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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.1656/Mum/2014
(Assessment Year: 2009-10)

The Great Eastern Shipping Co. Ltd. Kalyaniwalla & Mistry LLP Esplanade House, 2nd floor, 29, Hazarimal Somani Marg, Fort, Mumbai-400 001 **(Appellant)**	Vs.	The Dy. Commissioner of Income-tax, Range-5(3), Room No.525B, 5th Floor, M.K. Marg, Mumbai-400 020 **(Respondent)**

PAN No. AAACT1565C

ITA No.3272/Mum/2015
(Assessment Year: 2009-10)

The Dy. Commissioner of Income-tax, Range-5(3), Room No.525B, 5th Floor, M.K. Marg, Mumbai-400 020 **(Appellant)**	Vs.	The Great Eastern Shipping Co. Ltd. Kalyaniwalla & Mistry LLP Esplanade House, 2nd floor, 29, Hazarimal Somani Marg, Fort, Mumbai-400 001 **(Respondent)**

Assessee by	:	Shri Jitendra Jain, Advocate Shri Falee H Bilimoria, Shri Akram Khan Ms.Yasmin Dastur, Shri Hormuzd Jamshedji, ARs
Revenue by	:	Shri Manoj Mishra, CIT DR

Date of hearing	25.08.2023
Date of pronouncement	13.09.2023

O R D E R

PER PRASHANT MAHARISHI, AM:

01. Cross Appeals For assessment year 2009 – 10 [ITA number 3272/M/2015] filed by the Deputy Commissioner of Income Tax- 5 (3) (2), Mumbai (The Learned AO) and [ITA number 1656//M/2014] by The Great Eastern shipping Co Ltd, Mumbai (The Appellant/Assessee) challenges correctness of assessment order passed under section 143 (3) read with section 144C (13) of The Income Tax Act, 1961 (The Act) dated 15/1/2014 by The Deputy Commissioner Of Income Tax Circle 5 (3), Mumbai (The Learned AO) pursuance to the direction issued by The Dispute Resolution Panel – II, Mumbai [The Ld DRP] in objection number 95 dated 20/12/2013 in case of draft assessment order passed under section 144C (13) passed by the assessing officer on 15/3/2013.

02. In ITA number 1656/M/2014 in assessee's appeal following grounds are raised :-

"This Appeal is against the Order of the Deputy Commissioner of Income Tax, Range 5(3), Mumbai, med under section 143(3) r.w.s. 144C(13) of the Act and relates to the Assessment Year 2009- 2010

NON TRANSFER PRICING ISSUES

1. The learned DRP erred in holding that the provisions of Section 14A of the Act were applicable in the case of the Appellant, since the dividend from

shares/units of mutual funds is subjected to tax in the hands of the payer under section 115-0115-R of the Act and as the Appellant receives an amount after the tax has been paid, it cannot be said that such dividend income is not chargeable to tax under the Act and, hence, the provisions of Section 14A are not attracted in the case of the Appellant 2)

2. The learned DRP erred in holding that the aggregate interest expenditure incurred by the Appellant pertaining to the tonnage and non-tonnage activities was to be considered for computing the amount liable for disallowance under sub-clause (ii) of Clause 2 of Rule 8D without appreciating the fact that the interest expenditure pertaining to the tonnage activities was not claimed by the Appellant against the non-tonnage activities.

3. The learned DRP further erred in directing the AO that in case the disallowance of interest expenditure computed under sub-clause (i) of Clause 2 of Rule 8D as above, exceeded the interest expenditure pertaining to the non-tonnage activities, the disallowance should be restricted to the extent of such interest expenditure, without appreciating the fact that such interest expenditure incurred for non-tonnage activities pertained to borrowings which were utilised for earning tax free and taxable income.

4. Without prejudice to Ground Nos. 2 and 3, the AO erred in considering the interest expenditure claimed against the non-tonnage activities at Rs 7,76,00,000/-, without excluding the interest

expenditure of Rs.3,21,74,002/- suo moto disallowed by the Appellant as capital expenditure while filing the Return of Income and the interest paid on income tax amounting to Rs.3,65,433/- suo moto disallowed by the Appellant while filing the Return of Income.

5. Without prejudice to what is stated in the above Ground Nos. 2 to 4 and in any event, the Appellant submits that the disallowance computed at Rs.7,76,00,000/- is not only erroneous, but also grossly excessive and arbitrary, and the same requires to be reduced substantially.

6. The learned DRP erred in confirming the disallowance of administrative and other expenditure aggregating to Rs.5,56,16,741/- computed in accordance with sub-clause (i) and (ii) of Clause 2 of Rule 8D towards the earning of exempt dividend income, as the same includes an adhoc amount of Rs.5,42,28,250/- computed in accordance with sub-clause (iii) of Clause 2 of Rule 8D at 0.5% of the average value of investments yielding tax free income, when in actual fact the aggregate actual administrative expenditure incurred by the Treasury Division of the Appellant was Rs.81,69,317/-

7) Without prejudice to the above Ground No.6 and in any event, the Appellant submits that the disallowance computed at Rs.5,56,16,741/- is grossly excessive and arbitrary and can in no event exceed Rs. 13,88,491/-, which is the proportionate amount computed on the basis of the actual administrative expenditure of Rs.81,69,317/- incurred by the

Treasury Division of the Appellant for earning tax free and taxable income.

8) Without prejudice to the aforesaid Ground Nos.2 to 7, the learned DRP erred in rejecting the contention of the Appellant that the provisions of Section 14A of the Act are not applicable to investments held as stock-in-trade.

9) The AO erred in computing the tax on Long Term Capital Gains at 20% as against the correct rate of 10%, while faming the Assessment Order under Section 143(3) r.w.s. 144C(13) of the Act.

10. The AO erred in not granting credit for tax deducted at source aggregating to Rs 12,62,041/- while framing the Assessment Order under Section 143(3) rw.s. 144C(13) of the Act, without assigning any reasons for the non-grant of such credit.

TRANSFER PRICING ISSUES

11) The Assessing Officer (AO) / Transfer Pricing Officer (TPO) erred in making adjustments under Section 92CA(3) without providing reasons as to which condition of Section 92C(3) had not been satisfied.

Financial Guarantees given on behalf of the Associated Enterprise

12) The AO TPO erred in rejecting the arithmetic mean of internal comparable rates of guarantee commission of 0.60% per annum adopted by the

Appellant for benchmarking the financial guarantees given by it on behalf of its Associated Enterprise.

13) The AO/ TPO erred in holding that the arm's length price of the financial guarantees given by the Appellant on behalf of its Associated Enterprise was 1.5% per annum.

Performance Guarantees given on behalf of the Associated Enterprises

14) The AO/TPO erred in holding that the performance guarantees given by the Appellant on behalf of its Associated Enterprises constitute "international transaction" under Section 92B of the Act.

15) Without prejudice, the AO/ TPO erred in rejecting the Appellant's contention that having regard to the facts and circumstances of the case, the arm's length price of the performance guarantees given by the Appellant on behalf of its Associated Enterprise was NIL

16) The AO/ TPO erred in holding that the arm's length price of the performance guarantees given by the Appellant to its Associated Enterprises was 1% per annum.

The Appellant craves leave to add to, alter or amend, the above Grounds of Appeal as and when advised."

03. In ITA number 3272/M/2015 filed by the learned assessing officer following grounds of appeal are raised

against the direction of the learned dispute resolution panel :-

"On the facts and circumstances of the case and in law, the Hon'ble DRP erred in law in directing that the shipping debts written back of Rs. 42,73,847/- be treated as part of tonnage tax income when the corresponding write off of the shipping debts as bad debts was done prior to the introduction of the tonnage tax scheme and as such the write back of such debts is not liable to be treated as Income arising out of tonnage tax activities carried out during the previous year relevant to the AY 2009-10.

(ii) On the facts and circumstances of the case and in law, the Hon'ble DRP erred in law in directing that the insurance claims received of Rs. 6,37,690/- be treated as part of tonnage tax income when the corresponding expenditure for which the claim was received was incurred in an earlier year when the tonnage tax scheme was not in existence and as such the insurance clam received in the previous year relevant to the AY 2009-10 was liable to be taxed u/s 41(1) and could not be treated as income arising out of tonnage tax activities carried out during the previous year relevant to the AY 2009-10.

(iii) On the facts and circumstances of the case and in law, the Hon'ble DRP erred in law in directing that the amount of Rs. 15,98,00,000/- forfeited and credited to Capital Reserve Account on account of non-conversion and forfeiture of Rs. 45,95,000 equity share warrants was neither taxable under section

41(1) nor under section 28(iv) of the Income-tax Act, 1961.

(iv) The appellant prays that the order of the Hon'ble DRP be set aside and the additions proposed in the draft assessment order u/s, 143(3) r.w.s. 144C(1) dated 15.03.2013 be restored.

The appellant craves leave to amend or alter any ground or add any other ground which may be necessary"

04. Assessee is a company engaged in the business of shipping, property development and finance operation including dealing in shares, securities, mutual funds and other money market operation in granting of loans and advances. Assessee filed return of income [ROI] on 29/9/2010 declaring a total income of ₹ 1,040,312,390. It was picked up for scrutiny.

05. As assessee has entered into international transaction with its associated enterprises, the learned assessing officer referred to the learned transfer-pricing officer for examination of the arm's-length price. The learned transfer-pricing officer noted that Assessee Company has a subsidiary in Singapore being agent of the assessee and renders agency services to the assessee company. The principal activity of the associated enterprise is to perform the role of shipping agent in Singapore. The assessee company has appointed the above company as a shipping agent for attending to the assessee company shipped following at Singapore. The subsidiary also incurs expenses on behalf of the assessee company has a

shipping agent which are reimbursed to it. As assessee is paying income tax under Tonnage Tax Scheme under section 115VA of the act, learned transfer pricing officer examined that the assessee has given a financial guarantee in favour of great shipped global energy services PTE Ltd amounting to ₹ 23,692,073/– as the guarantee fee commission received. Further assessee has given performance guarantee in favour of Keepel Fels Limited amounting to ₹ 659,83,72,880/–. With respect to the financial guarantee given to Great ship global energy services PTE Ltd the guarantee was issued in favour of two banks on behalf of its associated enterprise. Assessee did not charge any guarantee commission however, it has made a suo moto upward transfer pricing adjustment of ₹ 23,692,073/– being 0.60% per annum guarantee fee income. Assessee submitted working of adjustment as per letter dated January 25/2012. The benchmarking of the above transaction the assessee company relied on the rates of guarantee commission charged by various bank in respect of guarantee undertaken by them on behalf of the assessee company. Based on the above information the average rate of guarantee commission paid by the assessee company comes to 0.56 per annum. The sheet showing the calculation submitted as per letter dated 24 December 2012. The assessee has adopted the guarantee commission rate at the rate of 0.60% per annum based on the average of the various guarantee commission rates paid by the assessee company to various bank. The assessee adopted the Comparable Controlled Price [CUP] method as The Most Appropriate Method [MAM] . The learned transfer-pricing officer

examined this international transaction. The assessee submitted that in earlier year the learned dispute resolution panel has held that the assessee should have charged the guarantee fee commission at the rate of 1.5% per annum on financial guarantee given on behalf of its associated enterprises. The learned transfer pricing officer considered the explanation of the assessee and rejected the benchmarking methodology by accepting the average rate of guarantee for the reason that guarantee depends on several factors. It noted that while calculating the average the minimum guaranteed rate was 0.3% and highest guarantee rate was 1%. Therefore, he rejected the benchmarking at the rate of 0.6% made by the assessee. The learned TPO held that as assessee has also given a performance guarantee which is a huge liability on behalf of associates associated Enterprises on the assessee and further the performance guarantee given is on outstanding balance of ₹ 659 crore which is more than the free reserves of the assessee company. Therefore, he held that the arm's-length price of the above guarantee commission fee should be at the rate of 3%. Accordingly he determine the arm's-length price of guarantee fee commission at ₹ 118,460,364/–. The assessee has already made suo moto disallowance/adjustment on account of arm's-length price of ₹ 23,692,073/– and therefore the difference of ₹ 94,768,291/- was made.

06. There is one more performance guarantee given by the assessee company in favour of its associated enterprises of ₹ 659 crores. The above transaction was not reported as an international transaction and no guarantee fee was also adjusted. The learned transfer-pricing officer was

charged the assessee, assessee submitted that it is not an international transaction and therefore it is not been reported is an international transaction in form number 3CEB. However, on 17 February 2012 the assessee gave complete details of the performance guarantee. The learned transfer pricing officer noted that there are five vessels under construction and outstanding amount on which financial guarantees given is ₹ 659 crores. Therefore he held that the as the arm's-length price in case of financial guarantee is considered at 3%, the performance guarantee should also be benchmarked at the rate of 3%. Accordingly, he made an upward revision of arm's-length price of the guarantee fee commission on performance guarantee at ₹ 19,79,51,187.

07. Accordingly order under section 92CA (3) of the act was passed on 11/1/2013 wherein the total adjustment of ₹ 292,719,478/- was made on account of the arm's-length price of the international transaction of corporate guarantee fee income and performance guarantee fee income.

08. During the course of assessment proceedings the learned assessing officer noted that assessee company has shown an amount of ₹ 29.25 crores as dividend income, and ₹ 7,530,572 has been treated as expenditure attributable to earning of dividend income and amount of ₹ 283,156,857 has been claimed as exempt under section 10 (34) of the income tax act. The learned assessing officer questioned the assessee and asked the assessee to furnish details of the same and to furnish the details of expenditure incurred or attributable for earning of these

exempt income in view of the provisions of section 14 A of the income tax act 1961 with rule 8D. Assessee did not give any submission on this regard except stating that assessee has not incurred any expenses for the purpose of earning of the income exempt earned during the year and therefore no disallowance under section 14 A is called for. The learned assessing officer after detailed discussion and considering several judicial precedent worked out disallowance invoking the provisions of rule 8D amounting to ₹ 260,715,583/–. As the assessee has already disallowed the sum in computation of total income of ₹ 7,530,532/–, so net disallowance under section 14 A was made of ₹ 253,185,050/–. Identical addition was also made to the book profit under section 115JB of the act.

09. During the year the learned assessing officer noted that assessee company has credited and amount of ₹ 15.98 crores to the capital reserve amount as forfeited on non-conversion of warrants. The contention of the assessee is that it is a capital receipt not liable to tax. The learned assessing officer rejected the contention of the assessee and noted that that forfeiture of non-commercial of warrant is a trading liability and provisions of section 41 (1) of the income tax act applies. Assessee has raised money through convertible warrants from certain promoters and non-executive director enterprise of ₹ 300 ₹ 12.75 per share. Each of such warrant was convertible into an equity share of the face value of ₹ 10 at the option of the warrant holders. Out of 50,05,000 warrants issued, 10,000 warrants were converted into equity shares and the balance were not converted at the option

of the warrant holders thereby cancellation of this warrant occurred. Therefore the upfront amount of ₹ 32 per warrant was forfeited which was originally paid by the subscribers. The assessee credited the same to the capital reserve account. According to the learned assessing officer, the above sum is chargeable to tax under section 41 (1 of the act. Accordingly the learned assessing officer made an addition of ₹ 15.98 crores under section 41 (one) of the act. The learned assessing officer further held that in alternative, the above sum is also taxable under section 28 (iv) of the income tax act.

010. The learned assessing officer further found that assessee's computation of income for tonnage tax scheme, has interest expenditure of ₹ 77,574,874, which has been claimed, as deduction against the assessee is non-tonnage tax activities. The assessee was requested to furnish a fund flow statement providing details of the loans taken in the interest expenditure incurred on such loan, which was claimed as part of the non-tonnage tax activities of the assessee company. The assessee furnished the details statement giving the particulars of loan by the interest expenditure and the purpose for which the loan was availed, along with the rate and amount of interest paid on reason for treating such expenditure as part of non-tonnage tax activities. The assessee also submitted the details reasoning for non-consideration of such interest as per last year. The learned assessing officer considered the contention of the assessee and rejected it. It was noted that as per the chart furnished by the assessee the substantial part of interest expenditure relates to loans, which were utilised

for the purpose of either acquisition of qualifying step or for other shipping related activities, which have subsequently been diverted to non-tonnage tax activities. Accordingly, based on the consistent stand taken by the revenue, interest expenditure of ₹ 17,944,163/– was attributable to the tonnage tax activities of the company stating that these expenditure has direct link with loans which were utilised for acquiring qualifying ships within the meaning of section 115VD of the income tax act and same is disallowable and added back to the total income of the assessee.

011. The learned assessing officer further noted that there are certain miscellaneous income which have been arising out of shipping that's written back amounting to ₹ 4,273,847 and general average claim of ₹ 637,690/– same was added back to the total income of the assessee for the reason that assessee is not entitled to take the benefit of the tonnage tax scheme on this income.

012. Accordingly draft assessment order was passed on 15/3/2013 determining total income of the assessee at ₹ 1,768,872,620/–. Aggrieved, with the draft assessment order assessee preferred an objection before the learned dispute resolution panel who gave its direction on 20/12/2013. The learned dispute resolution panel against the disallowance of ₹ 17,944,163 being interest expenditure disallowed/added by the learned assessing officer, the learned dispute resolution panel held that the identical issue is covered in favour of the assessee by the decision of the coordinate bench in assessee's own case for assessment year 2006 – 07 and the learned dispute

resolution panel also for assessment year 2008 – 09 given a direction to the assessing officer but in view of the decision of the coordinate bench, the objection was allowed and the learned assessing officer was directed to delete the disallowance of interest expenditure of ₹ 17,944,163.

013. With respect to the disallowance under section 14 A of the act the learned dispute resolution panel noted that the learned assessing officer has correctly disallowed invoking the provisions of section 14 A of the act. With respect to the quantum of disallowance, the assessee has disallowed a sum of ₹ 7,530,532/– under section 14 A of the act out of which can amount of ₹ 6,142,041/– was disallowed on account of interest expenditure under rule 8D (2) (ii) of the rules. The AO rejected the same holding that the assessee was having a common pool of funds from which business expenses from tonnage tax activity and non-tonnage tax activity as well as investments are being made and accordingly the disallowance under section 14 A read with rule 8D (2) (ii) was determined at ₹ 205,098,852/– out of the total interest expenses is by the assessee amounting to ₹ 1,536,389,275/–.. In principle, the learned DRP agreed with the contentions of the assessee however directed the learned assessing officer that the total disallowance computed under rule 8D the total interest expenditure debited against the non-tonnage income, the disallowance should be restricted to the total expenditure by way of interest under the head of non-tonnage income only. With respect to the administrative and other expenditure, the assessee has disallowed a sum of ₹ 1,388,491/– the learned assessing

officer working out the disallowance at 0.5% of average value of the investment amounting to ₹ 54,228,250. The learned dispute resolution panel the action of the learned assessing officer was confirmed. With respect to the addition to the book profit of the amount of disallowance made by the learned assessing officer under section 14 A, the learned dispute resolution panel rejected the objection of the assessee following the decision of the coordinate bench in 37 taxmann.com 128.

014. With respect to the other income treating the same as non-tonnage tax income following the decision of the coordinate bench in assessee's case for assessment year 2006-07 the objection was accepted.

015. With respect to the taxation of forfeiture of share application money under section 41 (1) and section 28 (iv) of the act, the coordinate bench held that it is not taxable and therefore the learned assessing officer was directed to delete the addition.

016. With respect to the arm's-length computation of the financial guarantee given by the assessee to the associated enterprise where the learned assessing officer has computed the guarantee commission rate at the rate of 3%, the learned dispute resolution panel directed the learned assessing officer to compute at the rate of 1.5% per annum. For Holdings of the learned dispute shall panel has lifted that there is a declining trend of guarantee commission rate by the banks with respect to the amount involved in that the assessee has given financial guarantee on behalf of its associated Enterprise aggregating to ₹ 484 crores. For the preceding year the

learned dispute resolution dialect and divert direction was also the same.

017. With respect to the computation of the arm's-length price of the performance guarantee fee on behalf of its associated enterprises where the learned transfer pricing officer has made an adjustment of ₹ 197,951,187 and the assessee has not shown the same as international transaction, the learned dispute resolution panel held that the arm's-length price of the performance guarantee should be taken at 1% of the amount of guarantee. Accordingly, the objections of the assessee were disposed of.

018. Based on this the learned assessing officer passed the final assessment order on 15/1/2014 wherein the total income of the assessee was computed at ₹ 3,273,085,570/– only to adjustments were made by the learned assessing officer.

a. arm's-length price of the international transaction of ₹ 101,521,838

b. Disallowance under section 14 A of ₹ 125,686,209/– the identical adjustment was also made in the computation of the book profit under section hundred 115 JB of the act.

019. Thus, assessee aggrieved with the direction of the learned dispute resolution panel conquering with the findings of the learned TPO and the learned AO, the learned AO is aggrieved with the direction of the learned dispute resolution panel directing the learned assessing

officer to delete certain addition/disallowance, have a preferred this appeal is with us.

020. By letter dated 30 June 2021, assessee has raised additional ground of appeal against the disallowance confirmed by the learned DRP/assessing officer under section 14 A of the act.

a. The first contention raised in the additional ground is that disallowance under section 14 A, for working out disallowance under rule 8D (2) (ii) and(iii) should be restricted to the investments on which dividend income is received.

b. Further the disallowance is challenged stating that there is no objective satisfaction recorded by the AO and further for computing book profit under section 115JB, the disallowance computed in the normal computation of income cannot be imputed while working out the book profit.

021. We find that all these grounds are in fact related to grounds number 1 to 8 of the appeal of the assessee. Therefore treating them as an alternative claim, it would be dealt with.

022. As per ground number 1 – 8 of the appeal the assessee is contesting the disallowance under section 14 A of the act. Further three additional grounds raised by the assessee are also revolving around the disallowance under section 14 A of the act. Contesting the disallowance under section 14 A of the act, the learned authorized representative submitted that assessee is offering its income under the tonnage tax scheme. Assessee has

submitted that the profit and loss account for the tonnage tax and non-tonnage tax business activities are prepared from the separate books of account maintained by the assessee in accordance with the provisions of section 115 VW of the act. The profit and loss account of the tonnage tax business and the profit and loss account of the other business of the assessee company are duly reconciled with the audited profit and loss account of the company. The gross receipt and the operating expenses and administrative and other cost pertaining to non-tonnage tax activity as well as tonnage tax activities of the assessee company have been reflected in the segmental profit and loss account. The profit from the tonnage tax business of ₹ 1141 crores has been duly certified by the auditors in accordance with the provisions of tonnage tax scheme. Thus the tonnage tax income of ₹ 1141 crores have been excluded while computing the business income in accordance with the provisions of that section and taxes paid on the income computed therein. Therefore, the gross receipts of the tonnage tax business and the expenses pertaining to the tonnage tax business are excluded while computing the business income of the assessee. Assessee explained that only dispute is with respect to the disallowance under rule 8D (2) (ii) and (iii) of the rules. It was submitted that the coordinate bench in assessee's own case has decided this issue for assessment year 2008-2009 so far as the interest expenditure is concerned. Thus based on the above submission the claim of the assessee is

a. there is no interest expenditure liable for disallowance as the own funds consisting of the

share capital and free reserve are far more than the aggregate value of investments held by the assessee company,

b. even otherwise that some part of the interest expenditure is liable for disallowance, the interest expenditure attributable to the tonnage tax business is required to be excluded,

c. administrative expenses cannot exceed the actual expenditure incurred by the assessee,

d. investments on which no exempt dividend income was received by the assessee during the year are to be excluded while computing the disallowance of administrative expenditure under rule 8D (2) (iii) of the act.

e. allocation of expenditure between the tonnage tax activity and non-tonnage tax activity is completely explained.

f. Reliance placed on decision of the coordinate bench in case of Varun shipping Co Ltd 134 ITD 339 wherein it has been held that where the income of the shipping company is computed as per the tonnage tax scheme, only those expenses incurred for the said business are deemed to have been allowed and no addition to such income can be made by way of a disallowance under section 14 A on account of any expenditure in relation to earning of the exempt dividend income.

g. statement of total income for the year ended 31/3/2009 wherein tonnage tax income of the assessee is shown separately. He further referred to the computation of the total income stated that income from other sources shown by the assessee is related to the dividend income out of which a sum of expenditure attributable thereto of ₹ 7,530,572 has already been disallowed.

h. Therefore no further disallowance under section 14 A of the act is required to be made.

023. With respect to the addition to the book profit under section 115JB of the act by the amount disallowed under section 14 A of the act, it was submitted that same is covered in favour of the assessee by the decision of the special bench in case of [82 taxmann.com 415] as well as in case of the assessee for assessment year 2008 - 2009.

024. The learned departmental representative vehemently supported the order of the learned lower authorities and submitted that the disallowance under section 14 A of the act has been correctly worked out by the learned assessing officer and confirmed by the learned dispute resolution panel. He submitted that argument of the appellant that they are assessed in Tonnage Tax Scheme; therefore no disallowance should be made cannot be accepted because the assessment of total income is to be made and it cannot be assessed in parts. Therefore, if some income is earned by the appellant by other than shipping activities, then how it could be left without taxing though tax u/s 115VG has been brought

to tax shipping. However, it does not mean that they are excluded from taxation for any income earned by them. So far as the applicability of Sec. 14A and Rule 8D is concerned, as regards dividend income it cannot claim that no expenditure at all has been incurred for earning this exempted income. After the decision of Bombay High Court in the case of Godrej Boyce Mfg Co. Ltd. 328 ITR 81. It is very clear that Rule 8D is applicable from Assessment year 2008-09. In this case, the Assessing Officer has made his calculation as per Rule 8D that are perfectly correct.

025. We have carefully considered the rival contention and perused the orders of the lower authorities. In issue in all these grounds is when the income of assessee is taxed under the Tonnage tax Scheme whether there can be any disallowance u/s 14A of the Act despite assessee earning exempt income such as Dividend. We find that identical issue arose in case of varun Shipping Limited V Addl CIT **[**2012] 17 taxmann.com 112 (Mum.) where in it has been held as under :-

"7. We have considered the rival submissions and also perused the relevant material on record. It is observed that the assessee is mainly engaged in the business of operation of ships and its income from the said business was declared and assessed as per the special provisions contained in Chapter XIIG which lay down tonnage tax scheme. As per the provisions of section 115VA contained in Chapter XIIG, the income from the business of operating qualifying ships can be computed at the option of the assessee in accordance

with the provisions of Chapter XIIG and once this option is exercised by the assessee, the income so computed shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and Gains of business or profession" notwithstanding anything to the contrary contained in section 28 to 43C. It, therefore, follows that when the income of the assessee from the business of operating ships is computed as per the special provisions contained in Chapter XIIG, only the expenses incurred by the assessee for earning income of the said business are deemed to be allowed and nothing else. It, therefore, cannot be said that when the income of the assessee from the business of operating ships is computed as per the special provisions of Chapter XIIG, any expenditure other than the expenditure incurred for the purpose of the said business has been allowed and consequently no addition to income so computed can be made by way of disallowance u/s 14A on account of expenditure incurred by the assessee in relation to earning of exempt dividend income. We, therefore, find merit in the contention of the learned counsel for the assessee that the income of the assessee from the business of operating ships having been computed in accordance with the provisions of Chapter XIIG, only the expenses incurred for the said business are deemed to have been allowed and no addition to such income can be made by way of disallowance u/s 14A on account of any expenditure incurred in relation to earning of exempt dividend income. In our opinion, if at all the assessee has claimed any such expenditure in computation of profit of business of shipping, the same are to be taken as disallowed when the income of the said business is finally

computed in accordance with the provisions of Chapter XIIG and no separate disallowance on account of such expenditure u/s 14A can be made. We, therefore, delete the disallowance made by the AO u/s 14A and confirmed by the learned CIT (Appeals) and allow ground No. 1 of the assessee's appeal."

026. Same view is also taken by coordinate benches in ITA 1940/CHNY/2016 in ACIT , chennai v. West Asia Maritime ltd., Chennai and in [2013] 37 taxmann.com 395 (Chennai - Trib.) in Four M Maritime (P.) Ltd. No contrary view is shown to us. Therefore respectfully following the decision of coordinate benches, we hold that where the income of the assessee is assessed under Tonnage tax Scheme , no disallowance u/s 14A can be made. Therefore, the ld AO and ld DRP are incorrect in apportioning interest expenditure and other expenditure, which are part of computation of tonnage tax computation of Total income. The Assessing Officer and the learned DRP have considered the total interest expenditure of the Appellant Company aggregating Rs.153.64 crores, which includes the interest expenditure of the tonnage tax business of the Appellant of Rs.145.88 crores for computing the disallowance under Rule 8D(2)(ii), same is not correct.

027. However in this case assessee has other business also, therefore, the income computation of Tonnage tax Scheme requires to be excluded but in other business, the disallowance u/s 14A is required to be made. It is submitted that Appellant is a tonnage tax company and the Profit & Loss Account for the tonnage tax and non-

tonnage tax business activities are prepared from the separate books of account maintained by the Appellant in accordance with the provisions of Section 115VW(i) of the Act. The Profit & Loss Account of the tonnage tax business and the Profit & Loss Account of the other businesses of the company duly reconciled with the audited Profit & Loss Account of the company was submitted. The gross receipts and the operating expenses and administrative and other costs pertaining to the Tonnage Tax and Non-Tonnage Tax Activities of the Appellant Company have been reflected in the segmental Profit & Loss Account. The profit from the tonnage tax business of Rs.1141.82 crores has been duly certified by the Auditor in accordance with the provisions of Section 115VW(ii) in the prescribed Form 66. The computation of Total Income for the year ended March 31, 2009, relevant to the Assessment Year 2009-10 shows that tonnage tax income of Rs.1141.82 crores has been excluded while computing the Business Income in accordance with the provisions of Section 115VF of the Act and tax is paid on the income computed in accordance with the provisions of Section 115V-I of the Act, based on the tonnage of the ships operated by assessee .Hence, the gross receipts of the tonnage tax business and the expenses pertaining to the tonnage tax business are excluded while computing the Business Income of the Appellant Company. As per the ROI filed in computation of Total Income Assessee has the worked out actual administrative expenditure incurred by the Treasury Division including employee costs and other relatable expenses were allocated between the taxable and non-taxable gross receipts of the Treasury Division

and the disallowance of Rs.13.88 lacs under Rule 8D(2)(i) was computed . It has also considered the interest expenditure of the non-tonnage tax business at Rs.7.76 crores as reduced by interest expenditure suo moto disallowed by the Appellant of Rs.3.26 crores whereby the net interest expenditure claimed in the computation of total income was Rs.4.50 crores and has computed the disallowance of interest expenditure at Rs.61.42 lacs under Rule 8D(2)(ii) in accordance with the formula prescribed. On the issue of interest expenditure, though assessee confirms that there is no disallowance warranted even assuming though not conceding that some part of the non-tonnage tax interest expenditure is liable for disallowance, it is respectfully submitted that the correct figure of interest expenditure of Rs.4.50 crores may please be considered for computing the disallowance. The Appellant has filed an application for rectification on this issue, which is pending as on date.

028. Further On a perusal of the Share Capital and Reserves and Surplus in the Balance Sheet as at the year end, the Reserves and Surplus amount to Rs.477593 lakhs and the Share Capital amounts to Rs.15229 lakhs. Hence, non-interest bearing own funds of the company aggregate to Rs.492822 lakhs. The investments held by the company, as at the year-end, aggregate to Rs.125096 lakhs, and are far lower as compared to the capital employed consisting of own funds of Rs.492822 lakhs. In fact, the investments are more than covered by the Reserves of the Company itself. There is, therefore, no borrowing attributable to the investments yielding tax free income and such investments are out of the own

funds and internal accruals generated by the Company itself. For this reason, itself there cannot be any disallowance of interest expenditure u/s 14A of the Act.

029. With respect to the administrative expenses, ld AO has however disallowed a further sum of Rs.5.42 crores, under clause 2(iii) of Rule 8D, being the amount computed @0.5% of the average value of investments held by the Appellant. However, the actual expenditure claimed of the Treasury Division based on the divisional Profit & Loss Account was only Rs.81.69 lakhs. Hence, the disallowance can never exceed the total expenditure incurred by the Company. Thus, as against the actual aggregate administrative expenditure of Rs.81.69 lakhs incurred by the Treasury Division of the Appellant Company and claimed accordingly, the Assessing Officer has disallowed expenditure aggregating to Rs.5.42 crores under clause 2(iii) of Rule 8D, which is completely incorrect.

030. Further ld AO while applying Section 14A of the Act in respect of several investments on which the Appellant received no dividend income during the year was also considered in average investment. Thus disallowance under Section 14A read with Rule 8D2(ii) and (iii) should have been by excluding those investments on which no dividend income was received during the year.

031. Therefore we set aside these grounds of appeal concerning disallowance u/s 14 A rwr 8 D while computing normal computation of income to the file of the ld AO, assessee is directed to submit revised computation before ld Ao, The ld AO may examine the

same and following our above directions and finding recompute the disallowance by :-

i. No disallowance of expense or interest should be made out of tonnage tax income computation

ii. As there is no interest expenditure liable for a disallowance as the own funds consisting of the share capital and reserves, are far more than the aggregate value of investments held by the company. No Interest disallowance should be made.

iii. The administrative expenses cannot exceed the actual expenditure incurred.

iv. Those investments on which no exempt dividend income was received by the Appellant during the year are to be excluded while computing the disallowance under Rule 8D(2)(iii).

032. Both the lower authorities are not correct in holding that the disallowance made under Section 14A of the Act under the normal computation of income is also required to be added back for computing book profits under section 115JB of the Act. This issue is covered in favour of the assessee by the decision of Special Bench of the Income Tax Appellate Tribunal, Delhi, in the case of Vireet Investment Pvt. Ltd. reported in 82 taxmann.com 415 (Delhi - Trib.) (SB), wherein it was held that the computation under clause (f) of Explanation 1 to Section 115JB(2) is to be made without resorting to the computation as contemplated under Section 14A read with Rule 8D of the Income-tax Rules, 1962. Honorable

Bombay High court in THE COMMISSIONER OF INCOME TAX, MUMBAI V. JSW ENERGY LTD. 2015 SCC ONLINE BOM 5243 has also held that such adjustment is not permitted. Therefore adjustment to the book profit as computed u/s 115 JB of the act and further increasing it by disallowance computed u/s 14A rwr 8D is not warranted. Hence, we direct ld AO to delete the same.

033. Accordingly, Ground, no 1 to 8 and additional contentions raised with respect to disallowance u/s 14A of the Act are allowed with above directions.

034. Ground number 9 of the appeal is with respect to the taxation of the long-term capital gain at the rate of 20% as against the current rate of 10% while passing the assessment order under section 143 (3) read with section 144C (13) of the act. On hearing the parties, we find that the learned assessing officer should have charged the correct rate of tax on the long-term capital gain. The learned assessing officer is directed to do so. Ground number 9 of the appeal of the assessee is allowed.

035. Ground number 10 is with respect to the not granting tax credit to the assessee of ₹ 1,262,041 while framing the assessment order. On hearing the parties, we direct the learned assessing officer to grant tax credit to the assessee of the above amount after proper verification. If the learned assessing officer finds that assessee is not entitled to any tax credit, he must give an opportunity to the assessee to explain the same and thereafter decide the issue. . Ground number 10 of the appeal is allowed.

036. Ground number 11 of the appeal is with respect to the adjustment made by the learned transfer pricing officer without providing reasons on which conditions of section 92C (3) has not been satisfied. Before us, the assessee has not argued this ground and therefore it is dismissed.

037. Ground number 12 and 13 is with respect to the arm's-length price computation of the financial guarantee issued by the assessee. The facts relating to the same shows that assessee is a company engaged in the business of shipping. In order to expand its business, it formed two-step down subsidiaries in Singapore, Greatship Global Offshore Services Pte. Ltd. (GGOS) and Great ship Global Energy Services Pte. Ltd. (GGES) as Singapore is one of the busiest ports in the world. The Appellant's immediate subsidiary, Greatship India Ltd. infused share capital into the subsidiaries, USD 94.06 million into GGOS and USD 66.96 million into GGES by 31st March 2009. The subsidiaries placed orders on shipyards in Singapore for building of new vessels in the preceding financial years 2006-2007 and 2007-2008. Assessee issued guarantees to shipyards (referred to as performance guarantee).

038. One of the shipyards, viz., Keppel Fels Ltd. required a bank guarantee for USD 25 million(Rs. 126.80 crores) from GGES. The ICICI Bank provided a Standby Letter of Credit to Keppel Fels Ltd. The Appellant in turn at the request of the Bank gave a financial guarantee to ICICI Bank for USD 25 million in financial years 2006-2007. The ICICI Bank charged guarantee commission @ 0.135% p.a. to GGES for issuing the Standby Letter of

Credit. The Appellant did not charge guarantee commission to GGES for issuing the financial guarantee to ICICI Bank on its behalf. However, while filing its Return of Income, the Appellant made a suo moto transfer pricing adjustment on the basis of guarantee commission paid by the Appellant to banks during each financial year, For this year it computed ALP of Guarantee Commission at the rate of 0.60% and made suo moto adjustment of Rs, 76,08,000/-.

039. During the financial year 2008-09,relevant to the Assessment Year 2009-10, the year under consideration), the Associated Enterprise - GGES availed a bridge loan of USD 90 million from the Bank of Nova Scotia. The AE had drawn USD 70.47 million equivalents to INR 357.42 crores of the said loans as on 31st March 2009. The Appellant gave a financial guarantee to the Bank of Nova Scotia for the loan taken by GGES from the Bank of Nova Scotia. The Appellant did not charge a guarantee commission to GGES for issuing the financial guarantee to the Bank of Nova Scotia on its behalf. However, while filing its Return of Income, the Appellant made a suo moto transfer pricing adjustment @ 0.60% p.a. on the basis of the average guarantee commission paid by the Appellant to banks for giving unsecured guarantees on behalf of the Appellant . The suo-moto adjustment relating to financial guarantee given to Bank of Nova Scotia was calculated by the Appellant as under:

Particulars	Amount (Rs.)
Amount of guarantee as at year end	357,42,38,400

Rate of guarantee commission	0.60%
Suo-moto adjustment	1,60,84,073

040. Thus, total suo-moto adjustment made by the Appellant in respect of financial guarantees was Rs. 2,36,92,073/- (Rs. 76,08,000/- (ICICI Bank) + Rs. 1,60,84,073 (Bank of Nova Scotia). The working of the suo moto TP adjustment submitted to the TPO.

041. The Ld. Transfer Pricing Officer (TPO) accepted the transaction of guarantee to ICICI Bank to be at arm's length for the AY 2007-2008. However, For this AY he held that the arm's length price of the financial guarantee given by the Appellant to the ICICI Bank on behalf of its AE, GGES was 3% p.a. The TPO relied upon the letters issued by the Allahabad Bank and State Bank of India (pages 397 to 400) wherein the Allahabad Bank stated that it generally charges guarantee commission of 0.60% per quarter for a financial guarantee above Rs.10 crores and State Bank of India has stated that it charges guarantee commission of 1.75% per annum in respect of bank guarantee above Rs.10 crores. The TPO computed the ALP of the financial guarantee given by the Appellant to ICICI Bank as under:

Name of the Bank	Guarantee Commission rate
State Bank of India	1.75%
Allahabad Bank	2.4%

Average of the above	2.075%
Add: Adhoc markup	0.925%
ALP of Guarantee commission	3%

042. The ld DRP (for the AY 2008-2009) held that the ALP of the financial guarantee given by the Appellant to ICICI Bank was 1.5% p.a. However, financial guarantee given by the Appellant to the ICICI Bank continued in AY 2009-2010, ld TPO computed ALP @3% and LD DRP upheld it @1.5% by following their own findings in AY 2008-2009.

043. Similarly, the ld TPO also benchmarked Financial Guarantee Given to Bank of Nova Scotia @ 3 % and Ld DRP upheld it @ 1, 5 %.

044. Assessee submitted that :-

i. as far as financial guarantees are concerned, the TPO has (for the Assessment Year 2007-08) accepted that the rate of 0.60% p.a. adopted by the Appellant on the basis of the guarantee commission paid by the Appellant itself to banks for unsecured financial guarantees given by the banks on behalf of the Appellant. For the Assessment Year 2008-09, the Tribunal has, in the Appellant's own case, held that the suo-moto adjustment made by the Appellant @ 0.55% p.a. (on the basis of guarantee commission paid by the Appellant to banks) was at arm's length. The Appellant submits that the order of the Tribunal for the Assessment Year 2008-09 should be followed in Assessment Year 2009-10 for the following reasons:

a. Consistency

b. Guarantee given by the Appellant to the ICICI Bank in the Assessment Year 2007-08 continued in the Assessment Years 2008-09 and 2009-10. In other words, the same financial guarantee is involved as far as guarantee given to ICICI Bank is concerned.

c. Internal CUP was accepted by the Tribunal in the case of the Appellant for Assessment Year 2007-08 (ITA Nos. 397/Mum/2012 and 437/Mum/2012 dated 10.01.2014), in respect of interest on loan to AE which order has been followed in Assessment Year 2008-09.The Tribunal held that interest charged by banks on loans availed by the Appellant constitutes an internal CUP for the purpose of benchmarking interest on loans received by the Appellant from its AEs

d. The Tribunal, has in the case of the Appellant's subsidiary, Greatship (India) Ltd. in ITA Nos. 1287/Mum/2017 and 6083/Mum/2018 for Assessment Year 2012-13 and 2014-15 (pages 405 to 449, internal page 11) held that they find no infirmity in the adoption of internal CUP, i.e. the average guarantee fees paid by the Appellant itself to banks.

e. The aforementioned order of the Tribunal in Greatship (India) Ltd. for Assessment Year 2012-13 and 2014-15 was followed by the Tribunal for Assessment Year 2015-16(ITA Nos. 7001/Mum/2019)(page 450 to 475).

ii. It would observe from the letters issued by SBI and Allahabad Bank that as the guarantee amount increases, the guarantee commission rate as a percentage of the guarantee amount decreases. Please see attached statement at page 476.

iii. The Appellant submits that for a guarantee of Rs. 126.80 crores given to ICICI Bank and for a guarantee of Rs. 357.42 crores given to Bank of Nova Scotia, the guarantee rate should be around 0.2% p.a.

iv. The following chart depicts the fact that the AE which had the loan from Bank of Nova Scotia (which loan was guaranteed by the Appellant) had itself provided adequate security to the lender and the AE had enough assets of its own to service the loan (page 49).

Associated Enterprise	Loan for which the Assessee company has provided guarantee	Security provided by the AE. GGES, itself	Total Assets of the AE
GGES	USD 70.47 Million (outstanding as on 31.3.2009)	First assignment on the vessel being constructed by Keppel Fels (Note 13 of the Accounts)	USD 152.906 Million (Vessel under construction + Current Assets)

v. Therefore, the Appellant submits that the risk of default by the AE was extremely low and, hence, the rate of commission charged in respect of financial guarantees given by the Appellant @ 0.60% p.a. is more than the Arm's Length Price.

vi. Further, the Appellant relies on the decision of the Mumbai Tribunal in the case of Everest Kanto Cylinders Ltd. (ITA No. 542/Mum/2012 dated 23rd November, 2012) wherein internal CUP was accepted as ALP. The Appellant submits that this decision has been affirmed by the Bombay High Court in 378 ITR 57.

vii. The facts of Everest Kanto were as follows:

a. Everest Kanto had a subsidiary,EKC Dubai.

b. Dubai subsidiary availed a loan from the ICICI Bank, Bahrain branch. Everest Kanto provided a financial guarantee to ICICI Bank.

c. Everest Kanto charged guarantee commission @ 0.5% p.a.on behalf of its AE.

d. In order to benchmark the rate of guarantee commission charged to its AE, the assessee company relied upon guarantee commission paid by it to ICICI Bank @ 0.60% p.a.

e. The Tribunal observed that the guarantee commission paid by the assessee company to ICICI Bank was a very good parameter and a comparable for taking it as internal CUP and comparing the same with the transaction with the AE.

viii. In the case of the Appellant, the facts of the Appellant and that of Everest Kanto are identical and therefore the decision of the Tribunal and jurisdictional High Court needs to be followed in the case of the Appellant.

ix. The Appellant relies on the following decisions wherein internal CUPs were accepted and the guarantee commission rate between 0.2% to 0.5% p.a. was accepted to be at Arm's Length.

i) Asian Paints Ltd. (149 ITD 511)(Mum.) – guarantee commission of 0.2% p.a. held to be at arm's length.

ii) Hindalco Industries Ltd. (62 taxmann.com 181) (Mum.) – guarantee commission of 0.5% p.a. held to be at arm's length.

iii) Thomas Cook (India) Ltd. v. Addl CIT (ITA No. 859/Mum/2014) – guarantee commission of 0.5% p.a. held to be at arm's length.

iv) Godrej Consumer Products Ltd. v. ACIT (ITA No. 1299/Mum/2013) – guarantee commission of 0.5% p.a. held to be arm's length.

v) Greatship (India) Ltd. v. DCIT (ITA Nos. 1287/Mum/2017 and 6083/Mum/2018) Assessment Years 2012-13 and 2014-15 -

guarantee commission of 0.43% p.a. held to be arm's length.

vi) Greatship (India) Ltd. v. DCIT (ITA No. 7001/Mum/2019) Assessment Year 2015-16 - guarantee commission of 0.40% p.a. held to be arm's length.

x. It is pertinent to mention here that the ICICI Bank has charged guarantee commission @ 0.135% p.a. to the AE in respect of the Standby letter of credit issued by it. Standby Letter of credit(at page 370) mentions that ICICI Bank will charge 0.135% p.a. to the AE – GGES. The Appellant has given a counter guarantee to ICICI Bank and made suo moto adjustment @ 0.60% p.a. The Appellant submits that 0.135% p.a. charged by ICICI Bank constitutes an internal CUP.

045. The ld AR further submitted that issue is squarely covered in favour of the assessee by the decision of coordinate bench in case of assessee for Ay 2008-09 where in benchmarking of the assessee was upheld.

046. The Ld DR vehemently supported the orders of the lower authorities.

047. We have carefully considered the rival contentions and perused the order of The LD TPO as well as directions of the ld DRP on this issue. The coordinate bench in assessee's own case has decided this issue in Para no 197/Mum/2023 for Ay 2008-09 per Para no 23 as under :-

"23. In ground No. 22 to 24 of appeal, the assessee has assailed TP adjustment in respect of financial guarantee given by the assessee on behalf of its AE. The ld. Counsel for the assessee submitted that the assessee has made suo-motto charge of 0.55%. The

ld. Counsel referred pages 92 to 95 of the paper book to show different rates of guarantee commission charged by different banks. He pointed that vide letter dated 15/07/2011 State Bank of India has given rate of commission charged by it. The rates vary from 2.75% to 1.75% depending upon the quantum of facility availed. Similarly, information was sought by the Transfer Pricing Officer from the Allahabad Bank. As per letter dated 12/07/2011 from Allahabad Bank (at page 94 of the paper book) for extending facility of financial guarantee, charges varies from 0.75% per quarter to 0.60% per quarter. The ld Counsel pointed that ABN AMRO Bank charges guarantee commission @0.35% p.a. (page 139 of paper book) and HSBC Banks charges 0.55% p.a. guarantee commission (page 146 of the paper Book). He further referred to the decision of Tribunal in the case of Greatship (India) Ltd. in ITA NO.1287/Mum/2017 decided on 05/04/2020. The Tribunal after considering various case laws, wherein different rates for guarantee commission were charged, upheld 0.43% commission p.a. charged by the assessee as ALP. In the instant case, the TPO had made adjustment by determining guarantee commission @3%. The rate of guarantee commission was restricted by the DRP to 1.5%. As is evident from the letters from various banks on record, different rates of guarantee commission are charged by different banks

depending upon the extent and duration of facility availed. Taking note of wide-ranging guarantee commission rates being charged by different banks, we adopt guarantee commission rate approved by Hon'ble Bombay High Court in the case of Everest Kanto Cylinders Ltd., 378 ITR 57(Bom), i.e. 0.55%.We uphold guarantee commission charged by the assessee at 0.55%. Hence, no adjustment is warranted on this issue. The, assessee succeeds on ground No.22 to 24 of the appeal."

048. We have carefully considered the reasons given by the coordinate bench while deleting the adjustment on account of corporate guarantee commission. However, we are not inclined to accept that as the honourable Bombay High Court in case of Everest Kanto cylinders Ltd (378 ITR 57 (Bom)) has upheld the benchmarking of corporate guarantee commission at the rate of 0.5%, for all the years and in all economic circumstances and for all the assessee is across the globe, that rate should be accepted as arm's-length price of corporate guarantee commission. If we accept that proposition, the requirement of maintaining contemporary erroneous document for each tax assessment year, transfer pricing order by the revenue authorities of international transaction every year would go for a toss. Further the decision of honourable Bombay High Court will become a safe harbour judicial precedent with respect to the arm's-length price of corporate guarantee issued by one corporate entity of MNE to other, irrespective of their creditworthiness, interest saving, cost of capital, the

benefit arising out of the corporate guarantee to be shared by the entities etc. That could not render Justice to the assessee as well as to the revenue. Therefore, it is necessary to benchmark the international transaction by adopting the most appropriate method and also by showing comparable/comparability analysis.

049. However, for this assessment year, we find that the learned TPO and the learned DRP has repeated their own orders of earlier years i.e. assessment year 2008 – 09. Therefore, both these orders/directions are not in accordance with the transfer pricing provisions as they do not determine the arm's-length price of the international transaction in accordance with the provisions of section 92C (3) of the act. Therefore, we disapprove both the above orders and directions.

050. Coming to the benchmarking analysis adopted by the assessee, we noted that assessee has made a suo moto adjustment considering 0.55% as arm's-length price of the international transaction, despite the fact that, assessee has not charged any guarantee fees from its associated enterprises. For the purpose of benchmarking, the assessee adopted the comparable uncontrolled price method and considered the average corporate guarantee charges charged by the bankers to the assessee placed at page number 383 of the paper book, which is 0.56%. On that basis, the assessee has benchmarked these corporate guarantees at the rate of 0.55%. Therefore, there was no dispute with the method i.e. CUP method as well as the comparables selected as average corporate guarantee charges charged by the bankers. As average

corporate guarantee charged by the bankers on the assessee is 0 .56%, is compared with the corporate guarantee issued by the assessee to the bankers on behalf of its associated enterprises, in any way cannot exceed 0.56%. Therefore, the adjustment made by the assessee is at maximum. Therefore, even otherwise, when the assessee has offered the income being adjustment of ALP of international transaction more than what it could have been in a worst-case scenario, no further adjustment can be made. Therefore, for this solitary reason we do not find that the method adopted by the assessee is improper and further for comparison, the assessee has selected maximum what could have been charged as corporate guarantee fees. Accordingly, ground number 12 and 13 of the appeal of the assessee are allowed upholding the benchmarking analysis made by the assessee and thereby deleting upward adjustment made by the learned lower authorities.

051. Ground no 14 to 16 of the appeal are with respect to ALP determination of performance guarantee issued by the assessee. During the immediately preceding financial year 2007-08 (Assessment Year 2008-09), the Appellant had given performance guarantees (5 nos.) to shipyards on behalf of its AEs, Greatship Global Offshore Services Pte. Ltd., Singapore (GGOS) (4 nos) and Greatship Global Energy Services Pte. Ltd., Singapore (GGES) (1 no.). The same guarantees have continued in financial year 2008-09 (Assessment Year 2009-10). A statement giving details of the performance guarantees furnished for the Assessment Year 2009-10 was submitted. The performance guarantees are in respect of orders for

construction of 5 vessels placed by the said AEs of the Appellant with shipyards Keppel Singmarine Pte. Ltd., Singapore and Keppel Fels Ltd., Singapore. The vessel construction agreements (5 nos.), guarantees given by the Appellant to the shipyards, along with the agreements entered into by the Appellant with its AEs and the Board Resolutions in respect of guarantees given were placed on record. The performance guarantees given to the shipyards were to the effect that if the AEs default in making payments to the shipyards or default in provision of letter of credit to the shipyards, the Appellant would make good such defaults. At the same time, the Appellant entered into separate agreements with its AEs in respect of each of the performance guarantee / vessel under construction, to the effect that if and when the performance guarantee is invoked, the Appellant shall step into the shoes of the AE and take delivery of the vessel, for use in its own business. In other words, if the performance guarantee given by the Appellant to the shipyard is invoked, the Appellant will become the owner of the vessel and use the vessel in its own business. The situation is akin to the Appellant placing an order for construction of vessels. The Appellant already had 39 vessels in its business in the current year. Agreements between the Appellant and its AEs were also placed on record. The Appellant submits that the vessel construction agreements had a Right of Assignment clause whereby the AEs could easily assign the under-construction vessels to the Appellant. Therefore, neither did the Appellant charge any guarantee commission to its AEs, nor did the Appellant make any suo moto TP adjustment, in respect of the performance guarantees

given on behalf of its AEs. The Appellant submits that if one were to take a comprehensive view of the arrangement between the Appellant and its AEs, one would conclude that if the Appellant was to, for whatever reason, called upon to perform its obligations in respect of the performance guarantees, the Appellant would step into the shoes of the AE and take delivery of the relevant vessel under construction and easily use it in its own business.

052. In the immediately preceding Assessment Year 2008-09 (i.e. the first year of furnishing of such performance guarantees), the TPO held that

"From the above it is clear that the assessee has taken upon itself the liability of its AE in the event of default and passed on a tangible benefit to its AE without getting duly compensated for the same" (page 15 of the TP order for Assessment Year 2008-09).

The TPO held that the ALP of the performance guarantees given by the Appellant is 3% p.a. The TPO arrived at the ALP of 3% p.a. on the basis of guarantee commission charged by Allahabad Bank on bank guarantees (2.4% p.a) and State Bank of India (1.75% p.a.), the average of which guarantee commission rates came to 2.075% p.a. to which the TPO added an adhoc "mark-up" of 0.925% p.a. to arrive at the guarantee commission rate of 3% p.a.

053. The DRP has followed its own order for the immediately preceding Assessment Year 2008-09 after observing as under:

> "It cannot be the case of the assessee that an unrelated party would have granted such guarantee without any fee. However, there is a distinguishing feature in the assessee's case that there is a back to back arrangement to guard against the invocation of the performance guarantee. In case any of the performance guarantees given by the shipyard are invoked, then the vessel in respect of which the performance guarantee is given will vest into the hands of the assessee. This peculiar feature of the agreement reduces the risk element with the assessee substantially. Yet, the grant of financial service by way of performance guarantee cannot be denied. It is seen that the DRP has held ALP of guarantee commission to be at 1% p.a. in the immediately preceding year, which is a fairly reasonable view. Therefore, we are in agreement with the order of the DRP for the preceding assessment year. We decide accordingly."

054. Thus it resulted in to total adjustments of Rs.6,59,83,729/-. Therefore, Assessee is in appeal before us.

055. Assessee submitted that :-

i. The Appellant relies on the following decisions of the Tribunal wherein it has been held that giving of a guarantee on behalf of an AE is not an international transaction as it has no bearing on the profits, income, losses or assets of the enterprises involved:

   a. Marico Ltd. (ITA No. 8858/M/11 and 8713/M/11) dated 18.5.2016
   b. Micro Ink Ltd. (157 ITD 132) (Ahd.)
   c. Videocon Industries Ltd. (55 taxmann.com 263) (Mum.)

ii. Without prejudice, the Appellant submits that section 92B, as amended retrospectively by the Finance Act, 2012, does not cover a performance guarantee of the type given by the Appellant as the words used in the Explanation below Section 92B are *"capital financing, including any type of long-term or short-term borrowing, lending or guarantee…"* Thus, the amendment to Section 92B is intended to cover financing transactions and would, if at all, cover a financial guarantee but not a performance guarantee.

iii. Without prejudice, the Appellant submits that the amendment to section 92B is prospective in nature and will apply w.e.f. 1.4.2012. The Appellant relies on the following decisions:

a. Jindal Steel & Power Ltd. (ITA No.893/Del/2014)(ITAT, Delhi Bench).
b. Dr. Reddy Laboratories Ltd. (81 taxmann.com 398)(ITAT, Hyderabad Bench).
c. Rusabh Diamonds (68 taxmann.com 141)(ITAT, Mumbai Bench)
d. KGK Enterprises (88 taxmann.com 264)(ITAT, Jaipur Bench)

iv. Without prejudice to the contention in Points 1 to 3 above, the Appellant submits that under the performance guarantees given to the shipyards, the obligation is to acquire and take delivery when the construction of the vessel is completed, in case of any failure of the subsidiary to do so, and become owner of the vessel. On the other hand, in the case of the financial guarantees, given by the Appellant, the Appellant has undertaken timely repayment of principal and interest to the lender bank and the bank, which has provided the Standby Letter of Credit in case of default by the AE. In case there is a devolvement in case of a financial guarantee, the Appellant will have to recover the amount from the AE on whose behalf the financial guarantee is given.

v. Without prejudice, the Appellant submits that the performance guarantees given by the Appellant do not involve any financial risk for the reason that if

any of the performance guarantees are invoked, the Appellant would become the owner of the vessel for which the performance guarantee was given. The Appellant submits that it is adequately compensated / covered for the liability / risk undertaken in the form of the vessel itself, which is an asset in the very business it is carrying on. Whether the business is carried on through a step down subsidiary or the Appellant itself, makes little difference, considering the substance of the relationship between a holding company and its 100% subsidiary – in substance it is one and the same person. Reliance is placed on the following decisions wherein it is held that the holding company and the subsidiary company are one and the same

a) CIT v. Cotton Naturals (I) (P.) Ltd.55 taxmann.com 523 (Del.)
b) VVF Ltd. v/s. DCIT (ITA No: 673/M/06) (Mum.)
c) Bharti Airtel Ltd. (43 taxmann.com 50) (Del. Trib.)
d) GTO v. Venesta Foils Ltd. (124 ITR 660) (Cal.)

vi. Therefore, there is no risk / liability undertaken by the Appellant for which it needs to be compensated by way of guarantee commission. Reliance is placed upon the decision of the Mumbai Bench of the Tribunal in the Appellant's own case for the Assessment Year 2008-09 wherein in respect of thesevery same performance guarantees (5 nos.) to shipyards the Tribunal held that if the guarantee is invoked, the assessee would acquire the vessel and therefore, there is no risk involved. Tribunal relied upon the decision of the co-ordinate Bench in the case of KEC International Ltd. (108 taxmann.com 172)(Mum.) to hold that no adjustment is warranted on account of performance guarantees.

vii. The Appellant submits that the following facts are relevant and should not be lost sight of the while deciding this issue:

a. The Appellant is the ultimate holding company of The Great Eastern Shipping Company Group.

b. The Appellant is responsible and in charge of strategic decision making as far as the Group is concerned.

c. Incorporation of step down subsidiaries in Singapore was a strategic decision as Singapore is one of the busiest ports.

d. Decisions of placing orders for new vessels by the Singapore AEs cannot be taken unless the Appellant directly or indirectly through its immediate wholly owned subsidiary, Greatship (India) Ltd. or through guarantees to banks and shipyards agrees to fund the acquisition of vessels.

e. Greatship (India) Ltd. infused USD 94.06 million and USD 66.96 million as share capital into GGOS and GGES respectively for acquisition of the vessels.

f. One of the AE's GGES borrowed monies from Bank of Nova Scotia for which the Appellant gave a financial guarantee, whose arm's length price was benchmarked @ 0.60% p.a.

g. Further, in cases of guarantees given by the holding company on behalf of its wholly owned step down subsidiary actually compensates for the inadequacies in the financial position of the subsidiary, specifically the fact that the subsidiary does not have enough shareholders' funds. It would not be expected that a company should pay for the acquisition of the equity it needs for its formation and continued viability. Equity is generally supplied by the shareholder at its own cost and risk. Accordingly, to the extent that a guarantee

substitutes for the investment of the equity needed to allow a subsidiary to be self-sufficient and to raise debt funding it needs, the costs of the guarantee and the associated risks, if any, should remain with the parent company providing the guarantee.

h. During the financial years 2007-08 and 2008-09, the AEs have out of the capital infusion by the Great Eastern Group and through borrowings by GGES paid USD 151.416 million out of the Contract Value of USD 309.08 million of under construction vessel.

i. The present performance guarantees are secured by the vessels. If the guarantees aggregating to USD 157.664 Million (payment outstanding as at 31.3.2009 as per statement at page 499) are invoked, the Appellant would obtain vessels of USD 309.08 Million, which it can use in its own business. Therefore, there is no risk assumed by the Appellant at all. In fact, it may benefit from the transaction.

viii. Without prejudice to all that is stated above, and in any event, the Appellant submits that the financial risk, if any, in the case of the performance guarantees given by the Appellant is much less than that in the case of any financial guarantee due to the peculiar facts of the case and therefore the ALP of guarantee commission chargeable by the Appellant should be much less than that of a financial guarantee.

ix. Without prejudice to all that is stated above, the guarantee rates of Allahabad Bank (pages 397 and SBI Bank (page 398 to 400**)** show a declining trend i.e. as the guaranteed amount increases the rate of guarantee commission as a percentage of the amount guaranteed decreases. Therefore, without conceding that the guarantee commission in respect of performance guarantee should be Nil as there is no risk involved, the Appellant submits that for performance guarantee of Rs. 659 crores,

> the guarantee rate cannot exceed 0.1% p.a. as per chart submitted at page 476. This is buttressed by the Letter of Credit rate offered by the ICICI Bank to GGES directly.

056. The learned departmental representative vehemently supported the orders of the lower authorities and submitted that the performance guarantee involves the financial commitment as the terms and conditions of the guarantee clearly indicate that the assessee would step into the shoes of the associated enterprises and would-be obliged to acquire the assets. He further submitted that nobody would be in a position to say that when the assets were acquired what kind of losses the assessee would incur. It was further submitted that there is no justification that why the assessee has benchmarked the arm's-length price of the performance guarantee facility at Rs. Nil.

057. We have carefully considered rival contentions, used the order of the learned transfer-pricing officer, direction of the learned dispute resolution panel and the order of the coordinate bench in assessee's own case for assessment year 2008 – 09. ITAT (ITA number 197/MUM/2013 (assessment year 2008 – 09)) has held as under :-

> "20. In ground No.19 to 21 of appeal, the assessee has assailed TP adjustment in respect of Performance Guarantee given by the assessee on behalf of AE. The ld. Counsel for the assessee submitted that the assessee had extended Performance Guarantee in respect of its 100% subsidiary in Singapore to the shipyard. The terms and conditions of the Performance

Guarantee agreement clearly indicate that there was no financial liability on the assessee company. In the eventuality of Performance Guarantee being invoked, the assessee would acquire the asset. Thus, the assessee would not be at loss in any case. The business of assessee and its AE is the same i.e. operation of ships, therefore, the asset that would be acquired by the assessee in eventuality of operation of Performance Guarantee would be utilized for the purpose of assessee's business. It would not be an unwanted asset. The ld. Counsel submitted that the DRP has upheld performance guarantee commission @1% p.a. instead of 3% proposed by the TPO.

21. Per contra, the ld. Departmental Representative vehemently defended the impugned order and the directions of the DRP on this issue and prayed for dismissing the grounds raised by the assessee assailing the adjustment.

22. Both sides heard. The assessee had extended performance guarantee to shipyard in respect of its 100% subsidiary based in Singapore. The assessee has taken ALP of the performance guarantee facility as 'Nil'. The DRP has determined ALP of the transaction @1%. The agreement in respect of which performance guarantee has been extended by the assessee on

behalf of its foreign subsidiary is with respect to construction of a ship. Guarantee has been extended to a shipyard. If guarantee were invoked, the assessee would be under obligation to pay guarantee, in turn the assessee would acquire the vessel. We find force in the argument of the Counsel for the assessee, there is no element of risk involved. In any case, on enforcement of guarantee clause, the assessee would acquire vessel, the assessee can use the same in its own business.

22.1. We find that the Tribunal in the case of ACIT vs. KEC International Ltd. 108 taxmann.com 172 (Mumbai) deleted adjustment made on account of performance guarantee where there was absolutely no risk involved for the assessee in issuing performance guarantee on behalf of its AE. Thus, in the facts of the case and the decision by the Coordinate Bench, we hold that no adjustment is warranted because of performance guarantee. The assessee succeeds on ground no. 19 to 20 of the appeal."

058. The coordinate bench has held that wherein it has been held that there is no element of risk involved, in even to of enforcement of guarantee clause the assessee would acquire vessel, that can be used by the assessee in its own business, and therefore the coordinate bench has held that no adjustment is warranted on account of performance guarantee.

059. No doubt, the guarantees were given in earlier years however, as on 31st of March 2009; certain guarantees were outstanding at the end of the financial year. The fact shows that the orders have been placed by the associated enterprises for construction of 2 vessels with a Singapore entity. Guarantees were given by the assessee on behalf of those associated enterprises that in the event of their failure to perform the agreed contract, assessee will step into the shoes of those associated enterprises and fulfil the obligation. The fulfillment of the obligation is to acquire those two vessels from Singapore entity. Thus, the assessee has given the guarantee to the Singapore entity that a of the associated enterprises default in making payment to that party or default in provision of letter of credit, the appellant would make good to such default. The assessee has entered into a separate agreement with its associated enterprises that in each of the performance guarantee when such guarantees are invoked, the assessee shall step into the shoes of the AE and take delivery of the vessels for use in its own business. Therefore, there are two transactions, (1) issue of corporate guarantee in favour of Singapore entity on behalf of its associated enterprises by the assessee to make good the payment of construction of 2 vessels, if those associated enterprises failed to perform their obligation of payment with respect to that agreement, (2) to mitigate the liability that may arise on the assessee, assessee entered into another agreement with its associated enterprises to take possession of those two vessels, which those associated enterprises failed to take delivery in the event this performance guarantee issued by the assessee to Singapore entity is invoked.

Therefore, basically there is a risk involved of making a payment to the Singapore entity in the event of failure of payment by associated Enterprises to Singapore entity, by the assessee. Therefore, there is a financial liability involved. The agreement of the assessee with its associated enterprises to take the possession of 2 vessels is only mitigates or risk management action of the assessee arising out of the corporate guarantee. Thus, the argument of the assessee cannot be accepted that the situation is akin to the assessee placing an order for construction of vessels. It is immaterial that assessee has any number of vessels in its business in the current financial year; the only material aspect is that whether any independent party would have issued such performance guarantee on behalf of associated enterprises of the assessee without charging any commission for issue of such guarantee. The answer is clearly in negative. Therefore, there exists an international transaction; this international transaction should have resulted into remuneration to the assessee. Such remuneration should have been benchmarked and it should have been demonstrated that it is at arm's-length.

060. Performance guarantee is sharing the advantage of MNE against the individual standalone companies, whereby, less competent, less capable, less resourceful associated enterprise can ride on the shoulders of more competent, more capable, more resourceful another associated enterprise to boost their credibility if a related entity provides them with a performance guarantee, i.e., pledges to fulfill their contractual obligations in case they fail to do so themselves. Of course, independent party can also issue

such guarantee for another enterprises but it cannot be either without cost or without remuneration. Therefore, these performance guarantees are in the nature of financial guarantees only. Undoubtedly, in these financial guarantees there is a requirement to determine the expected loss arising out of that if the probability of invocation of the guarantee/default arises. Over and above, there is risk mitigation also in the form of acquisition of vessels. Therefore, the issuance of performance guarantee by the assessee in favour of the associated enterprises to a Singapore entity is a financial guarantee transaction, which is less unfavorable to the assessee compared to the financial guarantee transaction issued to the bankers, requires to be benchmarked as it involves the financial risk on the assessee by adopting one of the methods as the most appropriate method. Merely because, vessels would be used in the business of the assessee, it does not reduce the financial implication as and when guarantee is invoked. Therefore, such a consideration is superfluous.

061. Even the annual accounts of the assessee also depicts these financial guarantees as contingent liabilities in schedule "20": Notes on Accounts

(a)	Guarantees given by banks counter guaranteed by the Company.	26712 lakhs
(b)	Guarantees by bank given on behalf of a subsidiary company/joint venture.	409 lakhs
(c)	Guarantees given to banks/ shipyard on behalf of	

subsidiaries. 128192 lakhs

062. In view of the above findings, and as the international transaction is required to be benchmarked for each financial/assessment year, we are of the view that the issue of performance guarantee which is a financial guarantee with risk mitigation, should also be benchmarked as it involves financial risk on the assessee.

063. However, we are also conscious of the fact that assessee has made us you a Moto adjustment with respect to the financial guarantee of 0.55% of the outstanding guarantees. These performance guarantees in the nature of financial guarantees needs to be benchmarked, which can be remunerated at less than that rate. As in the case of financial guarantees without any security, the assessee has offered SUO Moto disallowance of 0.55% as guarantee. In addition, here the assessee has adequate security and therefore the benchmarking of this performance guarantee needs to be substantially lower than pure financial guarantees. Thus the rates adopted by the learned TPO and the learned dispute resolution panel are not at all relevant and are exorbitant high without any basis. Therefore, those rates are already rejected by us.

064. Accordingly ground number 14 – 16 of the appeal of the assessee is set-aside to the file of the learned assessing officer with a direction to the assessee to benchmarked the above international transaction and produce relevant details of benchmarking to the learned assessing officer/transfer pricing officer, the learned AO/TPO may

examine the same and decide the issue in accordance with the law.

065. In the result, appeal filed by the assessee is allowed with the above directions.

066. Now we come to the appeal of the learned AO. The learned AO as per ground number 1 and 2 has challenged non-taxability of bad debts written back and an insurance claim received during the year but pertaining to the years prior to the tonnage tax scheme applicability to the assessee directed by the learned dispute resolution panel to be not taxable. The fact shows that the bad debts written back by the assessee were pertaining to the sale consideration/remuneration received by the assessee in the earlier year written also during the earlier year but written back during this year. Similar is the case with respect to the insurance clam received during the year pertaining to earlier years. According to the assessing officer both these income should be out of the tonnage tax income of the assessee and should be taxed separately. The learned dispute resolution panel has directed the AO to not to include these to receipt separately as for this year the income would be taxed on the basis of tonnage tax scheme.

067. On careful consideration of the order of the learned AO and the direction of the learned DRP and considering the rival contention, we find that for this assessment year the assessee is chargeable to tax on the basis of the tonnage tax scheme. We find that the logic and reason given by the learned assessing officer for separately taxing the above income is unjustified in view of the fact that had

there been a bad debt arising out of the sale made by the assessee prior to the tonnage tax regime would have been allowed to the assessee as a deduction separately or not. Clear-cut answer is no. Therefore similarly, the bad debts of earlier if written back during the year cannot also be taxed when the income of the assessee is required to be computed under the tonnage tax scheme. As claimed by assessee, issue is covered in favour of assessee by earlier decision; however, we decide this issue based on clear provision of law itself. Accordingly we do not find any infirmity in the direction of the learned dispute resolution panel directing the AO to not to include the bad debts written back and insurance claim received separately as income of the assessee. Accordingly, ground number 1 and 2 of the appeal of the AO are dismissed.

068. As per ground number 3 of the AO Coming to the appeal of the learned assessing officer wherein the learned AO has challenged the direction of the learned dispute resolution panel of not taxing the forfeiture of the warrants under section 41 (1) of the act. The facts shows that Out of the 5005000 warrants allotted on August 09, 2007 to certain Promoters and Non Executive Directors on preferential basis, 10000 warrants were converted into Equity Shares at the predetermined price of Rs. 312.75. The balance 4995000 warrants, which were not converted due to unfavourable market conditions, stood cancelled at the expiry of the 18 months period. As per the terms of the issue, the amount of Rs. 1598.40 lakhs being the amount

received upfront from the warrant holders @ Rs. 32 per warrant stood forfeited. In the capital reserve, amounts of warrant forfeited were shown. The AO treated it as income invoking the provisions of section 41 (1) and section 28 (iv) of the act. The learned dispute resolution panel directed the learned AO to not to tax the above amount.

069. On careful consideration of the rival contention, the orders of the learned AO and the direction of the learned dispute resolution we do not find any infirmity in the order of the learned dispute resolution panel in directing the learned assessing officer to not to tax the above amount under section 41 (1) and section 28 (iv) of the act. The fact shows that assessee Company had on August 09, 2007, allotted 50,05,000 convertible warrants to certain Promoters and Non Executive Directors, pursuant to the resolution passed by the shareholders at their meeting held on July 26, 2007, at a price of Rs. 312.75 per share. Each warrant was convertible into one Equity Share of the face value of Rs. 10/-, at the option of the warrant holders, at any time prior to expiry of 18 months from the date of allotment of the warrants. Out of the 50,05,000 warrants, 10,000 warrants were converted into Equity Shares. Due to the unfavorable market conditions, which did not justify conversion of warrants, the balance 49,95,000 warrants were not converted. Accordingly the said warrants stood cancelled and the amount of Rs. 1598 lakhs being

the amount received upfront from the warrant holders @ Rs. 32/- has been forfeited and credited to capital reserve. The issue is squarely covered in favour of the assessee by the decision of the honourable Supreme Court in case of CIT versus Mahindra and Mahindra Ltd 93 taxmann.com 32 (SC). Thus, we do not find any infirmity in the direction of the learned dispute resolution panel. Accordingly, ground number 3 of the appeal of the learned AO is dismissed.

070. In the result, appeal filed by the learned assessing officer is dismissed.

071. Thus, cross appeals for assessment year 2009 – 10 are disposed of as above.

Order pronounced in the open court on 13.09. 2023.

Sd/-	Sd/-
(MS. KAVITHA RAJAGOPAL)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 13.09. 2023
Sudip Sarkar, Sr.PS/ Dragon
Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai