

आयकर अपीलिय अधिकरण  
मुंबई पीठ "आई", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एस. रिफौररहमान, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER

आअसं. 9071/मुं/2010 (नि. व. 2006-07)  
ITA NO.9071/MUM/2010(A.Y.2006-07)  
आअसं. 3103/मुं/2014 (नि. व. 2007-08)  
ITA NO.3103/MUM/2014(A.Y.2007-08)  
आअसं. 1503/मुं/2014 (नि. व. 2008-09)  
ITA NO.1503/MUM/2014(A.Y.2008-09)  
आअसं. 1504/मुं/2014 (नि. व. 2009-10)  
ITA NO.1504/MUM/2014(A.Y.2009-10)

Credit Agricole Corporate And Investment Bank  
(formerly Calyon Bank),  
11<sup>th</sup> Floor, Hoechst House,  
Nariman Point, Mumbai – 400 021  
PAN: AACCC-3872-B

..... अपीलार्थी / Appellant

बनाम Vs.

The Asstt. Director of Income-tax  
(International Taxation)-1(2) Mumbai,  
1<sup>st</sup> Floor, Scindia House, Ballard Pier,  
Mumbai 400 038

.....प्रतिवादी / Respondent

आअसं. 4259/मुं/2014 (नि. व. 2007-08)  
ITA NO.4259/MUM/2014(A.Y.2007-08)  
आअसं. 1483/मुं/2014 (नि. व. 2008-09)  
ITA NO.1483/MUM/2014(A.Y.2008-09)  
आअसं. 1868/मुं/2014 (नि. व. 2009-10)  
ITA NO.1868/MUM/2014(A.Y.2009-10)

The Asstt. Director of Income-tax  
(International Taxation)-1(2) Mumbai,  
1<sup>st</sup> Floor, Scindia House, Ballard Pier,  
Mumbai 400 038.

..... अपीलार्थी / Appellant

बनाम Vs.

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.....प्रतिवादी / Respondent

C.O. No.140/MUM/2014

[Arising out of ITA NO.1868/MUM/2014(A.Y.2009-10)]

Credit Agricole Corporate And Investment Bank  
 (formerly Calyon Bank),

Mumbai -400 021

... Cross Objector

बनाम Vs.

The Asstt. Director of Income-tax

(International Taxation)-1(2) Mumbai.

... Appellant in Appeal

Assessee by : Shri P.J. Pardiwala, Sr.Advocate gwith  
 S/Shri Madhur Agarwal &Fennil Bhat

Revenue by : Shri Soumendu Kumar Dash, Sr. AR &  
 Ms. Agnes P. Thomas

सुनवाई की तिथि/ Date of hearing : 16/06/2023

घोषणा की तिथि/ Date of pronouncement : 11/09/2023

आदेश / ORDER

**PER BENCH:**

These cross appeals by the assessee and Revenue for Assessment Years 2006-07 to Assessment Year 2009-10 are taken up together as identical issues are involved in all these appeals. The appeals are decided in seriatim of Assessment Years.

**ITA NO.9071/MUM/2010-A.Y. 2006-07:**

2. This appeal by the assessee is directed against the assessment order dated 22/10/2010, passed u/s. 143(3) r.ws. 144C(13) of the Income Tax Act, 1961 [in short 'the Act']. The brief facts of the case as emanating from records are: The assessee is a France based multinational bank with branch offices in

India. The assessee is a non-resident having Permanent Establishment (PE) in India. During the course of scrutiny assessment proceedings, the Assessing Officer made multiple additions/disallowances vide draft assessment order dated 30/12/2009. The assessee filed objections before the Dispute Resolution Panel (DRP) against the additions /disallowances made by the Assessing Officer. The DRP vide directions dated 24/09/2010 dismissed the objections filed by the assessee. The Assessing Officer passed the impugned assessment order in accordance with the directions of the DRP confirming additions/disallowances, hence, the present appeal by the assessee.

3. Shri P.J.Pardiwala, Sr.Advocate appearing on behalf of the assessee submitted at the outset that majority of the grounds raised in the present appeal have already been considered by the Tribunal in assessee's own case in the preceding Assessment Years. He referred to the order of Tribunal in ITA No.6706/Mum/2012 and 6682/Mum/2012 for Assessment Year 2005-06 decided on 05/01/2018. He also placed reliance on Tribunal order in ITA No.724/Mum/2011 and ITA No.1135/Mum/2011 for Assessment Year 2004-05 decided on 10/12/2014. The Id. Counsel for the assessee pointed that some of the perennial issues have travelled to the Hon'ble Jurisdictional High Court, the Hon'ble High Court upheld the findings of the Tribunal in favour of the assessee.

4. Shri Soumendu Kumar Dash representing the Department vehemently defended the assessment order. However, the Id. Departmental Representative fairly admitted that the issues raised in the present appeal

have been considered by the Tribunal in assessee's own case in the preceding Assessment Years.

5. The assessee in appeal has raised as many as 25 grounds. In addition, the assessee has also raised multiple additional grounds. Prima facie we observe that the issue raised in additional grounds complement the grounds raised in appeal. For the sake of convenience and ease of adjudication of issues, the additional grounds are taken up along with the relevant grounds of appeal.

**Ground No.1 – Taxability of interest Rs.5,85,87,683/- received by Indian Branch from Head Office(HO) /Overseas Branches on NOSTRO Accounts:**

6. The Id. Counsel for the assessee submitted that the ground of appeal in relation to taxability of interest received is covered by the decision of Hon'ble Bombay High Court, however, the assessee does not wish to press ground No.1 of appeal to put an end to the litigation. In light of the statement made by Id. Counsel for the assessee, the ground No.1 of appeal is dismissed as not pressed.

**Ground No.2 :Disallowance of interest paid to HO/Overseas Branches invoking the provisions of section 40(a)(i) of the Act:**

**Ground No.3: Disallowance of bank charges paid to HO/Overseas branches by invoking the provisions of section 40(a)(i) of the Act:**

7. Both these grounds are inter related, hence, are taken up together for adjudication. The Id. Counsel for the assessee submitted that the issues

raised in ground No.2 and 3 are recurring. These issues are squarely covered by the decision of Special Bench of Tribunal in the case of Sumitomo Mitsui Banking Corporation Ltd. vs. DCIT, 136 ITR 66(Mum-Trib-SB). The Tribunal has consistently decided this issue in favour of assessee allowing deduction of interest paid to HO. On similar basis bank charges paid to HO/Overseas branches is also allowed. The Id. Counsel for the assessee referred to Tribunal order for Assessment Year 2004-05 dated 10/12/2014(supra) (at page 175 of the paper book) and Tribunal order dated 05/01/2018 for Assessment Year 2005-06(supra) (at page 259 of the paper book) (supra).

8. We find that the issue is recurring in nature. The taxability of interest / commission paid to HO/Overseas branches has been considered by the Co-ordinate Bench in assessee's own case in Assessment Year 2004-05. The Co-ordinate Bench in turn placing reliance on the earlier decision of the Tribunal in ITA NO.4471/Mum/2009 for Assessment Year 2002-03 dated 21/03/2014 has decided the issue in favour of assessee. We find that the Tribunal has held that the ratio laid down in the case of Sumitomo Mitsui Banking Corporation vs. DCIT(supra) squarely applies to the issue in hand and thus, allowed the payment of interest and bank charges paid to HO/Overseas branches. No contrary material has been placed on record by the Revenue. Respectfully following the decision of Co-ordinate Bench in assessee's own case in the preceding Assessment Years ground No.2 and 3 of the appeal are allowed.

9. The assessee has raised additional grounds on 20/03/2018. The additional ground raised is without prejudice to ground No.3. The same reads as under:

*“ Without prejudice to Ground No. 3, having held that the interest earned by the Indian Branch from the Nostro accounts maintained with Head Office / Overseas Branches is taxable income, the bank charges deducted by the HO/ OB for maintaining such Nostro accounts should be allowed as a deductible expenditure.”*

Since, we have allowed assessee’s claim of deduction of bank charges raised in ground No.3 of appeal, the additional ground raised has become academic, hence, not deliberated upon.

**Ground No.4, 5 & Additional Grounds:**

**Ground No.4: Allowability of direct expenses towards credit risk assistance and Electronic Data Processing(EDP) assistance provided by HO to Indian Branch”**

**Ground No.5: Allowability of direct expenses incurred by HO/Overseas Branch towards HO-SI Charges, Regional Logistics Asia Pacific Cost and EDP recharges and Information System Asia Pacific chargesu/s.37(1) of the Act:**

10. The Id. Counsel for the assessee submitted that the issue raised in ground No.4 and 5 of appeal has been considered by the Tribunal in the preceding Assessment Years. In Assessment Year 2005-06, the Tribunal had restored the issue to the Assessing Officer. The Assessing Officer passed the order giving effect on 31/12/2018 and has allowed direct expenses incurred towards Head Office –System Implementation (HO-SI) Charges, Regional Logistics Asia Pacific Cost and EDP recharges and Information System Asia Pacific charges.

10.1 We find that the issue raised in ground No.4 and 5 of the appeal was considered by the Co-ordinate Bench in assessee's own case in the preceding Assessment Years. While deciding the appeal of assessee for Assessment Year 2004-05 the Co-ordinate Bench placed reliance on the decision of Tribunal in assessee's own case for Assessment Year 2002-03 allowing direct expenditure incurred by HO u/s. 37(1) of the Act. In Assessment Year 2005-06 the Co-ordinate Bench restored the issue back to the file of Assessing Officer as the Revenue Authorities failed to verify the documents furnished by the assessee. In remand proceedings the Assessing Officer allowed the expenditure. We find that this issue is recurring and the Tribunal has been consistently allowing this issue in favour of assessee. No material has been placed on record before us to show any distinction in the impugned assessment year. Therefore, we find no reason to take a contrary view. Ergo, ground No.4 and 5 of appeal are allowed for the reasons stated in Tribunal order for Assessment Year 2004-05.

11. The assessee has raised additional grounds of appeal vide applications dated 14/01/2016 and 19/03/2018, The additional grounds of appeal are as under:

Vide application dated 14/01/2016

*“ The Assessing Officer (AO) ought to have granted credit for taxes deducted by the India branch on Head Office System Implementation charges, Regional Logistics Asia Pacific costs & EDP recharge and Information Systems Asia Pacific charges.”*

Vide Application dated 19/03/2018

*“ The DRP ought to have directed the AO to grant credit for taxes deducted by the India branch on Head office system implementation charges, EDP Recharge, Regional Service Center Asia charges and Asia Data Processing Centre costs.”*

12. The Id. Counsel for the assessee submits that the assessee has claimed TDS credit as a consequent relief to ground No.4 and 5. We find that similar grounds were raised by the assessee in Assessment Year 2005-06. The Tribunal decided these grounds in MA No.526/Mum/2018 dated 26/04/2019 restoring the issue back to the file of Assessing Officer. We deem it appropriate to restore the aforesaid additional grounds raised by the assessee to Assessing Officer with similar directions. Needless to say that the Assessing Officer shall grant reasonable opportunity of hearing/make submissions to the assessee, in accordance with law. The additional grounds are allowed for statistical purpose.

**Ground No.6: Disallowance u/s. 14A of the Act:**

13. The Id. Counsel for the assessee submits that in the preceding Assessment Year, the Tribunal has restricted disallowance of expenditure u/s. 14A of the Act to 2% of exempt income earned by the assessee. We find that during the period relevant to the assessment year under appeal the Assessing Officer invoked the provisions of Rule 8D and made disallowance of Rs.1.79 crores u/s. 14A of the Act. It is no more res-integra that Rule 8D applies from Assessment Year 2008-09[Re: Godrej & Boyce Mfg. Co. Ltd. vs. DCIT, 328 ITR 81]. In the preceding Assessment Years the Co-ordinate Bench in assessee's own case has estimated disallowance u/s. 14A of the Act to the extent of 2% of

the exempt income earned. Respectfully following the decision of the Coordinate Bench in assessee's own case, we direct the Assessing Officer to restrict disallowance u/s. 14A of the Act to 2% of the exempt income earned during the relevant period. In the result, ground No.6 of appeal is partly allowed.

**Ground No7 - Profit on revaluation of unmatured forward forex contracts:**

14. The Id.Counsel for the assessee submitted that the assessee has earned profit of Rs.58.36 crores on revaluation of unmatured forward forex contracts. In the preceding Assessment Years the loss on revaluation was not allowed by the Assessing Officer. The assessee carried the issue in appeal before the Tribunal . The Tribunal in Assessment Year 1998-99 allowed loss on revaluation of unmatured forex contracts. As a corollary, profit arising on such unmatured forex contract is liable to tax. The Id.Counsel for the assessee submitted that in the light of the decision of the Tribunal in preceding Assessment Years allowing loss on revaluation of unmatured forex contracts, the ground No.7 of appeal is not pressed. In view of the statement made by Id.Counsel for the assessee, ground No.7 of appeal is dismissed as not pressed.

**Ground No.8 : Netting of Interest u/s. 244A of the Act against interest u/s.234D of the Act :**

15. The Id. Counsel for the assessee submitted that the assessee was liable to pay interest of Rs.73,63,170/- u/s. 234D of the Act and the same time the assessee was entitled to receive interest u/s. 244A of the Act. The assessee prayed for netting off of the interest. The Assessing Officer rejected the

prayer of assessee. The assessee carried the issue in appeal before the CIT(A) . The CIT(A) upheld the findings of Assessing Officer. The Id.Counsel for the assessee pointed that the Hon'ble Bombay High Court in Income Tax Appeal No.27 of 2016 for Assessment Year 2004-05, in the case of CIT vs. Credit Agricole Corporate and Investment Bank decided on 16/07/2018 has considered this issue and has decided the same in favour of the assessee.

15.1 We find that one of the question before the Hon'ble Bombay High Court in the aforesaid appeal was:

*2."Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in allowing the interest paid under the provisions of the act to be adjusted against the interest received under Section 244A of the Act?"*

The Hon'ble High Court following the decision rendered in the case of DIT vs. Bank of America in Income Tax appeal No.17 7 of 2012 held that no substantial question of law arises for consideration. Thus, the above question was decided in favour of assessee.In assessee's own case in Assessment Year 2005-06 in ITA No.6706/Mum/2012(supra), the Co-ordinate Bench allowed netting of interest u/s. 234D and 244A of the Act. We find no reason to take a different view in impugned assessment year, hence, ground No.8 of appeal is allowed for parity of reasons.

**Additional ground filed on 06/06/2013 – Interest received u/s.244A of the Act is liable to tax at a rate prescribed in Article-12 of DTAA between India & France:**

16. The Id.Counsel for the assessee submitted that similar issued was raised in Assessment Year 2005-06 before the CIT(A). The CIT(A) allowed this ground

in favour of assessee. The Department accepted the same as this issue was not carried further in appeal by the Department. The Id.Counsel for the assessee further pointed that this issue was agitated by the Department in appeal before the Tribunal for Assessment Year 1997-98 in ITA No. 1430 of 2013 in case titled Director of Income Tax vs. Credit Agricole Indo-Suez Ltd. The Hon'ble High Court upheld the findings of Tribunal and dismissed the ground raised by the Department.

We find that in the aforesaid appeal one of the substantial question of law assailing findings of the Tribunal was on the issue of rate of tax on interest received u/s. 244A of the Act. The Hon'ble High Court placing reliance on the decision of Special Bench of Tribunal in the case of Clough Engineering Ltd., 130 ITD137 dismissed the substantial question in an appeal by the Department. Thus, in the light of facts of the case and the aforesaid decisions, we find merit in additional ground of appeal raised by the assessee, hence, the same is allowed.

**Ground No.9 – Disallowance of depreciation on Motor Car claimed @40%:**

17. The Id.Counsel for the assessee submitted that the assessee had claimed deprecation of Rs.2,25,787/- @ 40% on vehicles. The Assessing Officer restricted the depreciation to 15% on the ground that the assessee failed to prove that the assessee had acquired vehicles after 1<sup>st</sup>October, 1998 and where “put to use” before 01/04/1999. The Assessing Officer further observed that the assessee failed to prove that the vehicles acquired were commercial vehicles. The Id.Counsel for the assessee pointed that the DRP in para 11.1 of

the directions has given a finding that the vehicles owned by the assessee were for the purpose of transportation of the employees as well as for banking business. The expenses incurred on this vehicles have been allowed as business expenditure u/s. 37 of the Act. After having recorded the aforesaid facts, the DRP upheld the findings of Assessing Officer and dismissed objection of assessee. He submitted that there is no question of “put to use” after having accepted that the vehicles were used for transportation of employees and for other banking requirements.

17.1 Per contra, the Id. Departmental Representative supporting the assessment order contended that the assessee could not produce any documentary evidence to show as to when the vehicles were “put to use”.

17.2 We have heard the submissions made by rival sides. We find that the DRP in its directions has given a finding of fact that the vehicles were used for transportation of employees and other banking business requirements. This itself shows that the vehicles were “put to use”. Since, vehicles were used for the business purpose of the assessee, i.e. transportation of employees, etc. they are eligible for higher rate of depreciation. In view of facts of the case, ground No.9 of appeal is allowed.

**Ground No.10: Taxability of Interest Paid by Indian Branch to Head Office and other overseas branches:**

18. The Id. Counsel for the assessee submitted that the assessee has paid interest to the tune of Rs.7.20 crores to Head Office and overseas branches. The Assessing Officer has taxed said interest in the hands of Head

Office/Overseas Branch under Article-12 of India France DTAA. The short contention of the assessee is that this issue is squarely covered by the decision of Special Bench in the case of Sumitomo Mitsui Banking Corporation vs. DDIT, 136 ITD 66 (Mum-SB). This is a recurring issue in assessee's case. In Assessment Year 2005-06 similar issue had come up, the Tribunal placing reliance on the decision of Hon'ble High Court in the case of Steria India Ltd., 386 ITR 390 dismissed the ground raised in appeal by the Revenue.

18.1 Both sides heard. We find that identical issue has been decided by the Co-ordinate Bench in an appeal by the Revenue in ITA No.6682/Mum/2012 for Assessment Year 2005-06 vide order dated 05/01/2018. The assessee has placed reliance on the decision in the case of Sumitomo Mitsui Banking Corporation vs. DDIT (supra) and Steria India Ltd. (supra). The Co-ordinate Bench dismissed the ground raised in appeal of Revenue. No contrary material has been brought to the notice of Bench to distinguish the decision taken by Co-ordinate Bench in assessee's own case in the preceding Assessment Year. Consequently, ground No.10 of the appeal is allowed for parity of reasons.

**Ground No.11: Amount paid by the assessee to its Head Office towards credit risk assistance, EDP assistance, Head Office SI Charges, etc.**

19. The Id. Counsel for the assessee submitted that the assessee has paid interest/commission to Head Office/Overseas branches. The contention of the assessee before the Assessing Officer was that Head Office and branches are in no manner different from the assessee and are in fact the same entity. Therefore, any interest or commission paid to / received from Head

Office/Branch does not give rise to real income. He further submitted that payment made to self is not exigible to tax in view of deeming provisions in Article-7 of DTAA. The Assessing Officer rejected assessee's contention and held that the payment made for SA Charges, EDR Recharge and RLAP, RSCA Charges would give rise to income in the nature of Fee for Technical Services(FTS) in the hands of Head Office, hence, liable to be taxed in India under Article 13(4) of India – France DTAA. The Id. Counsel for the assessee submitted that similar addition was made in Assessment Year 2005-06. The Tribunal in Department's Appeal in ITA No.6682/Mum/2012 decided this issue in favour of assessee.

19.1 We find that in Assessment Year 2005-06, Assessing Officer held certain expenditure viz. interest on loan, interest paid on Nostro Account, etc. in the nature of FTS. The Tribunal placing reliance on the decision in the case of Steria India Ltd.(supra) decided the issue in favour of assessee. No contrary material has been placed on record by the Revenue. Following the decision of Co-ordinate Bench in assessee's own case on similar set of facts, ground of appeal No.11 is allowed.

**Ground No.12 : Double Taxation of Direct Expenses:**

20. The Id. Counsel for the assessee submitted that this ground has been allowed in earlier years, hence, the income was not assessed to tax. Consequently, ground No.12 of appeal has become infructuous. In view of statement made by Id. Counsel for the assessee, ground No.12 of appeal is dismissed as infructuous.

**Ground No.13 & 14: Taxability of ECB Interest arising to Singapore and Hongkong branch in India in respect of ECB to Indian borrowers:**

21. The Id. Counsel for the assessee submitted that during the period relevant to Assessment Year under appeal, the assessee was involved in certain ECB loan transactions / loan syndication for Indian companies along with its sister branches in Singapore and Hong Kong. The Assessing Officer held that interest earned by Singapore branch and Hong Kong branch on ECBs is liable to be taxed in India as business income. He pointed that similar additions were made by the Assessing Officer in 2005-06, which was subsequently deleted by the CIT(A). The Department carried the issue in appeal before the Tribunal in ITA No.6682/Mum/2012 (supra). The Tribunal dismissed the ground raised by the Department.

21.1 We find that in Assessment Year 2005-06, the Assessing Officer had made addition in the hands of Singapore Branch and Hong Kong Branch in respect of interest on ECB loans. The Co-ordinate Bench decided this issue in favour of assessee, holding as under:

*“10.3. We have heard the rival submissions. We find that the earnings on account of ECB loans can be classified into two categories namely interest and commission, that interest pertained to the loans funded by the Hong Kong and Singapore branches, that the India branch did not advance any funds for the loans, that commissions was received by the lead arrangers or Coleadarrangers, that the Indian entity would provide assistance in general relationship management and will provide assistance to Singapore entity, if required. It has been held, in both the matters, relied upon by the assessee, that the provisions of sub Articles (1) and (2) of Article 12 of India-France DTAA would apply only when recipient of interest was not having a permanent establishment in country where it had received interest. It is an undisputed fact that in the assessee's case, banking operations were carried out by the PE in India. Besides, the PE was remunerated on an arm's length basis. In BNP Paribas SA (supra), it was held that once an enterprise was found to be carrying on the related*

*business or profession through a PE or a fixed base in the other contracting state, the scheme of taxability on the gross basis, as implicit in the taxation of dividend, interest, royalties and fees for technical services, and other incomes, under the tax treaties, would come to an end. In Indo French DTAA, for example, articles 11(6), 12(5), 13(6) and 23(2) provide so. We are aware that in the case of Sumitomo Mitsui Banking Corporation (136 ITD 66), the Special Bench has decided the issue in favour of the Department and against the assessee. But respectfully following the judgment of the Hon'ble Uttarakhand(supra), we decide ground no. 6 against the AO."*

No contrary material or decision has been brought to the notice of Bench. We find no reason to take a contrary view on similar facts in the impugned assessment year. Hence, ground No.13 & 14 of appeal are allowed.

**Ground No.15: Double Taxation of ECB Interest as income arising to Overseas branches on ECB to Indian borrowers and by way of Transfer Pricing adjustment income of Indian Branches:**

22. We find that ground No.15 of appeal is consequential to ground No.13 & 14 of appeal. Since, we have allowed ground No.13 & 14 of appeal, ground No.15 becomes infructuous, hence, dismissed.

**Ground No.16 & 17: Taxability in India of 50% of commission earned by Hongkong Branch on ECB to Indian borrowers and erroneous amount considered for the same in the computation ( i.e. Rs.3,01,77,577/- instead of Rs.9768,359/-).**

23. The Id. Counsel for the assessee pointed that similar addition was made in Assessment Year 2005-06. The CIT(A) deleted the addition. The Department carried the issue in appeal before the Tribunal in ITA No.6682/Mum/2012(supra). The Tribunal dismissed this ground of appeal. The facts in the impugned assessment year are similar to Assessment Year 2005-06. The Id. Counsel for the assessee further submitted that the issue has also been decided by the Hon'ble Bombay High Court in the case of assessee's

group concern in Income Tax Appeal No.1781 of 2014, titled DITvs. Caylor Bank vide order dated 23/03/2017.

23.1 We have examined the documents on record. We find that the issue with regard to taxability of commission earned by Hongkong Branch in respect of ECBs was subject matter of consideration before Co-ordinate Bench in assessee's own case for Assessment Year 2005-06 in appeal by the Department. The Co-ordinate Bench placing reliance on the decision of Hon'ble High Court in Income Tax Appeal No.1781 of 2014 (supra) dismissed the ground raised by Revenue. No contrary material has been placed before us by the Department to distinguish facts, hence, we see no reason to take a different view. Following the decision of Co-ordinate Bench in assessee's own case for Assessment Year 2005-06, ground No.16 & 17 of appeal are allowed for parity of reasons.

**Ground No.18: Double Taxation of Commission on Income arising to Hongkong Branch:**

24. The ground of 18 of appeal is consequential to ground No.16 & 17 above. Since we have allowed ground No.16 & 17 of appeal in favour of assessee, the ground of appeal No.18 has become infructuous, hence, the same is dismissed as such.

**Ground No.19: Transfer Pricing Adjustment on Interest in respect of call placements and borrowings:**

25. The Id.Counsel for the assessee submits that although the assessee does not accept the legality of the disallowance, however, due to smallness of amount involved, the assessee is not pressing this ground of appeal.

In view of the statement made by Id.Counsel for the assessee at Bar, ground No.19 of appeal is dismissed as not pressed.

**Ground No.20: Taxability in the hands of Indian Branch f Interest & commission arising to Overseas Branches in respect of ECB to Indian Borrowers:**

26. The Id.Counsel for the assessee submitted that the Tribunal in Assessment Year 2005-06 in assessee's own case has held that adjustment should be made by taking into account only the fee and other charges received by the foreign branches from the borrowers of ECB and the rate of 20% estimated by the CIT(A) was held to be just and proper. The issue was carried in appeal before the Hon'ble Bombay High Court. The Hon'ble High Court has confirmed the view taken by the Tribunal.

26.1 Both sides are unanimous in stating that the issue raised in ground No.20 of appeal has been considered by the Co-ordinate Bench in Assessment Year 2005-06. We find that the issue is perennial. The Co-ordinate Bench while adjudicating this issue has in turn referred to the decision of Hon'ble Bombay High Court [Re. DIT vs. Caylon Bank ITA No.1781& 1748/2014 decided on 23/03/2017] wherein the view of Tribunal in Assessment Year 2002-03 and 2003-04 was confirmed. Respectfully following the decision of the Co-ordinate Bench on this issue, ground No.20 of the appeal is allowed protanto.

**Ground No.21: Transfer Pricing Adjustment made in respect of commission earned by Indian Branch for marketing of derivative products (60% of INPV was attributed):**

27. The Id.Counsel for the assessee submitted that Indian Branch of the assessee entered into various derivative transactions as per the policy framed by Head Office. Certain derivative transactions entered by branch office are fully backed by its AEs. In such transactions, the market risk and the counter party risk are borne by the AE. The branch office merely acts as a selling entity of Head Office or other branches of the bank. Branch office identifies customers, markets and sales derivatives to the identified customers and performs the liaisons and negotiation between AE and Indian customers. For the said services, the branch office is remunerated at 50% of the markup charge on such derivative transactions or the cost incurred by it +10% markup on such costs, whichever is high. The manner of remuneration is consistently applied by the group on worldwide basis and the same is documented by the Head Office in memorandum called – “Capital markets: sales and structuring – Transfer Pricing report”. The TPO in present case made upward adjustment of Rs.7.08 crores on the ground that certain foreign banks viz. Bank of America and J P Morgan Chase Bank are also doing similar activities and the Indian branches of these banks are remunerated at a fees equal to 60% of Initial Net Present Value (INPV). The TPO held that the Indian Branch of the assessee Bank should also receive 60% instead of 50% presently received by the Indian Branch. Assailing the findings of TPO the Id.Counsel for the assessee submitted that the TPO has placed reliance on data of other foreign banks which are controlled transaction. The determination of ALP on the basis of controlled transactions is not permissible. He further submitted that such information is neither available in the public domain nor was made available to the assessee

before making transfer pricing adjustment. The functions undertaken by the foreign banks were neither disclosed nor were the basis of computation of margins of the said banks. The Id.Counsel for the assessee submitted that the case of assessee is squarely covered by the decision rendered in the case of Barclays Bank PLC vs. ADIT, 90 taxmann.com 378 (Mum-Trib). He submitted that the facts in the case of assessee are identical to the facts in the case of Barclays Bank PLC (supra). The only difference he pointed is in the rate of remuneration. The assessee has taken 50% of the markup or cost +10%, whichever is higher, whereas in the case of Barclays Bank PLC Indian branch was remunerated at 24.4% of INPV. The reasons for making addition in Barclays Bank PLC was similar to that of the assessee. The Tribunal held that the TPO has erred in considering JP Morgan Chase Bank and Bank of America NA as comparable for the aforesaid transactions. The Id.Counsel for the assessee prayed for deleting the transfer pricing adjustment.

27.1 Per contra, Id. Departmental Representative placed reliance on the findings of TPO and DRP and prayed for dismissing ground No.21 of appeal.

27.2 We have heard the submissions made by rival sides and have examined the orders of authorities below. A perusal of the TPO order dated 30/10/2009 shows that the TPO has recorded the fact that no independent enterprises in India is providing similar services to its foreign branches, hence, CUP cannot be applied. He further recorded that since, these products are not dealt by any Indian company, the data of such service providers are not available. Thereafter, the TPO referred to the Bank of America and JP Morgan Chase

Bank, where the profitsplit method was applied for benchmarking transactions of marketing derivative products. He also referred to 1995 OECD Report for use of controlled transactions. The TPO observed “ that evidence from enterprises may be useful in understanding the transactions with Associated Enterprises may be useful in understanding eh transaction under review or as pointer to further investigations”. However, we find that the TPO did not carry out any further investigation and applied the markup of 60% as was in the case of Bank of America NA and JP Morgan Chase Bank to make the upward adjustment of Rs.7,08,99,600/-. We find that the Tribunal in the case of Barclays Bank (supra), wherein the TPO in somewhat similar manner has made TP adjustment in respect of derivative transactions held as under:-

*“ 5.3.We have heard the rival submissions and perused the material before us. We find that one of the divisions of the assessee i.e. Barclays Capital would handle the global derivative operations, that same included foreign exchange, interest rate, equity, commodity and credit derivatives, that the activities of the assessee were limited to marketing activities, that the AE.s were concluding the sale-transaction, that for the year under consideration the assessee was compensated at the rate of 24%(approximately)of the estimated day-1profit/loss from the said deals in accordance with the GTPP of the group, that the TPO had rejected the TNMM applied by the assessee and had used PSM for benchmarking the transaction of marketing of derivative products, that he concluded that risk relating to the derivative business remained partly in India and partly outside India and that the key assets in derivative were its people, that one of the foreign bank branch was being compensated at the rate of 60% for the same derivative business, that he made an addition of Rs.51.12 crores,that the FAA granted relief to the assessee.We find that the TPO had accepted, in principle, that the functional role of the assessee was limited to rendering the marketing services to overseas branches,that rest of the activities were handled by the AE.s.The derivative transaction does not end with marketing.It is a complex process.So,the AE would compensate the assessee for the services rendered to it.There would always be a relation between the compensation paid and availed services.The assessee had adopted the GTPP to determine ALP of the IT.s.In our opinion, there was no defect in its approach.On the other hand,method applied by the TPO and the details of controlled transactions,relies upon by him,were not*

available in the public domain. The assessee did not have any opportunity to examine the comparability of FAR of the transactions selected by the TPO. In our opinion, use of untested comparables to determine the ALP is against the basic spirit of the TP provisions and the Rule 10 of the Rules. The TPO had also violated the principles of natural Justice by not confronting the assessee with the comparables used against it. He proposed an addition of Rs. 51.12 crores to the income of the assessee without affording an opportunity to it, so that it could become aware of the basis for the adjustment. Only on this count the adjustment could be validly deleted.

5.4. But, we would like to decide the issue on merits also. It is found that the assessee had followed GTPP for TP purposes, that as per the global policy the Indian branches rendering the services and arranging for the sales of the derivative products for its customers from its foreign branches were to get at 24.40 percent of the INPV. The Appellant had carried out a TP study and had applied TNMM for determining the ALP. We find that the average cost plus margin of the uncontrolled comparables was 19% and in the assessee's case, cost plus margin was 424%. If we look at these figures, it becomes clear that compensation received by the assessee from its AE for derivative deal was at arm's length. INPV of a derivative transaction is calibrated based on projection of expected cash flow on a derivative transaction and applying appropriate discounting factor. INPV calculation can be different for different banks because of their functioning. So, in our opinion it would be inappropriate to apply for a uniform multiplier effect on the value of sales credit/INPV of derivative transactions. In other words, the INPV fixed by Indian branch of another foreign bank in India should not have been compared with the assessee case, because the above said branch of the foreign bank itself was dealing with its another AE. In short, we hold that the methodology adopted by the TPO, for determining the ALP of INPV of the derivative transactions, was incorrect from the very beginning and was fundamentally wrong. We would like to refer to the case of Technimont ICB(P.) Ltd. (supra) and it reads as under:

"14. What is an 'uncontrolled transaction' has been clearly defined under Rule 10A(a) to mean 'a transaction between enterprises other than associated enterprises whether resident or nonresident'. A plain reading of the meaning given to the expression 'uncontrolled transaction' leaves no room for any doubt that it is a transaction between two non-associated enterprises. If the transaction is between two associated enterprises, it goes out of the ambit of 'uncontrolled transaction' under Rule 10A. When section 92C is read along with Rules 10B(e), and 10A, it becomes abundantly clear that in computing ALP under the transactional net margin method, a comparison of the assessee's net profit margin from international transactions with its AEs has necessarily to be made with that of the net profit margin realized by the same enterprise or an unrelated enterprise from a comparable but definitely uncontrolled transaction i.e., a transaction between non-associated enterprises. There is no

*statutory sanction for roping in a comparable controlled transaction for the purposes of benchmarking. When it has been clearly mandated in all the relevant methods for determining ALP that the comparison has to be made by the enterprise's international transaction with comparable uncontrolled transaction, by no sheer logic a comparable controlled transaction can be employed for the purposes of making comparison. There is no warrant for diluting the prescription given by the statute or rules when such prescription itself serves the ends of justice properly and is infallible. If the view of the Revenue that a controlled transaction should not be shunted out for the purposes of benchmarking is accepted, then all the relevant provisions contained in Chapter X in this regard, will become otiose. If such a contention of making comparison with a comparable controlled transaction is taken to its logical conclusion, then there will never arise any need to take up any case for transfer pricing scrutiny. The reason is obvious. ALP is determined for application in respect of transactions between two AEs so that the profit likely to arise from such transactions is not under-reported vis-a-vis from similar transactions with third parties. If the comparison is made again with net profit margin realized from transactions between two AEs, instead of third parties, it may demonstrate the same cooked results in both the situations, thereby leaving no scope for any adjustment. In this eventuality, the very object of such provisions will be frustrated. Thus it follows that the ALP can be determined only by making comparison with a comparable uncontrolled transaction and not a comparable controlled transaction."*

*We are of the opinion that the FAA had rightly held that the TPO was not justified in considering JP Morgan Chase Bank and Bank of America, NA having similar arrangements with their AEs as appropriate comparables for the aforesaid transaction.*

*5.5. We also find that the method applied by the TPO is not PSM as defined under the Rules. Rule 10B of the Rules stipulates that for the purpose of applying PSM the Net Profit derived by the AE from the international transactions is to be considered. However, the TPO has made the adjustment by taking 60% of Day 1 INPV, which is a hypothetical value representing the gross surplus cash. In the matter of Johnson & Johnson Ltd. (247 Taxman 136) the Hon'ble Bombay High Court has held that the TPO is obliged under the law to determine the ALP by following any one of the prescribed methods of determining the ALP as detailed in Section 92C(1) of the Act, that the determination of the ALP has to be done only by following one of the method prescribed under the Act. We are also agreeable to the argument submitted by the assessee that the PSM can never be applied for benchmarking marketing support service functions. As per Rule 10B(d), PSM is applicable "mainly in IT.s involving transfer of unique intangibles or in multiple IT.s which are so inter-related that they*

*cannot be evaluated separately for the purpose of determining the ALP of any one transaction.”*

*[Emphasized by us]*

We find that the manner and reason for making adjustment by the TPO in instant case is quiet similar to the adjustment made in case of Barclays Bank PLC. Thus, in the facts of the case and the decision rendered in the case of Barclays Bank PLC we find merit in ground No.21 of the appeal. The T.P adjustment is directed to be deleted for parity of reasons.

**Ground No.22: Applicability of Section 115JB of the Act to the Banking companies:**

28. The Id.Counsel for the assessee submits that the assessee is a Non-resident Foreign Banking Company. The Assessing Officer invoked the provisions of section 115JB of the Act to determine the book profits. The contention of the assessee is that assessee being a banking company does not maintain books of account in accordance with the provisions of Schedule -VI of the Companies Act, 1956, hence, the provisions of section 115JB are not attracted. The Id.Counsel for the assessee in support of his submissions placed reliance on the decision of Tribunal in ITA No.4702/Mum/2015 for Assessment Year 2005-06 titled DCIT vs. Credit Agricole Corporate and Investment Bank Ltd. decided on 30/06/2017. The Id.Counsel for the assessee further referred to the decision of Hon'ble Bombay High Court in the case of CIT vs. Union Bank of India in Income Tax Appeal No.1196 and 1175 of 2013 decided on 16/04/2019, wherein the Hon'ble Jurisdictional High Court held that the provisions of section 115JB of the Act prior to amendment by virtue of Finance Act, 2012 would not apply to a Banking Company.

28.1 We have considered the decisions on which the Id.Counsel for the assessee has placed reliance. We find that the Co-ordinate Bench in assessee's own case for Assessment Year 2005-06 in ITA No.4702/Mum/2015 (supra) has held that the provisions of section 115JB of the Act does not apply to the assessee being a Banking Company. We further observe that the Hon'ble Bombay High Court in the case of CIT vs. Union Bank of India & Others has examined the issue threadbare and has finally held that section 115JB of the Act as it stood prior to its amendment by virtue of Finance Act, 2012 would not be applicable to Banking Company. Thus, in view of the law expounded by Hon'ble Jurisdictional High Court on this issue, ground No.22 of appeal is allowed.

**Ground No.23: Without prejudice to the ground No.22, the assessee has raised a ground assailing addition of provision for FBT, Provisions for standard advances and disallowance u/s. 14A of the Act in determining Book Profits:**

29. Since assessee succeeds on ground No.22, the alternate prayer made by the assessee has become infructuous, hence, ground No.23 of appeal is dismissed as infructuous.

**Ground No.24: The assessee has assailed ;the findings of Assessing Officer in holding that income is taxable @40% as is applicable to Non-resident Banking Company:**

30. The Id.Counsel for the assessee at the outset stated that this issue has been decided against the assessee by the Tribunal in Assessment Year 2005-06. The Id.Counsel for the assessee submitted that however, while deciding the issue the Tribunal has merely placed reliance on the earlier decision of the

Tribunal in assessee's own case and have not examined the provisions of Explanation-1 to section 90 inserted by Finance Act, 2002 w.e.f. 01/04/1962. He submitted that the PE of overseas entity in India cannot be charged tax at a rate higher than the rate as applicable to a domestic company carrying out the same activities. To support his submissions, he placed reliance on the decision in the case Bank of Tokyo Mitsubishi Bank Ltd. vs. CIT 108 taxmann.com 242 Calcutta. He further referred to Article – 7(3) and 26 the India -France DTAA.

30.1 Per contra, the Id. Departmental Representative vehemently placed reliance on the order of the Tribunal in assessee's own case for Assessment Year 2005-06.

30.2 We have heard the submissions made by rival sides. We find that the issue is perennial. The Co-ordinate Bench in appeal by the assessee for Assessment Year 2005-06 in ITA No.6706/Mum/2012 has decided this issue against the assessee by placing reliance on the order of Tribunal and the Hon'ble Bombay High Court in the preceding years. The Id.Counsel for the assessee informed that the assessee is in appeal before Hon'ble High Court against the order of Tribunal for Assessment Year 1996-97 and the appeal is pending for final disposal. Taking into consideration entire facts, we see no reason to take a different view in the impugned assessment year. Hence, the issue of rate of tax in present appeal is decided in terms of the earlier order of the Tribunal in assessee's own case. Ground No.24 of appeal is dismissed.

**Ground No.25: Levy of Interest u/s. 234B of the Act:**

31. Charging of interest u/s. 234B of the Act is mandatory and consequential, hence, ground No.25 of appeal is dismissed.

32. In the result, appeal of the assessee is partly allowed.

**ITA NO.3103/MUM/2014-A.Y. 2007-08 – ASSESSEE’S APPEAL**  
**ITA NO.4259/MUM/2014 –A.Y.2007-08 – REVENUE’S APPEAL**

33. The gist of issues raised by assessee in its appeal are as under:

Ground No.1 – Taxability of interest received by Assessee from Head Office(HO) /Overseas Branches on NOSTRO Accounts;

Ground No.2: Disallowance of bank charges paid to HO/Overseas branches under section 40(a)(i) of the Act;

Ground No.3: Allowability of direct expenses incurred by HO/Overseas Branch towards HO-System Implementation Charges, Regional Logistics Asia Pacific Costs (RLAP) and Electronic Data Processing(EDP) recharges and Information System Asia Pacific(ISAP) charges;

Ground No.4: Disallowance u/s. 14A of the Act;

Ground No.5 : Profit on re-valuation of unmatured forward forex contracts;

Ground No.6: Netting off of interest u/s. 244A of the Act against interest u/s.234D of the Act;

Ground No.7: Restricting of depreciation on motor cars to 15% as against the claim of 40%;

Ground No.8: Taxability in the hands of assessee (Indian Branch) of interest and commission arising to overseas branches in respect of ECB to Indian borrowers;

Ground No.9: Transfer Pricing Adjustment made in respect of commission earned by assessee (Indian Branch) for marking of derivative products (60% INPV) was attributed;

Ground No.10: Taxation of income of assessee at a rate as applicable to Non-resident company;

Additional ground raised by way of application dated 15/01/2016:

*“ The Assessing Officer (AO) ought to have granted credit for taxes deducted by the India branch on Head Office System Implementation charges, Regional Logistics Asia Pacific costs & EDP recharge and Information Systems Asia Pacific charges.”*

34. The gist of issues raised by Revenue in its appeal are as under:

Ground No.1: Taxability of interest paid to HO/Overseas Branches u/s. 40(a)(i) of the Act:

Ground No.2: Deductibility of Direct expenses towards credit risk assistance and EDP assistance provided by HO to Indian Branches;

Ground No.3: Interest received u/s. 244A of the Act liable to tax at a rate prescribed in Article-12 of DTAA between India and France,

Ground No.4:Taxability of interest paid by Indian Branch to HO and other overseas branches;

Ground No.5: Amount paid by assessee to Head Office towards credit risk assistance, EDP assistance, Head Office System Implementation, etc.;

Ground No.6: Taxability of ECB interest arising to Singapore Branch in India in respect of ECB of Indian Borrowers;

Ground No.7: Taxability of ECB interest arising to Hong Kong Branch in India in respect of ECB of Indian Borrowers;

Ground No.8: Taxability in India of 50% of commission earned by Hong Kong branch on ECB to Indian Borrowers,

35. Both sides are unanimous in stating that majority of the issues raised in appeal for Assessment Year 2006-07 are subject matter of appeal either in appeal by the Department or the assessee in subsequent Assessment Years i.e. Assessment Year 2007-08, 2008-09 and 2009-10. We find that the issues raised in the appeal for Assessment Year 2006-07 are recurring issues that have been decided by the Tribunal in the preceding Assessment Years and those very issues are subject matter of appeal, either by the Department or the assessee in the subsequent Assessment Years as well. The facts germane to the issues in Assessment Year 2007-08 are similar to facts in Assessment Year 2006-07 decided by us(*ibid*). To avoid repetitive detailed discussion on the issues raised in subsequent Assessment Years, only the issues raised in the grounds of appeal in Assessment Year 2007-08 are listed. The findings given by us while adjudicating the appeal of assessee for 2006-07 would *mutatis mutandis* apply to the cross appeals for Assessment Year 2007-08. For parity

of reasons, the appeal of assessee is partly allowed and the appeal of Revenue is dismissed.

**ITA NO.1503/MUM/2014-A.Y.2008-09 - ASSESSEE'S APPEAL:**  
**ITA NO.1483/MUM/2014 –A.Y.2008-09 – REVENUES APPEAL:**

36. The gist of issues raised by assessee in its appeal are as under:

Ground No.1 – Taxability of interest received by Assessee from Head Office (HO)/Overseas Branches on NOSTRO Accounts(*Same as ground No.1 in appeal for AY 2006-07*);

Ground No.2: Disallowance of bank charges paid to HO/Overseas branches under section 40(a)(i) of the Act(*Same as ground No.3 in appeal for AY 2006-07*);

Ground No.3: Allowability of direct expenses incurred by HO/Overseas Branch towards HO-System Implementation Charges, Regional Logistics Asia Pacific Costs (RLAP) and Electronic Data Processing(EDP) recharges and Information System Asia Pacific(ISAP) charges(*Same as ground No.5 in appeal for AY 2006-07*);

Ground No.4: Disallowance towards the provision made in respect of standard assets, derivative exposures and country risk:The Ld. Counsel for the assessee submitted that the issue is recurring and in the preceding assessment years the issue has been considered by the Tribunal. We find that in assessment year 2003-04, 2004-05 and 2005-06 similar provision for country risk was made by

the assessee. The CIT(A) in the impugned assessment year has rejected the claim of assessee following the reason given by his predecessor in Assessment Year 2005- 06. The co-ordinate Bench while deciding the appeal of assessee for assessment year 2005-06 in turn following the order of Tribunal in assessee's own case for assessment year 2004- 05 dismissed the ground. The Tribunal in assessment year 2003- 04 and 2004- 05 decided the issue against the assessee placing reliance on the decision of Special Bench in the case of Net India Industries Limited vs. ACIT 18 SOT 51. We see no reason to take a different view on parity of facts. Thus, ground no. 4 of appeal is dismissed.

Ground No.5: Transfer Pricing Adjustment on interest in respect of call placements and borrowings(*Same as ground No.19 in appeal for AY 2006-07*);

Ground No.6: Taxability in the hands of assessee (Indian Branch) of interest and commission arising to overseas branches in respect of ECB to Indian borrowers(*Same as ground No.20 in appeal for AY 2006-07*);

Ground No.7: Transfer Pricing Adjustment made in respect of commission earned by assessee (Indian Branch) for marking of derivative products (60% INPV)(*Same as ground No.21 in appeal for AY 2006-07*);

Ground No.8. Deduction u/s.35DDA of the Act for expenses incurred on voluntary/early retirement plan and voluntary separation plan during Assessment Year 2004-05: the Id. Counsel for the assessee submitted that the assessee had filed an application under section 154 of the Act before the Assessing Officer. The Assessing Officer vide order dated 16/11/2021 allowed

the deduction u/s.35DDA of the Act, therefore, the ground has become infructuous.

In view of the statement made by Id. Counsel for the assessee, ground no.8 of appeal by the assessee is dismissed as infructuous.

Ground No.9: Deduction u/s. 35DD of the Act for amalgamation and major expenses incurred during Assessment Year 2005-06: The Id.Counsel for the assessee submits that the assessee has incurred expenses to the tune of Rs.9,93,71,998/- towards restructuring in Assessment Year 2005-06. The Assessing Officer invoked the provisions of section 35DD of the Act. Accordingly, 1/5<sup>th</sup> expenditure was to be amortized over a period of five years. However, the Assessing Officer allowed amortization of 50% of the 1/5<sup>th</sup> expenditure, i.e. as against Rs.1,98,74,400/- only Rs.99,37,200/- were allowed by the Assessing Officer on the ground of lack of documentation. The findings of Assessing Officer were upheld by the CIT(A). The assessee filed application u/s. 154 of the Act dated 01/03/2012 before the Assessing Officer. The CIT(A) in impugned Assessment Year directed the Assessing Officer to expeditiously dispose off the said application of assessee. The Assessing Officer purportedly allowed deduction of balance 50% amount in proceedings u/s. 154 of the Act. The Id. Counsel for the assessee submitted that since amortization of entire 1/5<sup>th</sup> amount has been allowed to assessee in AY 2005-06, the relief in impugned Assessment Year and the subsequent Assessment Years i.e.AY 2008-09 and 2009-10 being part of five year block is allowable being consequential.

The facts have not been disputed by the Revenue. As sequitur to the relief allowed in AY 2005-06, the assessee's claim of amortization of 1/5<sup>th</sup> amount is allowed.

Ground No.10: Restricting of depreciation on motor cars to 15% as against the claim of 40%. *(Same as ground No.9 in appeal for AY 2006-07);*

Ground No.11: Relief of Canadian Tax of Rs.5,917/- u/s.90 of the Act: The Id. Counsel submitted that though the assessee does not accept the legality of disallowance, however, due to smallness of the amount, it chooses not to press the ground. In view of the statement made by Id. Counsel, ground no.11 of appeal is dismissed as not pressed.

Ground No.12: The assessee has assailed the finding of Assessing Officer in holding that income of the assessee is taxable at a rate (40%), as applicable to non-resident company. *(Same as ground No.24 in appeal for AY 2006-07)*

37. The gist of issues raised by Revenue in its appeal are as under:

Ground No.1: Disallowance of interest paid to HO/Overseas Branches u/s. 40(a)(i) of the Act. *(Same as ground No.2 in appeal by the assessee for AY 2006-07);*

Ground No.2: Allowability of Direct expenses towards credit risk assistance and EDP Assistance provided by HO to Indian Branches. *(Same as ground No.4 in appeal by the assessee for AY 2006-07);*

Ground No.3: Taxability of interest paid by Indian Branch to HO and other overseas branches.*(Same as ground No.10 in appeal by the assessee for AY 2006-07);*

Ground No.4: Amount paid by assessee to Head Office towards credit risk assistance, EDP Assistance, Head Office System Implementation, etc.*(Same as ground No.11 in appeal by the assessee for AY 2006-07);*

Ground No.5: Taxability of ECB interest arising from Singapore Branch in India in respect of ECB of Indian Borrowers. *(Same as ground No.13 in appeal by the assessee for AY 2006-07);*

Ground No.6: Taxability of ECB interest arising from Hong Kong Branch in India in respect of ECB of Indian Borrowers. *(Same as ground No.14 in appeal by the assessee for AY 2006-07);*

Ground No.7: Taxability in India of 50% of commission earned by Hong Kong branch on ECB to Indian Borrowers. *(Same as ground No.16 & 17 in appeal by the assessee for AY 2006-07).*

38. Majority of the rounds raised by the assessee and the Revenue in cross appeals are similar to the one adjudicated in the Assessment Year 2006-07. Corresponding ground numbers of AY 2006-07 are mentioned against the grounds of appeal in the impugned assessment year. Both sides are unanimous in stating that the facts germane to the grounds raised in impugned assessment year are similar to Assessment Year 2006-07. Hence, the findings

given by us while adjudicating the issues raised in 2006-07 would mutatis mutandis apply to the grounds raised in present Assessment Year.

38.1 Apart from the similar issues recurring over the Assessment Years there are certain fresh issues in appeal by the assessee. The findings on the fresh grounds have been given independently.

39. In the result, appeal of the assessee is partly allowed and the appeal of Revenue is dismissed.

**ITA NO.1504/MUM/2014-A.Y.2009-10 – ASSESSEE’S APPEAL**  
**ITA No. 1868/MUM/2014 –A.Y.2009-10 – REVENUES APPEAL**  
**C.O NO.140/MUM/2014-A.Y. 2009-10 – BY ASSESSEE**

40. The gist of issues raised by assessee in its appeal are as under:

Ground No.1: Disallowance of bank charges paid to HO/Overseas branches by under section 40(a)(i) of the Act. *(Same as ground No.2 in appeal for AY 2006-07);*

Ground No.2: Allowability of Direct expenses towards credit risk assistance and EDP Assistance provided by HO to Indian Branches. *(Same as ground No.4 in appeal for AY 2006-07);*

Ground No.3: Allowability of direct expenses incurred by HO/Overseas Branch towards HO-System Implementation Charges, Regional Logistics Asia Pacific Cost(RLAP) and Electronic Data Processing(EDP) recharges and Information System Asia Pacific(ISAP) charges. *(Same as ground No.5 in appeal for AY 2006-07);*

Ground No.4: Disallowance towards the provision made in respect of standard assets, derivative exposures and country risk. *(Same as ground No.4 in appeal for AY 2008-09)*

Ground No.5: Restricting of depreciation on motor cars to 15% as against the claim of 40%, *(Same as ground No.9 in appeal for AY 2006-07);*

Ground No.6: Amount paid by assessee to Head Office towards credit risk assistance, EDP Assistance, Head Office System Implementation, etc.*(Same as ground No.11 in appeal for AY 2006-07);*

Ground No.7: Taxability of ECB interest arising to Singapore Branch in India in respect of ECB of Indian Borrowers. *(Same as ground No.13 in appeal for AY 2006-07)*

Ground No.8 Taxability of ECB interest arising to London Branch in India in respect of ECB to Indian Borrowers: The facts in ground no.8 of appeal are similar to facts in ground No. 7 and 9 of the appeal. The Tribunal in AY 2005-06 in respect of Singapore and Hong Kong Branch has decided the issue in favour of assessee. For parity of reasons ECB interest arising to London Branch in India in respect of ECB to Indian Borrowers is not taxable in India. Thus ground no.8 is allowed.

Ground No.9: Taxability of ECB interest arising to Hong Kong Branch in India in respect of ECB of Indian Borrowers. *(Same as ground No.14 in appeal for AY 2006-07);*

Ground No.10: Double taxation of ECB interest as income arising to Overseas Branches on ECB to Indian Borrowers. *(Same as ground No.15 in appeal for AY 2006-07);*

Ground No.11: Taxability in India of 50% of commission earned by Hong Kong branch on ECB to Indian Borrowers. *(Same as ground No.16 & 17 in appeal for AY 2006-07);*

Ground No.12: Transfer Pricing adjustment in respect of commission income being twice charged to tax. *(Same as ground No.15 in appeal for AY 2006-07);*

Ground No.13: Taxability in the hands of assessee (Indian Branch) of interest and commission arising to overseas branches in respect of ECB to Indian borrowers. *(Same as ground No.20 in appeal for AY 2006-07);*

Ground No.14.: Transfer Pricing Adjustment made in respect of commission earned by assessee (Indian Branch) for marking of derivative products (60% INPV).*(Same as ground No.21 in appeal for AY 2006-07);*

Ground No.15: Transfer Pricing Adjustment on interest in respect of call placements and borrowings. *(Same as ground No.19 in appeal for AY 2006-07)*

Additional Ground Vide application dated 15/01/2016

*“The Assessing Officer (AO) ought to have granted credit for taxes deducted by the India branch on Head Office System Implementation charges, Regional Logistics Asia Pacific costs & EDP recharge and Information Systems Asia Pacific charges.”*

*(Same as Additional Ground in appeal for AY 2006-07)*

Additional Ground Vide application dated 07/02/2023

*“The learned AO erred in not granting complete deduction of INR 1,98,74,400 being one fifth of amalgamation and merger expenses of INR 9,93,71,998 incurred during Assessment Year 2005-06.”*

*(Same as ground No.9 in appeal for AY 2008-09)*

41. The gist of issues raised by Revenue in its appeal are as under:

Ground No.1: Taxability of interest paid to HO/Overseas Branches u/s. 40(a)(i) of the Act. *(Same as ground No.2 in appeal by the assessee for AY 2006-07);*

Ground No.2: Disallowance towards the provision made in respect of standard assets, derivative exposures and country risk. *(Same as ground No.4 in appeal by the assessee for AY 2008-09)*

Ground No.3: Taxability of interest paid by Indian Branch to HO and other overseas branches. *(Same as ground No.10 in appeal by the assessee for AY 2006-07)*

42. The cross appeal by the assessee and revenue in the impugned assessment year are directed against the assessment order dated 21/01/2014 passed u/s. 144C(13) r.w.s. 143(3) of the Act.

43. The grounds agitated by the assessee and the Revenue in their respective appeals are similar to the one raised in preceding Assessment Years. Both sides are unanimous in stating that the submissions made in preceding

assessment years on the similar grounds raised in respective appeals would equally apply to the present set of appeals. The issues raised in the cross appeals are perennial arising out of same set of facts in the impugned assessment year, as well. Therefore, the findings given by us while adjudicating these issues in Assessment Year 2006-07 and 2008-09 would mutatis mutandis apply to the grounds raised in the present Assessment Year. For parity of reasons appeal of the assessee and the Revenue is partly allowed.

**C.O NO.140/MUM/2014 – A.Y. 2009-10 – BYASSEESSEE:**

44. The solitary issue raised by assessee in its Cross Objections read as under:

*“ Without prejudice to its stand that the interest paid by the India branch of the Bank to its Head Office ('HO') and overseas branches ('OB') is deductible expenditure even though no tax was deducted at source, in the event the interest so paid by the India branch to its HO/OB is held to be not deductible, the interest received by the India branch from its HO and OB may not be taxable.”*

45. The issue raised by the assessee in cross objections is corresponding to ground of appeal no.3 in appeal by the Revenue. Since ground no.3 of appeal by the Department is dismissed, the cross objections filed by the assessee have become infructuous.

**46. To sum up, appeals of the assessee for Assessment Years 2006-07,2007-08 and 2008-09 and 2009-10 are partly allowed and the appeals of**

**the Revenue for Assessment Years 2007-08 and 2008-09 are dismissed and that of AY 2009-10 is partly allowed. The Cross Objections of the assessee in Assessment Year 2009-10 are dismissed as infructuous.**

Order pronounced in the open court on Monday the 11th day of September, 2023.

Sd/-

(S.RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 11/09/2023  
 Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)/Sr. Private SecretaryITAT,  
 Mumbai