of the Assessee's business and is revenue in nature, it is anallowable expenditure in terms of Section 37 of the Act. Reliance in this regard was placed on the following several judicial precedents, wherein the Indian entities were allowed to claim deduction towards ESOP expenses on shares issued by the parent/group entity. Assessee submitted that since ESOPs are issued with an expectation to receive uninterrupted services from employees and the same needs to be debited to the Profit & Loss Statement of the assessee as per Indian GAAP, such expenditure

should be treated as a part of remuneration by employer to employee and consequently such expenditure should be allowed as deduction u/s. 37 of the Act.

47. Not convinced with the submissions of the assessee the Assessing Officer rejected the submissions made by the assessee and disallowed the ESOP expenses incurred during the year, by considering it as capital in nature, not allowable u/s. 37(1) of the Act.

48. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and filed detailed submissions before the appellate proceedings. After considering the submissions of the assessee Ld.CIT(A) dismissed the ground raised by the assessee. Aggrieved assessee is in appeal before us challenging the same.

49. At the time of hearing, Ld. AR brought to our notice Page No. 51 and 52 of the Ld CIT(A) order to submit that there is no dispute with regard to issue of shares by the Holding Company to the employees of the assessee company in a scheme to retain the talented employees. However, Ld CIT(A) has dismissed the appeal of the assessee with the

observation that assessee has not substantiated the claim as revenue expenditure and has not submitted any new material to substantiate the claim. She submitted that the issue involved is ESOP for the benefit of the employees and the assessee has remitted the difference amount to the parent company. She submitted that the various ITAT benches has decided this issue favour of the assessee as it is in the nature of revenue. In this regard she brought to our notice the decisions of various benches as under: -

a. Red Hat India (P) Ltd (2022) 136 taxmann.com 52 (Mum Trib)
b. Novo Nordisk India (P) Ltd (2014) 42 taxmann.com 168(Bang Trib)
c. PVP Ventures Ltd (2012) 23 taxmann.com 286 (Mad)
d. TE Connectivity Services India (P) Ltd (2022) 145 taxmann.com (Bang Trib)
e. Biocon Ltd (2013) 35 taxmann.com 335 (Bang Trib)

50. On the other hand, Ld.DR relied on the orders of the lower authorities.

51. Considered the rival submissions and material placed on record. We observe that the Parent and holding company Cleartrip Inc has issued and granted its shares to the employees of the subsidiary companies based the performances, this includes employees of the assessee company. The issue before us is whether the cost of ESOP which is accounted as revenue expenses by the assessee company are

revenue or capital expenditure. We observe from the record that the Hon'ble Madras High Court held this expenses to be revenue in nature in the case of PVP Ventures (supra) and it held as under: -

> *"29. As far as the Employees Stock Option Plan is concerned, as rightly pointed out by the Tribunal, the assessee had to follow SEBI direction and by following such direction, the assessee claimed the ascertained amount as liability for deduction. We do not find that there exists any error to disturb the order of the Tribunal and in turn the Assessing Authority. In the circumstances, we agree with the submission of learned senior counsel appearing for the assessee in this regard by upholding the order of the Tribunal."*

52. Further we observe that in the similar facts on record, the ITAT Bangalore considered the fact that the assessee company offered the shares of its parent company to its employees, difference between market value on the date of issue of shares and price at which those shares were issued to the employees of the assessee company was to be regarded as expenditure incurred for the purpose of the business allowable u/s 37(1) of the Act. The relevant ratio in the case of TE Connectivity Services India (P.) Ltd., *v.* National Faceless Assessment Centre (supra) is reproduced below: -

> *"21. We have heard the rival submissions. Learned Counsel for the assessee reiterated submissions made before the revenue authorities. It was submitted that it has been judicially a well settled proposition that CCDs constitute debt and interest payable*

thereon is a deductible expenditure till the time the same are converted into equity. In this regard, reliance was placed on the decision of the Coordinate Bench of this Tribunal for A.Ys. 2009-10 to 2013-14 in the case of M/s. CAE Flight Training (India) Pvt. Ltd. in ITA No. 2006/Bang/2017, IT(TP)A Nos. 63 & 84/Bang/2015, 599, 2060 & 2178/Bang/2016 & C.O. Nos. 83/Bang/2017 & 09/Bang/2018 by order dated 25/07/2019. Besides the above, reliance was also placed on the following decisions laying down proposition that a debt can never be characterized as equity/capital viz., Embassy One Developers Pvt. Ltd., ITA No.2239 & 2240/Bang/2018 order dated 26.11.2020 and IMS Health Analytics Services Pvt. Ltd. ITA No.1549/Bang/2019 order dated 19.6.2020. It was submitted that the law is well settled that income tax is leviable on real income. Real income can be ascertained by deducting real expenditure. It was reiterated that the real expenditure was INR 6.09 Crores and not merely INR 1.56 Crores, the former has to be allowed as a deduction irrespective of the fact that the amount charged to P&L is only INR 1.56 Crores. It was submitted that accounting entries are not determinative for tax liability and only real income can be taxed. Reference was made to the decision of the Hon'ble Supreme Court in the case of **Kedarnath Jute Mfg. Co. Ltd. 82 ITR 363 (SC)***, wherein it was held that, the way in which entries are made by an assessee in his books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. For the proposition only real income is taxable, the learned counsel for the assessee relied on the decision of Hon'ble Supreme Court in the case of* **Shoorji Vallabhdas & Co. 46 ITR 144 (SC),** *wherein the Hon'ble Court held that if income does not result at all, there cannot be a tax, even though in bookkeeping, an entry is made about a hypothetical income, which does not materialise. It was submitted that the assessee is entitled to deduction of entire amount of interest expense being INR 6.11 Crores. The learned DR reiterated the stand of the DRP and the reasoning given by the DRP.*

22. We have carefully considered the rival submissions. The first aspect which needs to be considered is as to whether the revenue authorities were justified in treating the CCDs as Equity and disallowing claim for deduction of interest paid on CCD's. We are of the view that CCDs till such time they are converted into

equity are in the nature of loans and therefore any interest paid on borrowings for the purpose of business has to be allowed as a deduction u/s. 36(1)(iii) of the Act. In this regard, we find that the ITAT Bangalore 'A' Bench in the case of ACIT v. M/s. CAE Flight Training (I) Pvt. Ltd. in IT(TP)A No.2060/Bang/2016 dated 25.7.2017 has exhaustively dealt with the issue and addressed all the issues raised by the DRP in it's directions. The DRP has disregarded the said decision on the ground that facts in the aforesaid case were that the CCD holders prior to conversion into equity shares did not have voting rights and dividend payout. From the offer letter dated 26.6.2015 copy of which is at page 358 of the assessee's paper book it is clear that the CCD in the case of the Assessee did not have voting rights prior to its conversion into equity nor were dividend payable on the CCD's and only interest at 9.75% p.a was payable. Therefore the very basis on which the DRP distinguished the decision in the case of CAE Flight Training (supra) is unsustainable. The issue for consideration in the aforesaid case of CAE Flight Training (supra)decided by the Bangalore Bench was with regard to the interest paid on CCDs. The contention of the revenue was that though the nomenclature CCD is used, yet they are in the nature of equity. The revenue sought to raise the above contention on the basis of the Thin Capitalisation rule which was not applicable for the assessment year which was under consideration before the Tribunal. Even for the present appeal which relates to AY 201718, thing capitalization rules laid down in Sec.94B of the Act are not applicable and those provisions are applicable only from 1.4.2018 i.e., from AY 2018-19 onwards. The Tribunal firstly held in the case of CAE Flight Training (I) Pvt. Ltd. (supra) that Thin Capitalisation principle was not applicable till such time those principles were recognised by way of statutory provisions. Thereafter, the Tribunal examined whether the question, interest paid on CCDs should be allowed as a deduction. The Tribunal held as follows:-

> *"23. As per above paras of this tribunal order, it comes out that even if Thin capitalization Principle is on Statute book of the other country, no disallowance can be made in India by applying this Principle. To this extent, we uphold the finding of CIT (A) by respectfully following this tribunal order. But the issue*

still remains because, the objections of AO/TPO are not merely on the basis of Thin capitalization Principle. Their basic objection is this that since the interest is paid on CCDs, this is not an interest on debt but on equity and hence, not allowable. On page 11 of his order for A. Y. 2009 - 10, the TPO has reproduced certain comments of RBI in 2007 Policy on convertible debentures in which it is stated that fully and mandatorily convertible debentures into equity within a specified time would be reckoned as equity under FDI policy. In view of this RBI Policy, the TPO concluded that these CCDs are equity and not debt and therefore, interest on it is not allowable u/s 36 (1) (iii). This finding of TPO is not by invoking Thin Capitalisation principle and therefore, it has to be decided independently. We find that the decision of TPO is bases on RBI policy of FDI. We all know that RBI policy of FDI is governed by this that what will be future repayment obligation in convertible foreign currency and since, CCDs does not have any repayment obligation, the same was considered by RBI as equity for FDI policy. Now the question is that such treatment given by RBI for FDI policy can be applied in every aspect of CCDs. Whether the holder of CCDs before ins conversion can have voting rights? Whether dividend can be paid on CCDs before its conversion? In our considered opinion, the reply to these questions is a BIG NO. On the same logic, in our considered opinion, till the date of conversion, for allowability of interest u/s 36 (1) (iii) of Income tax Act also, such CCDs are to be considered as Debt only and interest thereon has to be allowed and it cannot be disallowed by saying that CCDs are equity and not debt. We hold accordingly. This issue is decided.

24 .After examining the applicability of the Tribunal order rendered in the case of Besix Kier Dabhol, SA vs. DDIT (supra), we now examine the applicability of the decision of Special Bench of the Tribunal rendered in the case of Ashima Syntex Ltd. Vs. ACIT as reported in

100 ITD 247 (Ahd.) (SB) on which reliance has been placed by ld. DR of revenue in the written submissions filed by him as reproduced above. From the facts noted by the Tribunal in this case, it is seen that in that case the assessee issued convertible debentures for subscription at the rate of Rs. 75 per debenture and these were in two parts; Part-A of Rs. 35 to be compulsorily converted into one equity share of the face value of Rs. 10 each at a premium of Rs. 25 per share on the date of allotment of the debenture and Part-B of Rs. 40 to be compulsorily converted into one equity share of the face value of Rs. 10 each at a premium of Rs. 30 per share on the expiry of 15 months from the date of allotment of the debenture. Part-B debenture was to carry an interest at the rate of Rs. 14 per annum till the date of conversion payable half yearly on 30th June and 31st December each year and on conversion. The issue in dispute in that case was regarding the allowability of expenses incurred on issue of such debentures and the issue in that case was not of interest on debentures before its conversion as in the present case. This is also an important aspect of the matter of that case that one part of the debenture was to be converted on the date of allotment of debenture itself, second part of the debenture has to be converted only on expiry of 15 months from the date of allotment of debenture and under these facts, it was held by Special Bench of the Tribunal in that case that the expenses incurred on issue of such debentures has to be considered as expenses incurred for issue of shares because it was found that first part of the debentures was to be converted into shares on the date of allotment itself and the second part was to be converted after expiry of 15 months from the date of allotment of debenture and therefore it was held that expenses incurred were actually incurred for issue of shares and not issue of debentures. In the present case, the issue is not regarding expenses incurred on issue of shares. In the

present case, the dispute is regarding interest on CCDs for a period before conversion. Hence in our considered opinion, this decision of special bench of the Tribunal is not applicable in the facts of present case because the issue in dispute is different. In that case the issue in dispute is regarding expenditure incurred on issue of convertibles whereas in the present case the issue is regarding allowability of interest ITA No.1549/Bang/2019 expenditure on convertible debentures for the pre-conversion period. Hence we hold that the revenue does not find any support from this decision of Special Bench of the Tribunal in that case.

25. Apart from relying on this decision of Special Bench of the Tribunal, the ld. DR of revenue in written submissions as reproduced above has mainly reiterated the same arguments which are adopted by the TPO in its order i.e. regarding RBI Master Circular on Foreign Investment in India dated 02.07.2007 and 01.07.2008. We would like to observe that such circular in the context of FDI policy of RBI is in a different context i.e. regarding future re-payment obligations in convertible foreign currency and to have control over such future repayment obligations, the RBI is exercising strict and control so that such future re-payment obligations does not go beyond a point and since in the case of fully convertible debentures, there is no future repayment obligation, the same was considered as equity for the purpose of FDI policy. In our considered opinion, any definition of any term is to be considered keeping in mind the context in which such definition was given. This definition of convertible debentures given by RBI is in the context of FDI policy to exercise control on future re-payment obligations in convertible foreign currency. In our considered opinion, such definition of the term convertible debentures cannot be applied in other context such as allowability of interest on such debentures during pre-conversion period or regarding payment of dividend on

such convertible debentures during preconversion period or regarding granting of voting rights to the holders of such convertible debentures before the date of conversion. If you ask a question as to whether dividend can be paid on such convertible debentures in a period before the date of conversion or whether such holders of convertible debentures can be granted voting rights at par with voting rights of share holders during pre-conversion period, the answer will be a big NO. On the same analogy, in our considered opinion, the answer of this question is also a big NO as to whether interest paid on convertible debentures for pre- conversion period can be said to be interest on equity and interest on debentures allowable u/s. 36(1)(iii) of the IT Act."

23. In the light of the aforesaid decision of the Tribunal which addresses all the issues raised by the DRP, we are of the view that the disallowance of interest expenses cannot be sustained on the basis that CCDs were in the nature of equity. The Tribunal has ruled that the definition of convertible debentures given by RBI is in the context of FDI policy to exercise control on future re-payment obligations in convertible foreign currency. Such definition of the term convertible debentures cannot be applied in other context such as allowability of interest on such debentures during preconversion period or regarding payment of dividend on such convertible debentures during preconversion period or regarding granting of voting rights to the holders of such convertible debentures before the date of conversion. The same principle will apply to the other corporate laws cited by the DRP in its directions.

24. On the question whether on the basis of book entries by which the interest was not debited in the profit and loss account but claimed in the computation of income, the disallowance can be sustained. On this aspect, the law is well settled and laid down by the Hon'ble Supreme Court in the case of ***Kedarnath Jute Mfg. Co. Ltd. 82 ITR 363 (SC)****, wherein it was held that, the way in which entries are made by an assessee in his books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. It is undisputed that the assessee has deducted TDS on the entire interest expenditure. The assessee while benchmarking interest payment to Associated Enterprise for the purpose of Sec.92 of the Act has benchmarked the entire*

interest amount of Rs.6.09 Crores. Thus, looked at from any perspective, the claim of the assessee for deduction of the sum of Rs.4,53,11,205 deserves to be accepted. The disallowance of the said sum of interest expenses and the consequent addition to the total income is therefore deleted. The relevant ground of appeal of the assessee i.e., Ground No.10 is accordingly allowed."

53. Respectfully following the above decisions, we are inclined to allow the claim made by the assessee and Ld CIT(A) has observed that the assessee has not filed any supporting documents before any authority, we direct the assessee to submit the relevant documents before the Assessing Officer and we direct the Assessing Officer to consider the same and allow the claim of the assessee as per our above direction.

54. In the result, appeal filed by the assessee is allowed for statistical purpose.

55. To sum-up, appeals filed by the respective parties are decided as under: -

Sl.NO.	**ITA.No. & A.Y.**	**Assessee appeal / Department Appeal**	**Result**
1.	ITA NO. 2540/MUM/2019(A.Y: 2012-13)	Department Appeal	Dismissed
2.	ITA NO.2541/MUM/2019 A.Y. 2013-14)		
3.	ITA NO. 2542 /MUM/2019 (A.Y. 2014-15)		
4.	ITA NO. 6964/MUM/2019 (A.Y. 2015-16)		
5.	ITA.No. 780/MUM/2022 (A.Y. 2017-18)		

Sl.NO.	ITA.No. & A.Y.	Assessee appeal / Department Appeal	Result
6.	ITA NO. 2530/MUM/2019 (A.Ys: 2012-13)	Assessee Appeal	Allowed for statistical purpose
7.	ITA NO. 2531, /MUM/2019 (A.Y: 2013-14)		
8.	ITA NO. 2532/MUM/2019 (A.Y: 2014-15)		
9.	ITA No. 6349/MUM/2019 (A.Y: 2015-16)		
10.	ITA.No. 657/Mum/2022 (A.Y. 2017-18)		

Order pronounced in the open court on 13th April, 2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai / Dated 13/04/2023
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum