आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./**IT(TP)A Nos.: 21/Chny/2022 & 40/Chny/2022**
निर्धारण वर्ष / Assessment Years: 2017-18 & 2018-19

M/s. Aban Offshore Limited, 113, Janpriya Crestpantheon Road, Egmore, Chennai – 600 008. **[PAN: AAACA-3012-H]**	v.	Deputy Commissioner of Income Tax, TPO Circle -1(1), Chennai.

आयकर अपील सं./**ITA Nos.: 797 & 798/Chny/2020**
निर्धारण वर्ष / Assessment Years: 2011-12

&

आयकर अपील सं./**ITA No.: 2757/Chny/2017**
निर्धारण वर्ष / Assessment Year: 2013-14

M/s. Aban Offshore Limited, 113, Janpriya Crestpantheon Road, Egmore, Chennai – 600 008. **[PAN: AAACA-3012-H]**	v.	Deputy Commissioner of Income Tax, Corporate Circle -1(1), Chennai.

आयकर अपील सं./**ITA No.: 1672/Chny/2019**
निर्धारण वर्ष / Assessment Year: 2013-14

Deputy Commissioner of Income Tax, Corporate Circle -1(1), Chennai. (अपीलार्थी/Appellant)	v.	M/s. Aban Offshore Limited, 113, Janpriya Crestpantheon Road, Egmore, Chennai – 600 008. **[PAN: AAACA-3012-H]** (प्रत्यर्थी/Respondent)

Assessee by : Shri. P. Murali Mohana Rao, CA
Department by : Shri. A. Sasikumar, CIT

सुनवाई की तारीख/Date of Hearing : 27.09.2023
घोषणा की तारीख/Date of Pronouncement : 08.11.2023

आदेश /O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This bunch of five appeals filed by the assessee and one appeal filed by the revenue are directed against separate but identical orders passed by the learned Commissioner of Income Tax (Appeals)-1, Chennai/NFAC, Delhi, dated 18.09.2020, 30.09.2019 & 22.03.2019 & 29.09.2021 for assessment years 2011-12 & 2013-14 . The assessee had also filed appeals against final assessment order passed by the Assessing Officer dated 28.02.2022 & 18.07.2022, in pursuant to directions of the learned DRP-2, Bengaluru, issued u/s. 144C(5) for assessment year 2017-18 & 2018-19. Since, facts are identical and issues are common for the sake of convenience, the appeals filed by the assessee and revenue are heard together and are being disposed off, by this consolidated order.

ITA No: 798/Chny/2020 for AY 2011-12:

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

Sl. No.	Grounds of Appeal	Tax Effect
1.	The order u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.09.2019 passed by the Commissioner of Income Tax (A)-1, Chennai (hereinafter referred to as 'the Ld.	General Ground

	CIT (A)) is erroneous both on facts and in law.	
2.	The Ld. CIT (A) erred in not quashing the reassessment proceedings u/s 147 of the Income Tax Act without there being any tangible material on record to come to conclusion that there is escapement of income.	Technical Ground
3.	The Ld. CIT (A) ought to have appreciated the fact that the issues under consideration were reopened by A.O. merely on change of opinion and further were already verified during original scrutiny proceedings.	Technical Ground
4.	The Ld. CIT (A) ought to have appreciated the fact that the issues raised and examined during the reassessment proceedings have been examined and answered through the queries raised in the notice u/s 143 2.	Technical Ground
5.	The Ld. CIT (A) ought to have appreciated the fact that the issuance of notice by AO u/s 148 of the Act after an expiry of four years without recording the satisfaction as required under first provision of section 147 of the Act, is bad in law.	Technical Ground
6.	The Ld. CIT(A) ought to have appreciated the fact that reopening assessment beyond a period of 4 years from the end of the relevant assessment year is invalid as there is no failure on part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment year.	Technical Ground
7.	The Ld. CIT (A) ought to have appreciated the fact that the reassessment proceedings cannot be initiated merely on the basis of Audit objection.	Technical Ground
8.	The Ld. CIT (A) erred in reopening the assessment of assessee u/s 147 of the Act without there being any new tangible material on record to come to conclusion that there is escapement of income.	Technical Ground
9.	The Ld. CIT (A) erred in not deleting the addition made by the AO u/s 37(1) of the Act claimed towards Fluctuation in Foreign Currency Exchange Rate Rs. 50,02,70,902/-	Rs. 16,61,77,507/
10.	The Ld. CIT (A) ought to have appreciated the fact that entire expenditure was claimed towards the fluctuation in foreign currency exchange rate for revenue items and not towards capital items.	Rs. 16,61,77,507/
11.	The Ld. CIT (A) ought to have appreciated the fact that entire details were submitted before the AO during the original scrutiny proceedings.	Rs. 16,61,77,507/-
12.	The Ld. CIT (A) ought to have appreciated the fact that in case of capital account transactions not covered under the provisions of Section 43A of the Act and of monetary items, the exchange loss and gains due to fluctuation in exchange rates are to be treated as per the applicable GAAP principles.	Rs. 16,61,77,507/-

13.	The Ld. CIT (A) ought to have appreciated the fact that as per the GAAP principles read along with Revised AS-11 the transactions in the nature of monetary items and are of capital nature not covered under the provisions of Section 43A are of revenue in nature and corresponding effect of exchange differences are to be accorded in the Profit & Loss Account.	Rs. 16,61,77,507/-
14.	The Ld. CIT (A) ought to appreciate the fact that the method followed by the assessee being based on guidance (Accounting Standards) issued by the ICAI, is very scientific, approved and considered very aspect of the transaction and is being followed on consistent basis.	Rs. 16,61,77,507/
15.	The Ld. CIT (A) ought to have appreciated the fact that the exchange difference has been accounted as per the rules of GAAP which enunciates it to be an allowable expenditure u/s 37(1) of the Act.	Rs. 16,61,77,507/
16.	The AO without verifying the submissions and legal position passed the order should be set-aside to the AO.	Rs. 16,61,77,507/
17.	The Appellant may add, alter or modify any other points to the grounds of appeal at any time before or at the time of hearing of the appeal.	General Ground

3. The brief facts of the case are that, the assessee is a Public Ltd Company, engaged in the business of offshore drilling and production services to companies engaged in exploration, development of oil and gas, both in domestic and international markets. The assessee has filed its return of income for the assessment year 2011-12 on 17.11.2011, admitting total income of Rs. 394,58,55,198/-. The assessment has been completed u/s. 143(3) r.w.s. 144C of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 21.01.2016 and the income was assessed at Rs. 753,75,07,335/-. The case has

been, subsequently reopened u/s. 147 of the Act and the assessment has been completed u/s. 143(3) r.w.s. 147 of the Act on 26.12.2018, and determined total income in the re-assessment was at Rs. 455,28,83,672/-, after disallowing Rs. 8,61,33,985/- u/s. 40(a)(ia) of the Act towards payment made outside India without TDS to M/s. Haledon International Corporation and Rs. 50,02,70,902/- u/s. 37(1) of the Act, on account of disallowance of foreign exchange loss. The assessee preferred an appeal before the ld. CIT(A). The ld. CIT(A) for the reasons stated in their appellate order dated 30.09.2019, partly allowed appeal filed by the assessee, where the ld. CIT(A) deleted additions made towards payment made to non-resident u/s. 40(a)(ia) of the Act for non-deduction of TDS u/s. 195 of the Act. However, confirmed additions made by the Assessing Officer towards disallowance of foreign exchange loss u/s. 37(1) of the Act. Aggrieved by the ld. CIT(A) order, the assessee is in appeal before us.

4. At the outset, we find that there is a delay of 304 days in filing the appeal before the Tribunal, for which a petition for condonation of delay along with affidavit explaining reasons for

delay has been filed. The Ld. Counsel for the assessee, referring to petition filed by the assessee submitted that the CIT(A) order was issued on 30.09.2019 and ordinarily the appellant should have filed appeal on or before 28.11.2019, but the appeal has been filed on 28.09.2020 with a delay of 304 days. The reasons for delay in filing of appeal is neither wilfull nor for wanton of any undue benefit, but purely for reasons beyond control of the assessee. He further submitted that out of total delay of 304 days, 106 days delay is not covered by Covid period. The balance 198 days is covered by Covid period. The assessee could not file appeal because the Accountant who received the order of the ld. CIT(A) could not take up steps to file appeal in consultation with Counsel who represented the case before the Tribunal. However, immediately after noticed that the appeal has not been filed against CIT(A) order, steps has been taken to file appeal which resulted in delay of 304 days. Therefore, in the interest of justice, the delay in filing of appeal may be condoned.

4.1 The ld. DR, on the other hand opposing petition filed by the assessee filed a detailed written submission and argued that

the appellant has filed a false affidavit giving reasons which are totally incorrect, which is evident from the reasons given by the assessee for condonation of delay. The relevant submissions filed by the ld. DR are reproduced as under:

> *"The appellant company is a limited company, having its head office at Door No.113, Pantheon Road, Egmore, Janapriya Chest, Chennai — 600 008. In this case, the assessment was reopened u/s 147 of the IT Act, by issuing notice u/s 148 of the I T Act dated 31.03.2018. In response to the notice, the assessee filed its return of income and requested for the reasons for reopening the assessment. It was duly communicated to the assessee and the appellant filed its objection on the reopening. This objection was disposed in compliance with Apex court's decision in GKN Driveshaft. Later, the AGM, Finance, Sri Subramaniam appeared and filed written submissions. After perusal of the written submissions, assessment u/s 143(3) rws 147 of the IT Act was completed vide order dated 26.12.2018.*
>
> ***2. Filing of Appeal before CIT A :***
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> *Aggrieved against the order, the appellant filed an appeal before the CIT(A)-1, Chennai on 03.01.2019. It is to be mentioned here that this appeal was filed within a week's time. The CIT(A) upheld the reopening and also passed a speaking order on each addition/disallowance vide order dt.30.09.2019. Before CIT(A), Sri Murali Mohan Rao, AR had appeared. The CIT(A) concluded the appeal proceedings within eight months from the date of filing of appeal. Hence, it is evident that the appellant was very much aware of the re-assessment proceedings initiated and appeal proceedings before CIT(A).*
>
> ***3. Filing of appeal before ITAT:***
>
> *Perusal of Appeal Memo and Form No.36 revealed a fact that the appellant was in receipt of the order on 30.09.2019 itself. It was duly mentioned under the column "appeal details" at point no.3 of Form No.36 filed before the Hon'ble ITAT. However, in spite of receipt of order on 30.09.2019, the appellant company did not file the appeal within the statutory time limit prescribed in I T Act. As per Appeal Memo and form for verification, the appeal was filed only on 24.09.2020. In spite of filing the appeal with a delay of ten months (302 days), the appellant company did not bother to file petition for*

condonation of delay. Hence, Hon'ble ITAT issued defect memo to the appellant company vide its notice dated 06.01.2022.

4. Filing of affidavit by citing false reasons:

Upon receipt of this defect memo notice, the appellant company, after nearly 50 days from the date of defect memo filed an affidavit dated 24.02.2022 signed by the Director of the appellant company wherein, it was mentioned that due to covid-19 situation and complete lock down, the appeal was not filed on time. It was also mentioned in the affidavit that papers had been misplaced by one of the office staff. Both the reasons given in the affidavit are not valid reasons and they cannot be accepted on account of the following reasons:

a) The COVID-19 lock down was declared by the Government of India only on 23-03-2020. The appellant received the CIT(A) order on 30.09.2019 itself. This fact was duly recorded at point no.3 of the Appeal Memo in Form No.36. Hence the first reason that the appeal delayed due to COVID-19 was a false reason.

b) The second reason that the papers had been misplaced is also not found to be true that they were in receipt of the order of the CIT(A) on 30.09.2019 itself. What kind of paper were misplaced was not clearly mentioned in the affidavit filed after receipt of Defect Memo.

c) After receipt of the order of CIT A dated 30.09.2019 the AO passed giving effect order dated 01.02.2020. Aggrieved against this order the appellant duly filed before CIT(A) on 04.03.2020. If so, the reason given in the affidavit for the delay in filing the appeal before Hon'ble ITAT due to COVID-19 is blatantly a false reason.

d) The reason given in the affidavit filed on 24-02-2022 that the "appeal could not be filed in time as the papers had been misplaced by one of office staff and the same could not be traced out" cannot be a true and correct reason for the delay of 302 days.
When the appellant filed appeal before Hon'ble ITAT with a delay of 302 days, the basic requirement is filing of a petition for condonation of delay with true and genuine reasons for the delay. In the present case, the appellant did not bother to file petition for condonation of delay at the time of filing of appeal. Only after receipt of defect memo issued b Hon'ble ITAT the appellant filed a cryptic affidavit by giving false reasons in the affidavit that due to COVID-19 lock down the appeal was filed with a delay of 302 day. Such affidavit shall not be considered as true and correct reason for delay.

5. Relying on latest decisions of Hon'ble ITAT Chennai:

In view of the above, it is submitted that the reasons given by the appellant in their affidavit after receipt of Defect Memo is not a valid reason to admit this appeal. In this connection, some of the latest decisions of Hon'ble ITAT, Chennai are relied _ upon:

Sl. No.	*Name of the case*	*ITA No.*	*A.Y*	*Date of Order*
01	*Jumma Khan Pathar Nishar*	*983/Chny/2020*	*2013-14*	*23.05.2022*
02	*Senthil Murugan Jewellers Pvt. Ltd.*	*768/Chny/2020*	*2014-15*	*14.12.2022*
03	*Preeti Madhok*	*752/Chny/2020*	*2014-15*	*17.06.2022*

In all the above decisions, Hon'ble ITAT, Chennai did not accept casual approach of assessee in filing the appeal with undue delay and furnishing false reasons in the affidavit for condonation of such delay. All these cases are squarely applicable to the facts and circumstances of the present case. Hence, it is prayed that the appeal may kindly be dismissed."

4.2 We have heard both the parties and considered relevant condonation petition filed by the assessee and also considered detailed written submission filed by the ld. DR. Having heard both the sides, we find that out of total delay of 304 days, 198 days delay is covered under Covid period, which is further covered under general exemption provided by the Hon'ble Supreme Court in MA No. 665/2021. For balance delay of 106 days, the assessee has explained the reasons for delay in filing of appeal. In our considered view, the reasons given by the assessee for not filing an appeal within the due date prescribed under the Act, comes under reasonable cause and thus, we

condone delay in filing of the appeal and admit appeal filed by the assessee for hearing.

5. The Ld. Counsel for the assessee, submitted that the only issue involved in this appeal filed by the assessee is disallowance of foreign exchange loss debited into profit & loss account u/s. 37(1) of the Act. The ld. Assessing Officer has disallowed forex loss incurred on various accounts including loans taken in foreign currency for the purpose of business of the assessee, on the ground that said forex loss relating to loan borrowed for the purpose of acquisition of fixed asset and thus, should be capitalized and cannot be allowed as revenue expenditure deductable u/s. 37(1) of the Act. The Assessing Officer, further, opined that the assessee has failed to furnish necessary evidences to prove forex loss is on account of revenue expenditure.

5.1 The Ld. Counsel for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT, Chennai Benches in assessee's own case for assessment year 2010-11 in ITA NO. 3063/Chny/2019, where

the Tribunal under identical set of facts set aside the issue to the file of the Assessing Officer for further verification to ascertain nature of forex loss incurred by the assessee and give appropriate treatment in light of provisions of section 43A of the Act and thus, for the impugned assessment year also, the issue may be set aside to the file of the Assessing Officer.

5.2 The ld. DR, Shri. A. Sasi Kumar, CIT, on the other hand supporting order of the ld. CIT(A) submitted that first of all, the assessee could not file necessary evidence including details of loans and advances borrowed in foreign currency to prove forex loss debited into profit & loss account is on account of revenue expenditure and the same is not relatable to loss/liability on account of acquisition of fixed assets. The ld. CIT(A), after considering relevant facts has rightly sustained additions made by the Assessing Officer and their order should be upheld.

5.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Assessing Officer disallowed forex loss mainly on the ground that said loss is on account of fluctuation in foreign

currency loan/liabilities borrowed for the purpose of acquisition of capital assets. It was the argument of the assessee before the lower authorities that forex loss/liabilities is of revenue account used for working capital purpose of the assessee and same is on account of revenue, and needs to be allowed as deduction u/s. 37(1) of the Act. We find that a similar issue has been considered by the coordinate bench of ITAT in assessee's own case for assessment year 2010-11 in ITA No. 3063/Chny/2019, where the Tribunal under identical set of facts, the issue has been set aside to the file of the Assessing Officer for further verification. Therefore, consistent with the view taken by the coordinate bench, we set aside the order passed by the ld. CIT(A) and restore the issue back to the file of the Assessing Officer and direct the Assessing Officer to reexamine the claim of the assessee and decide the issue in light of our reasons given in assessee's own case for assessment year 2010-11.

5.4 In the result, appeal filed by the assessee in ITA No. 798/Chny/2020 for assessment year 2011-12 is treated as allowed for statistical purposes.

ITA NO: 797/Chny/2020 for assessment year 2011-12:

6. The issue involved in this appeal filed by the assessee is similar to the issue which we have discussed in ITA No. 798/Chny/2020 for assessment year 2011-12. The assessee has filed appeal against order of the ld. CIT(A) dated 18.09.2020, where the ld. CIT(A) has dismissed appeal filed by the assessee, without condoning the delay, however, not discussed the issues on merits. The assessee has challenged the order of the ld. CIT(A) before the Tribunal on merits. The sole issue that came up for our consideration from this appeal is additions towards forex loss. Initially, the ld. CIT(A) vide order dated 13.09.2019 set aside the issue of disallowance of forex loss to the file of the Assessing Officer to ascertain the nature of forex loss, whether it is pertains to capital account or revenue account. Thereafter, in the consequent assessment proceedings in pursuant to the directions of the DRP, the Assessing Officer reiterated his observations with regard to disallowance of forex loss u/s. 37(1) of the Act and made additions on the ground that the assessee could not file requisite details as directed by the ld. CIT(A). The assessee challenged the order giving effect to CIT(A) order passed by the Assessing Officer dated

01.02.2020, before the CIT(A) on 04.03.2020, with a delay of three days. The ld. CIT(A) dismissed appeal filed by the assessee un-admitted on the ground that the assessee did not file affidavit in support of the reasons stated for delay in filing of appeal. The assessee has filed appeal against ld. CIT(A) order and challenged additions made towards disallowance of forex loss u/s. 37(1) of the Act. Thereafter, the assessee had filed one more appeal against CIT(A) order dated 30.09.2019, which has been numbered as ITA 798/Chny/2020. The Tribunal has disposed off, appeal filed by the assessee in ITA No. 798/Chny/2020 for assessment year 2011-12 and decided the issue of disallowance of forex loss u/s. 37(1) of the Act and restore the issue back to the file of the Assessing Officer. Since, the issue involved in appeal filed by the assessee is disallowance of forex loss u/s. 37(1) of the Act and further, the very same issue has been decided by the Tribunal in ITA No. 798/Chny/2020 and set aside the issue to the file of the Assessing Officer for further verification, in our considered view, this appeal filed by the assessee on very same issue becomes infructuous and thus, we dismiss appeal filed by the assessee in

ITA No. 797/Chny/2020 for assessment year 2011-12 as infructuous.

6.1 In the result, appeal filed by the assessee in ITA No. 797/Chny/2020 is dismissed as infructuous.

ITA No:2757/Chny/2017 for assessment year 2013-14:

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

"1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.

2. The learned CIT(A) erred in holding that the investment made by the assessee to M/s Aban Holding Pte Ltd., Singapore (wholly owned subsidiary), for maintaining controlling interest, is for the purpose of business.

3. The learned CIT(A) failed to appreciate the fact that the assessee, M/s Aban Offshore Ltd. is in the business of providing drilling & energy oriented services whereas M/s Aban Holdings Pte Ltd. is in the business of investment in other foreign companies, hence it cannot provide any help in expanding or managing assessee's business being not engaged in same line of assessee's business.

4. The Learned CIT(A) erred in allowing the assessee's appeal in light of the decision of Hon'ble Mumbai High Court in the case of Crescent Organics (P.) Ltd. vs. DCIT (IT Appeal No.337 of 2012) dated 30 July, 2014 wherein it has been held that interest paid on borrowals utilized for investments in a foreign company was not in course of assessee's business, its claim for deduction under section 36(1)(iii) was to be rejected.

5. The Learned CIT(A) failed to appreciate the fact that the assessee is not availing/providing any significant services apart from funding with M/s Aban Holding Pte Ltd., Singapore oriented related parties, hence, no significant correlation can be established in ease or expansion of assessee's business and investment made in M/s Aban Holding Pte Ltd., Singapore, as seen from year on year related party disclosure (Annexure 1), Consolidated & Standalone financials (Annexure 2 & 3).

6. The Learned CIT(A) failed to appreciate the fact that it can never be legislature's intention to allow interest expense of assessee for funding a foreign company which ultimately benefit only the foreign company that is taxable only in foreign country, in absence of any availed / provided service with the assessee.

7. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

Each of the grounds of appeal is mutually exclusive of, independent and without prejudice to other.

Based on the facts and the circumstances of the case and in law, the learned Assessing officer, learned Transfer Pricing Officer and the Honourable Dispute Resolution Panel - Transfer Pricing Matters

1. Erred in making ALP addition of Rs. 25,78,18,040/towards Corporate Guarantee fee @ 1% on guarantee given on behalf of Aban Holdings Pte Limited of Rs.2570,60,30,960/for credit granted by banks.

a. Erred in upholding the adjustment on account of corporate guarantee of Rs. 25,78,18,040/without appreciating that corporate guarantee is outside the purview of transfer pricing as per the provisions of the Act read with the rules.

b. Erred in not appreciating the fact that the appellant provided the corporate guarantee for its own investment and benefit, as a parental act/ obligation to its then newly created AEs and was a procedural compliance for availing the loan.

c. Erred in not appreciating the fact that when two divergent views are possible, the view which is favourable to assessee should be adopted.

d. Erred in not appreciating the fact that the Corporate Guarantee was on account of commercial expediency as such does not have any bearing on the profits/income of the Appellant/ AE.

e. Erred in not appreciating the fact that provision of corporate guarantee is a shareholder function and for furtherance of appellant's global expansion of business.

f. Erred in not appreciating the fact that the Credit rating of the AE's would be not less than the credit rating of the assessee; the credit facilities are sanctioned by the banker based on the financial stability and credit rating of the associated enterprise.

g. Erred in confirming the action of the AO/TPO in not appreciating the fact that the AE has not received any benefit in the form of lower interest rate by virtue of the corporate guarantee given by the taxpayer, and that the taxpayer has not been benefited monetarily from such transaction. Hence, no ALP adjustment is warranted in this regard.

h. Erred in confirming the action of the AO/TPO in calculating the ALP of the corporate guarantee fee using 'CUP' as the most appropriate method without complying with the procedure laid down for computation of arms length price as given in the provisions of section 92C of the Act.

i. Erred in not appreciating the fact that the TPO has erred in comparing the domestic bank rate with the international transaction which is not in accordance with Rule10B(1) of the Income Tax Rules, 1962.

j. Erred in not appreciating the fact that the comparison should be based on real transactions of similar nature and it cannot be based on the hypothesis as to what would have happened if the assessee was to have similar transactions with Non AEs.

k. Without prejudice to the other grounds, the AO/DRP/TPO erred in applying the rate of 1% as the rate for calculation of the guarantee fee without any basis.

l. Without prejudice to the other grounds, the AO/DRP/TPO erred in calculating the corporate guarantee for the whole year and not restricting the same to relevant period and for the utilised amount.

Corporate Tax Matters

1. Disallowance of interest 5s 361 iii of the Act of Rs.3 22 86 80 000 -:

a. Erred in disallowing interest expenditure of Rs. 3,22,86,80,000/without following the DRP directions, wherein it has directed to follow the honourable ITAT order of the assessee's own case for the AY 2010-11 & AY 2011-12 in ITA No.585/Mds/2016.

b. Erred in disallowing the interest expenditure of Rs. 3,22,86,80,000/on mere suspicion and presumptions, without proper appreciation of the fact that the said loan on which interest expenditure claimed is sanctioned and utilized for specified business purposes.

c. Ought to have appreciated the fact that in standard business practices, the loan taken for business purpose should

have a charge on the assets of the company. In the instant case, there exists first and second pari-passu charge on drilling rigs, drillship and other accessories used to carry out the regular business indicating that the loan taken is for business purposes.

d. Erred in ignoring the fact that the investment in its foreign subsidiary, M/s. Aban Holdings Pte Ltd, Singapore is purely for commercial expediency, it being a part of expanding its off-shore activity outside India, thereby complementing and supplementing the assessee's own business interests.

e. Ought to have appreciated the fact that the objects of M/s. Aban Offshore Ltd and its 100% subsidiary M/s. Aban Holdings Pte Ltd, Singapore are the same and parallel to each other as per the Memorandum of Association of both the companies.

f. Erred in not appreciating the fact that interest earned during the last financial years from. the loan advanced to its subsidiary were offered to Income tax and the dividend earned thereon on subsequent conversion of loan to investment is also taxable in the hands of the assessee company.

g. Ought to have appreciated the fact that the AO has not brought any cogent material on record to show that the assessee company has not utilized the proceeds of the said loan for business purpose.

h. Without prejudice to the above grounds, the expenditure incurred towards interest is allowable u/s 37(1) of the Act as it is incurred wholly and exclusively for the purposes of business.

i. Without prejudice to the above grounds, even if it is not allowed as a business expenditure, then interest expenditure incurred to make investments in subsidiaries is allowed u/s 57(iii) of the Act.

2. Disallowance' s14A of the Act of Rs.2,08,475/–

a. Erred in disallowing interest expenditure of Rs. 2,08,475/without following DRP directions wherein it has directed to follow the honourable ITAT's order in the assessee's own case for the AY 2010-11 & AY 2011-12 in ITA No.585/Mds/2016.

b. Ought to have appreciated the fact that the investment is made out of assessee's own fund in view of business expediency and for which purpose section 14A cannot be invoked.

c. Erred in not bringing any cogent material on record to show the nexus between the interest bearing funds being utilized to make the investments in Mutual funds.

d. Ought to have appreciated that the term loan on which interest expenditure is incurred has been sanctioned by the bank to be utilized for a specific business purpose.

c. Without prejudice, ought to have appreciated the fact that while calculating disallowance u/s Rule 8D, only those investments can be taken which gives rise to exempt income.

3. Disallowance u/s 40(a)(i) of Rs.20,66,05,099/-

a. Erred in disallowing certain expenses pertaining to Management Fees & Consultancy Charges amounting to Rs. 20,66,05,099/which were paid to various service providers who are non-residents in relation to services provided in connection with business interests & operations that exist completely outside India.

b. Erred in additionally observing that the payments of Rs. 6,79,48,334/and Rs. 5,08,44,167/made to M/s. Haledon International Corporation and M/s. Hester Development Inc were unverifiable and disallowing the same u/s 37(1) of the Act.

c. Ought to have appreciated that M/s Haledon International Corporation is incorporated in Dubai and M/s. Hester Development Inc is incorporated in USA, the companies does not have any place of business or any Business Connection or any permanent establishments in India.

d. Ought to have appreciated that as per Article 7 of the DTAA between India and UAE it is clear that the business income of the Dubai based company is chargeable to tax in Dubai and not in India.

e. Ought to have appreciated that as per Article 7 of the DTAA between India and USA it is clear that the business income of a USA based company is chargeable to tax in USA and not in India.

f. Ought to have appreciated that as per the provisions of Section 195, part of a sum paid to a non-resident will be income chargeable in India. Since payments to Dubai and USA Companies are not chargeable to tax in India, assessee has not deducted withholding tax.

g. Ought to have appreciated that the assessee company has made payments for amount of Rs. 8,78,12,598/towards legal

and professional fees for the services utilized in the business carried on outside India.

h. Ought to have appreciated that as these payments were for the services utilized in the business carried on outside India, these payments were not deemed to accrue or arise in India in view of provisions of sec.9(1)(vii)(b) of the ITA.

i. Ought to have appreciated that explanation to sec.9(1)(vii) will not apply to the payments of Rs. 8,78,12,598/as the entire nature of services and activities availed by the assessee comes within the realm of 'professional services' and not within the meaning of 'FTS' as provided in explanation to the Section 9(1)(vii).

j. Ought to have appreciated the fact that the entire amount of Rs. 20,66,05,099/was made outside India for the services rendered outside India and utilized outside India and therefore are not taxable u/s 9(i)(vii) of the Act.

k. Erred in making disallowance u/s.40(a)(i) of the Act of Rs. 20,66,05,099/- without appreciating the decision of the honourable ITAT order in the assessee's own case for the AY 2012 13 in ITA No.450/Mds/2017.

l. Without prejudice to above grounds, ought to have appreciated that the assessee is not "an assessee in default" as defined u/s.201(1) of the Act and when no order u/s.201(1) of the Act is passed, disallowance u/s.40(a)(i) of the Act cannot be made.

The appellant company is a limited company, having its head office at Door No.113, Pantheon Road, Egmore, Janapriya Chest, Chennai — 600 008. In this case, the assessment was reopened u/s 147 of the IT Act, by issuing notice u/s 148 of the I T Act dated 31.03.2018. In response to the notice, the assessee filed its return of income and requested for the reasons for reopening the assessment. It was duly communicated to the assessee and the appellant filed its objection on the reopening. This objection was disposed in compliance with Apex court's decision in GKN Driveshaft. Later, the AGM, Finance, Sri Subramaniam appeared and filed written submissions. After perusal of the written submissions, assessment u/s 143(3) rws 147 of the IT Act was completed vide order dated 26.12.2018.

2. <u>Filing of Appeal before CIT A :</u>

Aggrieved against the order, the appellant filed an appeal before the CIT(A)-1, Chennai on 03.01.2019. It is to be mentioned here that this appeal was filed within a week's time. The CIT(A) upheld the reopening and also passed a speaking

order on each addition/disallowance vide order dt.30.09.2019. Before CIT(A), Sri Murali Mohan Rao, AR had appeared. The CIT(A) concluded the appeal proceedings within eight months from the date of filing of appeal. Hence, it is evident that the appellant was very much aware of the re-assessment proceedings initiated and appeal proceedings before CIT(A).

3. Filing of appeal before ITAT:

Perusal of Appeal Memo and Form No.36 revealed a fact that the appellant was in receipt of the order on 30.09.2019 itself. It was duly mentioned under the column "appeal details" at point no.3 of Form No.36 filed before the Hon'ble ITAT. However, in spite of receipt of order on 30.09.2019, the appellant company did not file the appeal within the statutory time limit prescribed in I T Act. As per Appeal Memo and form for verification, the appeal was filed only on 24.09.2020. In spite of filing the appeal with a delay of ten months (302 days), the appellant company did not bother to file petition for condonation of delay. Hence, Hon'ble ITAT issued defect memo to the appellant company vide its notice dated 06.01.2022.

4. Filing of affidavit by citing false reasons:

Upon receipt of this defect memo notice, the appellant company, after nearly 50 days from the date of defect memo filed an affidavit dated 24.02.2022 signed by the Director of the appellant company wherein, it was mentioned that due to covid-19 situation and complete lock down, the appeal was not filed on time. It was also mentioned in the affidavit that papers had been misplaced by one of the office staff. Both the reasons given in the affidavit are not valid reasons and they cannot be accepted on account of the following reasons:

a) The COVID-19 lock down was declared by the Government of India only on 23-03-2020. The appellant received the CIT(A) order on 30.09.2019 itself. This fact was duly recorded at point no.3 of the Appeal Memo in Form No.36. Hence the first reason that the appeal delayed due to COVID-19 was a false reason.

b) The second reason that the papers had been misplaced is also not found to be true that they were in receipt of the order of the CIT(A) on 30.09.2019 itself. What kind of paper were misplaced was not clearly mentioned in the affidavit filed after receipt of Defect Memo.

c) After receipt of the order of CIT A dated 30.09.2019 the AO passed giving effect order dated 01.02.2020. Aggrieved against this order the appellant duly filed before CIT(A) on 04.03.2020. If so, the reason given in the affidavit for the

delay in filing the appeal before Hon'ble ITAT due to COVID-19 is blatantly a false reason.

d) The reason given in the affidavit filed on 24-02-2022 that the "appeal could not be filed in time as the papers had been misplaced by one of office staff and the same could not be traced out" cannot be a true and correct reason for the delay of 302 days.

When the appellant filed appeal before Hon'ble ITAT with a delay of 302 days, the basic requirement is filing of a petition for condonation of delay with true and genuine reasons for the delay. In the present case, the appellant did not bother to file petition for condonation of delay at the time of filing of appeal. Only after receipt of defect memo issued b Hon'ble ITAT the appellant filed a cryptic affidavit by giving false reasons in the affidavit that due to COVID-19 lock down the appeal was filed with a delay of 302 day. Such affidavit shall not be considered as true and correct reason for delay.

5. Relying on latest decisions of Hon'ble ITAT Chennai:
In view of the above, it is submitted that the reasons given by the appellant in their affidavit after receipt of Defect Memo is not a valid reason to admit this appeal. In this connection, some of the latest decisions of Hon'ble ITAT, Chennai are relied _ upon:

Sl. No.	*Name of the case*	*ITA No.*	*A.Y*	*Date of Order*
01	*Jumma Khan Pathar Nishar*	*983/Chny/2020*	*2013-14*	*2305.2022*
02	*Senthil Murugan Jewellers Pvt. Ltd.*	*768/Chny/2020*	*2014-15*	*14.12.2022*
03	*Preeti Madhok*	*752/Chny/2020*	*2014-15*	*17.06.2022*

In all the above decisions, Hon'ble ITAT, Chennai did not accept casual approach of assessee in filing the appeal with undue delay and furnishing false reasons in the affidavit for condonation of such delay. All these cases are squarely applicable to the facts and circumstances of the present case. Hence, it is prayed that the appeal may kindly be dismissed.

8. The first issue that came up for our consideration from assessee appeal is Transfer Pricing adjustment towards

corporate guarantee fees amounting to Rs. 25,78,18,040/-. The AO has made TP adjustment of Rs. 25,78,18,040/- towards corporate guarantee fee @ 1% of total corporate guarantee outstanding at the end of the year amounting to Rs. 2570,60,30,960/- on the ground that corporate guarantee given by the assessee to their AEs, is an international transaction, which needs to be bench marked to determine the ALP of the transaction. It was the submission of the assessee before the TPO that, corporate guarantee given to their AEs is not resulting into any quantifiable benefit to the AEs. Therefore, the same cannot be considered as international transaction to bench mark the ALP of the transaction.

8.1 The Ld. Counsel for the assessee, at the time of hearing submitted that this issue is squarely covered in favor of the assessee by the decision of ITAT, Chennai Benches in assessee's own case for assessment year 2016-17 in IT(TP)A No. 30/Chny/2021, where the issue of addition towards corporate guarantee fees has been decided by the Tribunal and by following the decision of Hon'ble Bombay High Court in the case of CIT vs Everest Kento Cylinders Ltd [2015] reported in

58 Taxmann.com 254, has directed the TPO to compute corporate guarantee commission @ 0.5% on total corporate guarantee given by the appellant to their AE.

8.2 The ld. DR, on the other hand supporting the order of the ld. DRP submitted that, although the issue is covered in favour of the assessee by the decision of ITAT, Chennai benches for earlier assessment year, but fact remains that Assessing Officer/TPO has given valid reasons for computing corporate guarantee commission at 1% of total corporate guarantee. Therefore, he submitted that the issue may be decided in accordance with law.

8.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. An identical issue has been considered by the tribunal in assessee's own case for earlier assessment year and by, considering relevant facts and also by following the decision of Hon'ble Bombay High Court in the case of CIT vs Everest Kento Cylinders Ltd (Supra), directed the TPO to compute corporate guarantee commission @ 0.5% to total corporate guarantee

given by the assessee to their AE. The relevant findings of the Tribunal are as under:

> ***"6.3*** *We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. In so far as the first arguments of the assessee that corporate guarantee* ***per se*** *is not an international transaction, we find that as per the definition of international transaction u/s.92B of the Act, the definition includes lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises. Therefore, from the definition of international transaction, which is very clear that the transaction of lending or borrowing also considered as international transaction. Since, corporate guarantee given to their AEs is in the nature of lending of money, which is having a bearing on the profit of the assessee, the same needs to be considered as international transaction and thus, we reject the arguments of the assessee on corporate guarantee* ***per se*** *is not an international transaction.*
>
> ***6.4*** *Having said so, when it comes to the rate, on which, such guarantee commission needs to be computed, we find that the co-ordinate Bench of the Tribunal in the assessee's own case for the AY 2015-16 had considered an identical issue and the Tribunal by following the decision of the Hon'ble Bombay High Court in the case of CIT v. Everest Kento Cylinders Ltd. [2015] reported in 58 taxmann.com 254, has directed the TPO to compute corporate guarantee commission @ 0.5% of total corporate guarantee given to their AEs and outstanding at the end of the relevant Financial Year. The relevant findings of the Tribunal are as under:*
>
> > *8. We have heard both the sides and considered the arguments and had gone through the orders of the lower authorities.*
> >
> > *9. In so far as the issue that whether Corporate Guarantee issued by the Assessee to its AEs comes within the definition of International Transaction or not? The Finance Act, 2012 has inserted, an explanation to Section 92B with retrospective effect from 1st April, 2002 to include the term guarantee within the definition of international transaction. Therefore, the Corporate Guarantee issued by an entity on behalf of its AEs is an international transaction as considered by the Bombay High Court in the case of the Commissioner of Income Tax Vs.*

Everest Kentor Cylinder Limited reported in [2015] 58 Taxmann.com 254 (Bom.). The Hon'ble High Court has considered the issue in the light of provision of Section 92B and explanation, to come to the conclusion that guarantee issued by an entity on behalf of its AEs, a SUBSIDIARY is international transaction. However, while benchmarking the rate of commission, no comparison can be made between guarantee issued by the commercial bank as against corporate guarantee issued by holding company for benefit for its AE subsidiary company for computing ALP of guarantee commission. The relevant observation of the Hon'ble Bombay High Court (supra) is reproduced as under:

> *"The adjustment made by the TPO was based on instances restricted to the commercial banks providing guarantees and did not contemplate the issue of corporate guarantee. No doubt, these are contracts of guarantee, however, when they are commercial banks that issue bank guarantees which are treated as the blood of commerce being easily encashable in the event of default and if the bank guarantee had to be obtained from commercial banks, the higher commission could have been justified. In the present case, it is assessee-company that is issuing corporate guarantee to the effect that if the subsidiary AE does not repay loan availed of it from ICICI, then in such event, the Assessee would make good the amount and repay the loan. The considerations which apply for issuance of a corporate guarantee are distinct and separate from that of bank guarantee are distinct and separate from that of bank guarantee and accordingly commission charged cannot be called in question, in the manner TPO has done. The comparison is not as between like transactions but the comparisons are between guarantees issued by the commercial banks as against a Corporate Guarantee issued by holding company for the benefit of its AE, a subsidiary company. In view of the above discussion, appeal does not raise any substantial question of law and it is dismissed."*

10. From the above decision of the Hon'ble Mumbai High Court, it is clear that Corporate Guarantee by an entity on behalf of its AEs a subsidiary company is an international transaction. However, while arriving at a rate, the Assessing Officer has taken comparables from commercial banks to at

arrive at mean margin of 1.04% and adopted such rate to determine the ALP of corporate guarantee issued by the Assessee. The Hon'ble Mumbai High Court has confirmed the order of the Tribunal wherein the Tribunal estimated the guarantee commission at the rate of 0.50%. We therefore by considering the facts and circumstances of the case, we are of the opinion that we will fix the guarantee commission at the rate of 0.50%.

6.5 *In this view of the matter and consistent with view taken by the co-ordinate Bench, we direct the AO/TPO to compute corporate guarantee fee @ 0.5% of total corporate guarantee given to their AEs."*

8.4 In this view of the matter and consistent with the view taken by the coordinate bench, we direct the TPO to compute corporate guarantee fee @ 0.5% on total corporate guarantee given by the appellant to its AE.

9. The next issue that came up for our consideration from assessee appeal is disallowance of interest expenditure u/s. 36(1)(iii) of the Act, amounting to Rs. 3,22,86,80,000/-. The Ld. Counsel for the assessee, submitted that this issue is also covered in favour of the assessee by the decision of ITAT, Chennai Benches in assessee's own case for assessment year 2016-17 in IT(TP)A No. 30/Chny/2021, where the Tribunal by following its earlier decisions for assessment years 2010-11 to 2012-13, has set aside the issue to the file of the Assessing

Officer and direct the Assessing Officer to verify the issue in accordance with the directions given by the Tribunal for the AY 2012-13.

9.1 The Ld. DR, on the other hand, supporting the order of the AO, submitted that the assessee has failed to make out a case of commercial expediency by bringing on record necessary evidences to prove that, what is the business advantage derived by the assessee by investing in equity capital of subsidiary company in Singapore. The Ld. DR further submitted that, the assessee had also failed to make out a case that investments made in Singapore Company will aid the business interest of the assessee. The Assessing Officer, after considering relevant facts has rightly disallowed interest expenses u/s.36(1)(iii) of the Act and his order should be upheld.

9.2 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that M/s. Aban Holdings Pvt. Ltd., Singapore, is a 100% subsidiary of Assessee Company. It was also not in dispute that the

assessee company and subsidiary companies are in the business of rendering services in connection with exploration of oil and gas. The assessee had owned rigs required for carrying out its business activity in the name of subsidiary company in Singapore, for the sole purpose of getting financial advantage by arranging funds required for acquiring rigs. The assessee has filed necessary evidences to prove that the investment made in subsidiary company is facilitated the subsidiary company to raise further capital from the Banks and Financial Institutions, to have a better debt equity ratio. We further noted that the assessee and the subsidiary company are in common business, having some business advantage in growing business in international market. Therefore, we are of the considered view that the assessee, as a businessman, has taken a prudent decision to make investments in subsidiary company to derive commercial advantage and thus, we are of the considered view that the AO as well as the DRP are erred in disallowing interest expenses u/s.36(1)(iii) of the Act, on loans and advances given to subsidiary company and also investment in equity share capital of subsidiary company.

9.3 We, further noted that this issue is squarely covered in favour of the assessee by the decision of the Tribunal in the assessee's own case for the AY 2012-13 in ITA No.450/Chny/2017 dated 19.06.2017, wherein, the Tribunal after considering the relevant facts and also, by following its earlier decision for the AYs 2010-11 & 2011-12, has set aside the issue to the file of the AO. The relevant findings of the Tribunal are as under:

"4. After hearing both the parties, we are of the opinion that the similar issue was considered by the Tribunal in assesse's own case in ITA Nos.585/Mds/2015 & 267/Mds/2016 for the assessment years 2010-11 and 2011-12 dated 14.9.2016 wherein Tribunal held that:-

31. We find that the reliance placed on by the ld. DR on the judgment of Madras High Court in the case of Trishul Investments (supra) is misplaced. The main contention of the ld. DR is that the interest expenditure on borrowings used for investment in wholly owned subsidiary cannot be allowed as deduction u/s.36(1)(iii) of the Act instead it should be added tothe cost of investment, in view of the above judgment of the Madras High Court. In our opinion, when activity is under taken as an investment activity and interest incurred up to the acquisition of the shares of subsidiary company could be considered as part of investment. Once it is acquired, then it will be a revenue expenditure. In the present case, it is an admitted fact that the wholly owned subsidiary company has already acquired shares and it is functioning.

31.2 In this case the assessee claimed the interest incurred on loan which was used for the purpose of purchase of shares as revenue expenditure, but it was not capitalized as part of the investment in shares. The contention of the DR was that it is to be added to the cost of the investment so as to increase the value of the capital asset.

31.3 In the present case, there is no dispute that the assessee has borrowed funds for the purpose of investment in shares and thereafter the assessee has incurred interest on it. In our opinion, the interest is to be considered as part of the cost of investment till date of acquisition and interest paid by the assessee commencing from the date of acquisition of shares till the date of sale would not form part of the cost of acquisition.

31.4 Further, it is a settled legal position that income of an assessee has to be computed under various heads specified under section 14 of the Act. Therefore, the deductions are to be allowed in computing the income under various heads only to the extent it is provided by the Legislature under that very heads. The computation of capital gain is provided in section 48 of the Act. According to this section, the only deductions which are allowable are - (1) the cost of acquisition of the asset, (2) the cost of any improvement thereto and (3) expenditure incurred wholly and exclusively in connection with the transfer of the asset. The cost of acquisition, in our opinion, means the amount paid for acquiring the asset. Once the asset is acquired, then any expenditure incurred thereafter cannot be considered as the cost of acquisition, since such expenditure would not have any nexus with the acquisition of the asset. Wherever the Legislature intended to allow such expenditure as deduction, it had specifically provided so under various heads. For example, in computing the income from house property, the assessee is allowed deduction under section 24 of the Act on account of interest paid on the borrowed funds utilized for acquiring the immovable property. Similarly, when the income is to be computed under the head "Profits and gains from business or profession", the deduction account of interest on borrowed fund is provided under section 36(1)(iii) the Act, where the business assets are acquired out of borrowed funds. At this stage, it may be pertinent to note that depreciation is also allowable as deduction under section 32 in respect of business assets on the cost of acquisition. In determining the cost of acquisition, the interest component after bringing the asset into existence is not taken into consideration as Explanation 8 to section 43 of the Act. If the interest is to be added to cost of acquisition, then the assessee would be entitled to double deduction once under section 36(1)(iii) and the other under section 32 of Act, which is not permissible in view of the decision of the Supreme Court in the case of Escorts Ltd. v. UOI[1993] 199 ITR 43.

31.6 Similarly, when the shares are purchased by way of investment, and the dividend is received in respect of such shares, the interest paid on borrowed funds has been held to be allowable as deduction against dividend income. The Supreme Court has gone a step further in the case of CIT vs. Rajendra Prasad Moody [1978] 115 ITR 519, wherein it has been held that deduction on account of interest paid on borrowed funds is allowable as deduction in computing the income under the head 'Income from other sources', even where the dividend is not received in a particular year. If this is the legal position, then we are afraid, how the interest paid by the assessee can be considered as part of the cost of acquisition of the shares. If the contention of the assessee is accepted then it would amount to allowing double deduction i.e., under section 57 as well as under section 48 of the Act, which can never be the intention of the Legislature. As already stated, the double deduction is prohibited as laid down by the Supreme Court in the case of Escorts Ltd. (supra). The entire scheme of the Act, therefore, reveals that interest component after the date of acquisition and till the date of sale cannot be treated as the cost of acquisition. It is only allowable as a revenue deduction on year to year basis against the income generated from such asset or likely to be generated to the extent provided by the Legislature under different heads.

31.6 The above view is also fortified by the decision of the coordinate Bench of the Tribunal in the case of Macintosh Finance Estates Ltd. vs. ACIT(12 SOT 324), wherein it has been held "once we find that interest expenses is an allowable expenditure under the head "Income from other sources", it cannot be allowed to be added to the cost of investment only because in this year no deduction is allowable because the dividend income has been made exempt''. The following observations of Supreme Court in the case of Saharanpur Electric Supply Co. Ltd vs. CIT (1992) 194 ITR 294 (SC) were relied on by the Court:-

> *''In case money is borrowed by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalized and added to the cost of the fixed assets''.*

31.7 A bare look at the above observations reveals that actual cost would include all expenditure necessary to bring the assets into existence and put them in working condition. Nowhere in the above observations, the Supreme Court held that the expenditure incurred after the acquisition of asset would be included in the cost of assets. The terminal point is the time when the asset is brought into existence or when the asset is put in a working condition. Therefore, on the basis of the Supreme Court judgment, it cannot be said that expenditure incurred after the asset brought into existence, i.e., after the acquisition of the asset would form part of the actual cost. The Supreme Court laid down the proposition that interest paid on monies borrowed for acquisition of capital asset and to meet expenses connected with its installation etc. and capitalized, has to be added to the cost of asset for the purpose of deprecation.

31.8 Thus in our opinion if the money was borrowed for purchase of shares of subsidiary company for the purpose of acquiring controlling interest and acquisition of such controlling interest was of the business of the assessee and it resulted in promote the business of the assessee as well as helpful to the assessee for having management control over said such subsidiary company, then the interest expenditure should be allowed u/s.36(1)(iii) of the Act. Further if the Assessing Officer found that investment in shares of subsidiary company not for maintaining controlling interest, then the Assessing Officer should see that there cannot be any disallowance in respect of investment of assessee's own fund. This is so because the borrowed funds and own funds are admittedly mixed up in such cases, the disallowance of interest has to be made on proportionate basis and benefit has to be given to the assessee towards investment of own fund. It is also to be noted that while computing disallowance if any u/s.36(1)(iii) of the Act, interest considered for disallowance u/s.14A of the Act was required to be excluded. With this observation, we restore the issue to the file of the Assessing Officer for fresh consideration after necessary examination and after allowing opportunity of hearing to the assessee. In the result, ITA No.585/Mds/2016 is partly allowed for statistical purpose.

5. Respectfully following the aforesaid order of the Tribunal we are inclined to remit the issue to the file of AO on similar direction. Further, we direct the AO to verify whether the investment is made in

subsidiary to have a controlling interest, or to avoid the dilution of controlling interest, or to keep the controlling interest intact as per object clause of Memorandum of Association of the assessee company and to decide thereupon. Hence, this ground is partly allowed for statistical purposes.

9.4 In this view of the matter and consistent with view taken by the co-ordinate Bench, we set aside the issue to the file of the AO and direct the AO to verify the issue in accordance with the directions given by the Tribunal for the AY 2012-13 and decide the issue for the impugned assessment year.

10. The next issue that came up for our consideration from grounds of appeal filed by the assessee is disallowance of professional and consultancy fee paid to non-residents u/s.40(a)(i) of the Act, for non-deduction of TDS u/s. 195 of the Act. The Assessing Officer, has disallowed payment made to certain non-resident service providers for rendering professional and consultancy services u/s.40(a)(i) of the Act, for non-deduction of TDS u/s.195 of the Act, on the ground that the payment made to non-residents are in the nature of fee for technical services as per the provisions of Sec.9(1)(vii) of the Act. It was the explanation of the assessee before the AO that, payment made to non-residents for rendering professional and

consultancy services, is for services rendered outside India. Since, the services were rendered outside India and the payments were also made outside India, said payment does not come under the definition of fee for technical services as per the provisions of Sec.9(1)(vii) of the Act.

10.1 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The Ld.AR for the assessee submitted that this issue is covered in favour of the assessee by the decision of the co-ordinate Bench in assessee's own case for the AY 2015-16 in IT(TP)A No.86/Chny/2019, wherein, the Tribunal by following its earlier order for the AY 2012-13, held that in order to bring the impugned payments under the definition of fee for technical services in light of the explanation inserted by the Finance Act with retrospective effect from 01.06.1976, the twin conditions of rendering services in India and utilization of such services in India, are necessary for deducting TDS on such payments. Since, the impugned payments are made outside India for rendering services is also outside India, the question of taxability of said payments in India in the hands of the service

provider does not arise and consequently, the assessee is not required to deduct TDS on said payments. We find that an identical issue had been considered by the Tribunal, in the assessee's own case for the AY 2015-16, wherein, the Tribunal by following its earlier decision for the AYs 2007-08 & 2012-13, held that the payment made by Branch Office of the assessee at Dubai to non-resident service provider does not come under the definition of fee for technical services and thus, remitted the matter back to the file of the AO to examine the issue afresh in light of our discussions and Article-7 of DTAA between India and UAE. The relevant findings of the Tribunal are as under:

> *"30. We have heard both the parties sides, perused the material available on record and gone through the orders of the authorities below.*
>
> *31. The similar issue has been considered by the Co-ordinate Bench of the Tribunal in assessee's own case for AY 2012-13 in ITA No.450/Mds/2017 dated 19.06.2017, wherein the Hon'ble Tribunal has remitted the matter back to the file of AO by observing as under:*
>
> > *"12. We have heard both the parties and perused the material on record. The Explanation incorporated in Section 9 declares that "where the income is deemed to accrue or arise in India under clause (v), (vi) and (vii) and sub-sec.(1), such income shall be included in the total income of the non-resident, whether or not be resident as a residence or place of business or business connection in India". The plain reading of the said provisions suggests that criterion of residence, place of business or business connection of a non-resident in India has been done away with for fastening the tax liability. However, the criteria of rendering service in*

India and the utilization of the service in India to attract tax liability u/s.9(i)(vii) remained untouched and unaffected by the Explanation to Section 9 of the Act and outside India. Therefore, the twin criterion of rendering of services in India and utilization of services in India become evidently necessary condition to deduct tax. However, in respect of the said payments, the rendering of services being purely off shore and outside India, the whatever paid towards the said services does not attract tax liability.

12.1 In view of the above, we are inclined to remit the issue to the file of the Assessing Officer to examine the issue afresh in the light of the above order along with the concerned DTAA and decide thereupon. The issue is partly allowed for statistical purposes."

32. In view of the above, we respectfully following the order of Co-ordinate Bench of the Tribunal, we set aside the order passed by the AO and remit the matter back to the AO and direct the AO to follow the above decision of the Co-ordinate Bench of the Tribunal in assessee's own case and pass assessment order thereupon."

10.2 In this view of the matter and consistent with view taken by the co-ordinate Bench, we set aside the issue to the file of the AO and direct the AO to follow the directions of the Tribunal given in the assessee's own case for the earlier assessment years and decide the issue for the impugned assessment year in accordance with law.

11. The next issue that came up for our consideration is disallowance u/s. 14A r.w.r. 8D of I.T. Rules, 1962. The assessee has earned dividend income from mutual funds/shares

and claimed the same as exempt u/s. 10(34) of the Act. The assessee has not made any disallowance of expenditure relatable to exempt income. The Assessing Officer, computed disallowance of expenditure relatable to exempt income u/s. 14A r.w.r. 8D of I.T. Rules, 1962 and determined total disallowance of Rs. 2,08,475/-.

11.1 The Ld. Counsel for the assessee, submitted that this issue is also covered in favour of the assessee by the decision of the ITAT Chennai Benches in assessee's own case for assessment years 2010-11 & 2011-12 in ITA No. 585/Mds/2016, where the Tribunal has directed the Assessing Officer to consider only those investments which yielded exempt income for the purpose of determination of disallowance u/s. 14A of the Act.

11.2 The ld. DR, on the other hand supporting the order of the ld. CIT(A) submitted that, although the assessee has earned exempt income, but did not made any disallowance of expenses relatable to exempt income. Thus, the Assessing Officer has

rightly invoked Rule 8D of I.T. Rules, 1962 and computed disallowance and their order should be upheld.

11.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for assessment year 2016-17 in IT(TP)A No. 30/Chny/2021, where the Tribunal held as under:

> ***"12.2*** *We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that there is no merit in the arguments of the assessee that it has sufficient own funds to make investments in shares/mutual funds which yielded exempt income, because, the AO has made disallowance under third limb of Rule 8D @ 0.5% of average value of investment in respect of other expenses, but not towards interest expensesunder the second limb of Rule 8D of Income Tax Rules, 1962. Therefore, the arguments of the assessee that it has sufficient own funds devoid of merits. As regards disallowance computed by the AO @ 0.5% of average value of investment, it is an admitted fact that the assessee has earned exempt income however, not made any* ***suo moto*** *disallowance of expenses in relation to exempt income, even though, the assessee has debited various expenses into the P&L A/c. It is logical to conclude that when the assessee has common expenses for taxable and exempt income, then the possibility of certain expenses attributable towards exempt income, cannot be ruled out. Therefore, we are of the considered view that there is no error in the reasons given by the AO to determine the disallowanceu/s.14A r.w.r.8D of Income Tax Rules. Further, the AO has considered only those investments, which yielded exempt income for the impugned assessment years. Therefore, we are of the considered view that there is no error in the findings given by*

the AO to make addition towards disallowance u/s.14A of the Act. Hence, we are inclined to uphold the findings of the lower authorities and reject the ground taken by the assessee."

11.4 In view of this matter and consistent with the view taken by the coordinate bench, we are inclined to uphold the findings of the ld. DRP and reject ground taken by the assessee.

12. The next issue that came up for our consideration from additional grounds filed by the assessee is not allowing credit for Dividend Distribution Tax (DDT). The Ld. Counsel for the assessee submitted that additional grounds filed by the assessee is purely legal issues, which can be taken at any time of the proceedings, including pending proceedings before the ITAT and thus, in view of the decision of Hon'ble Supreme Court in the case of National Thermal Power Co Ltd vs CIT [1998] 229 ITR 383 (SC), additional grounds filed by the assessee may be admitted.

12.1 The ld. DR, on the other hand opposing petition filed by the assessee argued that the assessee could not make out a case of facts with regard to additional grounds, which were

already on record before the Assessing Officer and thus, additional grounds filed by the assessee may be rejected.

12.2 We have heard both the parties and considered petition filed by the assessee for admission of additional grounds and we find that grounds taken by the assessee are purely legal issues, which can be taken at any time of proceedings, including pending proceedings before the Tribunal. Further, the grounds raised by the assessee are in relation to credit for DDT paid on account of Dividend Distribution and facts with regard to said payment are already recorded in Form no. 26AS for the assessment year 2012-13. Therefore, we are of the considered view, that an additional ground filed by the assessee requires to be admitted and thus, we admit additional grounds filed by the assessee for adjudication.

13. The Ld. Counsel for the assessee, submitted that the assessee has declared dividend on 20.09.2012 and dividend distribution tax at Rs. 6,70,00,685/- is paid on 11.10.2012 and 19.10.2012 and the same is reflecting in Form no. 26AS for assessment year 2012-13. But, the ld. Assessing Officer while

passing final assessment order for assessment year 2013-14 had considered DDT challans paid on 04.10.2013, 28.11.2013, 17.12.2013, 21.01.2014 & 18.02.2014 as per Form no. 26AS for assessment year 2013-14 at Rs. 7,59,41,017/-, which are relating to assessment year 2014-15 and not relating to assessment year 2013-14. Therefore, the matter may be set aside to the file of the Assessing Officer to verify the facts and allow credit for appropriate assessment years.

13.1 The ld. DR, on the other hand fairly agreed that facts needs to be verified by the Assessing Officer and thus, issue may be set aside to the file of the Assessing Officer.

13.2 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It was the argument of the assessee that the Assessing Officer has wrongly adjusted DDT paid for assessment year 2014-15 to DDT payable for assessment year 2013-14. The assessee has filed necessary Form no. 26AS and challans for payment of DDT for assessment year 2013-14 and argued that facts may be verified by the Assessing Officer and allow credit

as per the law. Since, the assessee has filed relevant evidences to prove payment of DDT, in our considered view, the Assessing Officer needs to verify the claim of the assessee and allow as per law. Thus, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to verify the claim of the assessee and allow credit for DDT for relevant assessment years as per law.

14. In the result, appeal filed by the assessee in ITA No. 2757/Chny/2017 for assessment year 2013-14 is partly allowed.

ITA No: 1672/Chny/2019 for assessment year 2013-14:

15. The Revenue has raised the following grounds of appeal:

"I. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.

2. The learned CIT(A) erred in holding that the investment made by the assessee to M/s Aban Holding Pte Ltd., Singapore (wholly owned subsidiary), for maintaining controlling interest, is for the purpose of business.

3. The learned CIT(A) failed to appreciate the fact that the assessee, M/s Aban Offshore Ltd. is in the business of providing drilling &% energy oriented services whereas M/ s A ban Holdings Pte Ltd. is in the business of investment in other foreign companies, hence it cannot lprovide any help in. expanding or managing assessee's business being not engaged in same line of assessee's business.

4. The Learned CIT(A) erred in allowing the assessee's appeal in light of the decision of Hon'ble Mumbai High Court in the case of Crescent Organics (P.) Ltd. vs. DCIT (IT Appeal No.337 of 2012) dated 30° July, 2014 wherein it has been held that interest paid on borrowals utilized for investments in a foreign company was not in course of assessee's business, its claim for deduction under section 36(l)(iii) was to be rejected.

5. The Learned CIT(A) failed to appreciate the fact that the assessee 1s not availing/providing any significant services apart from funding with M/s Aban Holding Pte Ltd., Singapore oriented related parties, hence, no significant correlation can be established in ease or expansion of assessee's business and investment made in M/s Aban Holding Pte Ltd., Singapore, as seen from year on year related party disclosure (Annexure 1), Consolidated & Standalone financials (Annexure 2 & 3).

6. The Learned CIT(A) failed to appreciate the fact that it can never be legislature's intention to allow interest expense of assessee for funding a foreign company which ultimately benefit only the foreign company that is taxable only in foreign country, in absence of any availed / provided service with the assessee.

7. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored."

16. The only issue that came up for our consideration from grounds of appeal filed by the revenue is deletion of addition towards disallowance of interest u/s. 36(1)(iii) of the Act, amounting to Rs. 3,22,86,80,000/-. This appeal is arising out of order passed by the Assessing Officer u/s. 154 of the Act dated 19.11.2018. The Assessing Officer, while passing final

assessment order u/s. 143(3) r.w.s. 92CA of the Act, dated 06.10.2017 has not followed the directions of DRP, in so far as disallowance of interest u/s. 36(1)(iii) of the Act. The assessee has filed appeal against final assessment order passed by the Assessing Officer before the Tribunal and challenged disallowance of interest u/s. 36(1)(iii) of the Act. Thereafter, the assessee has filed a petition u/s. 154 of the Act on 07.11.2018 and requested the Assessing Officer to follow the directions of the DRP. The Assessing Officer, vide their order dated 19.11.2018 passed u/s. 154 of the Act rejected petition filed by the assessee, on the ground that the assessee has approached the DRP for rectification on the issue of disallowance of interest u/s. 36(1)(iii) of the Act and further, if at the issue needs rectification, the assessee should approach ld. DRP, but not the assessing officer. Aggrieved by the order passed by the Assessing Officer u/s. 154 of the Act dated 19.11.2018, the assessee has filed appeal before first appellate authority. The ld. CIT(A), vide their order dated 22.03.2019, allowed appeal filed by the assessee and directed the Assessing Officer to verify and allow interest expenses as per the order of the DRP dated 13.09.2017 and order of the ITAT for

assessment year 2012-13 dated 19.06.2017. Aggrieved by the ld. CIT(A) order, the revenue is in appeal before us.

16.1 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Although, the revenue has filed appeal against CIT(A) order on the issue of disallowance of interest u/s. 36(1)(iii) of the Act, but fact remains that said issue had already been adjudicated by the Tribunal in ITA No. 2575/Chny/2017 and set aside the issue to the file of the Assessing Officer by following its earlier decision in assessee's own case for assessment year 2012-13. Since, the issue had already been adjudicated and decided in ITA No. 2575/Chny/2017 for assessment year 2013-14, the present appeal filed by the revenue becomes infructuous and thus, the appeal filed by the revenue is dismissed as infructuous.

17. In the result, appeal filed by the revenue in ITA No. 1672/Chny/2019 for assessment year 2013-14 is dismissed.

IT(TP)A 21/Chny/2022 for assessment year 2017-18:

18. The first issue that came up for our consideration is Transfer Pricing adjustment towards corporate guarantee amounting to Rs. 61,44,100/-. The AO has made TP adjustment of Rs. 61,44,100/- towards corporate guarantee fee @ 1% on total corporate guarantee outstanding at the end of the year, on the ground that corporate guarantee given by the assessee to their AEs, is an international transaction, which needs to be bench marked to determine the ALP of the transaction. It was the submission of the assessee before the TPO that, corporate guarantee given to their AEs is not resulting into any quantifiable benefit to the AEs. Therefore, the same cannot be considered as international transaction to bench mark the ALP of the transaction.

18.1 The Ld. Counsel for the assessee, at the time of hearing submitted that this issue is squarely covered in favor of the assessee by the decision of ITAT, Chennai Benches in assessee's own case for assessment year 2016-17 in IT(TP)A No. 30/Chny/2021, where the issue of addition towards corporate guarantee fee has been decided by the Tribunal and

by following the decision of Hon'ble Bombay High Court in the case of CIT vs Everest Kento Cylinders Ltd [2015] reportd in 58 Taxmann.com 254, has directed the TPO to compute corporate guarantee commission @ 0.5% on total corporate guarantee given by the appellant to their AE.

18.2 The ld. DR, on the other hand supporting the order of the ld. CIT(A) submitted that, although the issue is covered in favour of the assessee by the decision of ITAT, Chennai benches for earlier assessment year, but fact remains that Assessing Officer/TPO has given valid reasons for computing corporate guarantee commission at higher rate. Therefore, he submitted that the issue may be decided in accordance with law.

18.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by us in assessee own case for Asst. Year 2013.14. We find that the facts in the present year are identical to the facts considered by us for assessment year 2013-14 in ITA No. 2757/Chny/2017. The reasons given by us in preceding Para

no. 8.3 to 8.4 for assessment year 2013-14, shall *mutandis mutatis* apply to this appeal as well. Therefore, for similar reasons, we direct the TPO to compute corporate guarantee fee @ 0.5% on total corporate guarantee given by the appellant to its AE.

19. The next issue that came up for our consideration from assessee appeal is disallowance of interest expenditure u/s. 36(1)(iii) of the Act, amounting to Rs. 1,18,05,20,000/-. The Ld. Counsel for the assessee, submitted that this issue is also covered in favour of the assessee by the decision of ITAT, Chennai Benches in assessee's own case for assessment year 2016-17 in IT(TP)A No. 30/Chny/2021, where the Tribunal by following its earlier decisions for assessment years 2010-11 to 2012-13, has set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to verify the issue in accordance with the directions given by the Tribunal for the AY 2012-13 and decide the issue for the impugned assessment year.

19.1 The Ld. DR, on the other hand, supporting the order of the AO, submitted that the assessee has failed to make out a case of commercial expediency by bringing on record necessary evidences to prove that, what is the business advantage derived by the assessee by investing in equity capital of subsidiary company in Singapore. The Ld. DR further submitted that, the assessee had also failed to make out a case that investments made in Singapore Company, will aid the business interest of the assessee. The Assessing Officer, after considering relevant facts has rightly disallowed interest expenses u/s.36(1)(iii) of the Act and his order should be upheld.

19.2 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by us in assessee own case for Asst. Year 2013.14. We find that the facts in the present year are identical to the facts considered by us for assessment year 2013-14 in ITA No. 2757/Chny/2017. The reasons given by us in preceding Para no. 9.2 to 9.4 for assessment year 2013-14, shall *mutandis mutatis* apply to this appeal as well. Therefore, for similar

reasons, we set aside the issue to the file of the AO and direct the AO to verify the issue in accordance with the directions given by the Tribunal for the AY 2012-13 and decide the issue for the impugned assessment year.

20. The next issue that came up for our consideration from grounds of appeal filed by the assessee is disallowance of professional and consultancy fee paid to non-residents u/s.40(a)(i) of the Act, for non-deduction of TDS u/s. 195 of the Act. The Assessing Officer, has disallowed payment made to certain non-resident service providers for rendering professional and consultancy services u/s.40(a)(i) of the Act, for non-deduction of TDS u/s.195 of the Act, on the ground that the payment made to non-residents are in the nature of fee for technical services as per the provisions of Sec.9(1)(vii) of the Act. It was the explanation of the assessee before the AO that, the payment made to non-residents for rendering professional and consultancy services, is for services rendered outside India. Since, the services were rendered outside India and the payments were also made outside India, said payment does not

come under the definition of fee for technical services as per the provisions of Sec.9(1)(vii) of the Act.

20.1 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by us in assessee own case for Asst. Year 2013.14. We find that the facts in the present year are identical to the facts considered by us for assessment year 2013-14 in ITA No. 2757/Chny/2017. The reasons given by us in preceding Para no. 10.1 & 10.2 for assessment year 2013-14, shall *mutandis mutatis* apply to this appeal as well. Therefore, for similar reasons, we set aside the issue to the file of the AO and direct the AO to follow the directions of the Tribunal given in the assessee's own case for the earlier assessment years and decide the issue for the impugned assessment year in accordance with law.

21. The next issue that came up for our consideration from grounds of appeal filed by the assessee is denial of tax credit u/s. 90 of the Act for Rs. 5,61,46,049/-. The Ld. Counsel for

the assessee, submitted that although the assessee has disclosed income earned from M/s. Aban Holdings Pvt Ltd., and paid tax, the Assessing Officer, has not allowed credit for foreign tax paid u/s. 90 of the Act, even though Article 25 of DTAA between India and Singapore allows claim for credit for tax paid in Singapore. Further, he submitted that this issue is covered in favor of the assessee by the decision of ITAT, Chennai Benches in assessee's own case for assessment year 2016-17 in IT(TP)A No. 30/Chny/2021, where the issue has been set aside to the file of the Assessing Officer.

21.1 The ld. DR, on the other hand fairly agreed that the issue may be set aside to the file of the Assessing Officer for further verification.

21.2 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that a similar issue has been considered by the Tribunal in assessee's own case for assessment year 2016-17 in IT(TP)A No. 30/Chny/2021, where the issue has been set aside to the file of the Assessing Officer to verify and allow credit for

tax paid in Singapore in terms of Article 25 of the DTAA between India and Singapore and also provisions of section 90 of the Act. In the impugned year also, the assessee claims that it had offered income to tax in India in respect of foreign tax paid in Singapore. Therefore, we direct the Assessing Officer to verify the claim of the assessee in light of necessary evidences, if any that may be filed by the assessee including certificate for tax paid in Singapore and allow credit in accordance with law.

22. The next issue that came up for our consideration from grounds of appeal filed by the assessee is incorrect credit for TDS. The Ld. Counsel for the assessee, submitted that although, the assessee has claimed for TDS credit of Rs. 16,39,92,186/-, but the Assessing Officer has allowed TDS credit for Rs. 16,37,64,684/- only. We find that if assessee claims for TDS and same is supported by necessary certificates, and appeared in Form no. 26AS, then same needs to be allowed as deduction. Therefore, the Assessing Officer is directed to verify the claim of the assessee with reference to Form no. 26AS and other details if any that may be filed by the assessee and allow credit for TDS in accordance with law.

23. In the result, appeal filed by the assessee in IT(TP)A No. 21/Chny/2021 for assessment year 2017-18 is allowed for statistical purposes.

IT(TP)A No: 40/Chny/2022 for assessment year 2018-19:

24. The only issue that came up for our consideration is Transfer Pricing adjustment towards corporate guarantee fees amounting to Rs. 7,23,96,680/-. The AO has made TP adjustment of Rs. 7,23,96,680/- towards corporate guarantee fee @ 1% on total corporate guarantee outstanding at the end of the year, on the ground that corporate guarantee given by the assessee to their AEs, is an international transaction, which needs to be bench marked to determine the ALP of the transaction. It was the submission of the assessee before the TPO that, corporate guarantee given to their AEs is not resulting into any quantifiable benefit to the AEs. Therefore, the same cannot be considered as international transaction to bench mark the ALP of the transaction.

24.1 The Ld. Counsel for the assessee, at the time of hearing submitted that this issue is squarely covered in favor of the assessee by the decision of ITAT, Chennai Benches in assessee's own case for assessment year 2016-17 in IT(TP)A No. 30/Chny/2021, where the issue of addition towards corporate guarantee fees has been decided by the Tribunal and by following the decision of Hon'ble Bombay High Court in the case of CIT vs Everest Kento Cylinders Ltd [2015] reportd in 58 Taxmann.com 254, has directed the TPO to compute corporate guarantee commission @ 0.5% on total corporate guarantee given by the appellant to their AE.

24.2 The ld. DR, on the other hand supporting the order of the ld. CIT(A) submitted that, although the issue is covered in favour of the assessee by the decision of ITAT, Chennai benches for earlier assessment year, but fact remains that Assessing Officer/TPO has given valid reasons for computing corporate guarantee commission at higher rate. Therefore, he submitted that the issue may be decided in accordance with law.

24.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by us in assessee own case for Asst. Year 2013.14. We further noted that the facts in the present year are identical to the facts considered by us for assessment year 2013-14 in ITA No. 2757/Chny/2017. The reasons given by us in preceding Para no. 8.3 to 8.4 for assessment year 2013-14, shall *mutandis mutatis* apply to this appeal as well. Therefore, for similar reasons, we direct the TPO to compute corporate guarantee fee @ 0.5% on total corporate guarantee given by the appellant to its AE.

24.4 In the result, the appeal filed by the assessee is allowed for statistical purposes.

25. As a result, appeal filed by the assessee in ITA No 797/Chny/2020 for assessment year 2011-12 is dismissed, assessee appeal in ITA No 798/Chny/2020 for assessment year 2011-12 is allowed for statistical purposes, assessee appeal in ITA No. 2757/Chny/2017 for assessment year 2013-14 is partly

allowed for statistical purpose, assessee appeal in IT(TP)A No. 21/Chny/2022 & 40/Chny/2022 for assessment years 2017-18 & 2018-19 are allowed for statistical purposes, and Revenue appeal in ITA No. 1672/Chny/2019 for assessment year 2013-14 is dismissed.

Order pronounced in the court on 08th November, 2023 at Chennai.

Sd/-	**Sd/-**
(वी दुर्गा राव)	**(मंजुनाथ. जी)**
(V. DURGA RAO)	**(MANJUNATHA. G)**
न्यायिकसदस्य/Judicial Member	**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated: 08th November, 2023
JPV
आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF