IN THE INCOME TAX APPELLATE TRIBUNAL
“J” BENCH, MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM &
MS PADMAVATHY S, AM

I.T.A. No. 2496/Mum/2022
(Assessment Year: 2018-19)

Varian Medical Systems International (India) Pvt. Ltd. Unit 9A, 9th Floor, North Tower, Godrej One, Phirojshanagar Eastern Express Highway, Vikharoli East, Mumbai-400059. **PAN : AADCV0767H**	Vs.	**Assessment Unit, NFAC Centre ITO, Ministry of Finance, Delhi,** Circle 3(3)(1), Aayakar Bhavan, M.K. Road, New Marine Lines, Churchgate, Mumbai-400020.
Appellant)	:	**Respondent**)

Appellant/Assessee by	:	Shri Ajit Jain a/w Shri Siddesh Chaugule, AR
Revenue/Respondent by	:	Shri Nihar Samal, Sr. DR
Date of Hearing	:	23.01.2024
Date of Pronouncement	:	13.02.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the final order of assessment passed by Assessment Unit, Income Tax Department dated 29.07.2022 under section 144C r.w.s. 144C(13) of the Income Tax Act, 1961 (in short 'the Act') for the AY 2018-19.

2. The assessee is a private limited company engaged in the business of services of medical and radiotherapy equipment in India. The assessee also

provides software development services to its Associated Enterprises (AE). During the year Varian Medical Systems India Software Pvt. Ltd. got amalgamated with the assessee company w.e.f. 01.04.2017 in terms of the scheme of amalgamation approved by the National Company Law Tribunal (NCLT). The assessee filed the return of income for AY 2018-19 on 30.11.2018 declaring total income of Rs. 35,56,75,590/-. The return was proceed under section 143(1) of the Act assessing the income at Rs. 35,84,34,480/- after making certain adjustments including the addition towards delayed remittance of employee contribution to PF/ESI. Subsequently, the case was selected for scrutiny under CASS and the statutory notices were duly served on the assessee. Since the assessee had certain international transactions with its AE, a reference was made to the Transfer Pricing Officer (TPO) in order to determine the Arms Length Price (ALP) of the transaction. The TPO passed an order under section 92CA(3) dated 28.07.2021 in which TP Adjustment of Rs. 4,02,88,853/- was determined. The AO passed a draft assessment order incorporating the TP Adjustment. Additionally the AO also made the below adjustments while passing the draft assessment order.

1.	Addition on account of accretion to reserve under section 68	Rs. 48,21,24,652/-
2.	Disallowance of finance cost under section 37(1)	Rs. 31,97,466/-
3.	Disallowance of installation support service charges and warranty services	Rs. 1,43,72,205/-
4.	Addition towards recovery of warranty support services charges from AE	Rs. 12,81,24,990/-
5.	Disallowance of warranty support charges under section 37(1)	Rs. 3,22,33,056/-.

3. Aggrieved, the assessee filed its objections before the Dispute Resolution Panel (DRP). Pursuant to the directions of the DRP, the T.P. Adjustment was reduced to Rs. 3,39,48,928/-. The DRP with regard to the other additions made by

the AO sustained only those addition made towards accretion to capital reserve treated as Long Term Capital Gains (LTCG) to the extent of Rs. 1,26,00,000/- and the finance cost disallowed to the extent of Rs. 9,06,801/-. The AO passed the final assessment order as per the directions of the DRP against which the assessee is in appeal before the Tribunal. The assessee raised various grounds and sub-grounds with regard to the following issues:

Issue	Ground No.
Erroneous levy of income tax and interest thereon	Ground No.1 (1.1)
Transfer Pricing - General	Ground No.2 (2.1 to 2.3)
Transfer Pricing- provision of software development services and related support services	Ground No.3 (3.1 to 3.8)
Transfer Pricing- interest on outstanding receivables	Ground No. 4 (4.1 to 4.6)
Disallowance of employee contribution to PF in the intimation under section 143(1)	Ground No. 5 (5.1 to 5.3)
Addition on account of accretion to reserve treated as LTCG	Ground No.6 (6.1 to 6.6)
Disallowance of Finance Cost under section 37(1) of the Act	Ground No.7 (7.1 to 7.3)
Short grant of advance tax credit	Ground No. 8 (8.1 & 8.2)
Short grant of TDS credit	Ground No. 9 (9.1 & 9.2)
Incorrect calculation of interest under section 234B of the Act	Ground No. 10 (10.1 to 10.3)
Levy of additional interest under section 234C	Ground No.11 (11.1 to 11.3)
Initiation of penalty under section 270A of he Act	Ground No. 12 (12.1 & 12.2)

4. Ground No.1 and 2 are general not warranting any separate adjudication.

T.P. Adjustment towards software developments services and related support services - Ground No.3 (3.1 to 3.8)

5. During the year under consideration, the assessee has rendered software development and related support services to its AE for an amount of Rs. 105,28,58,960/-. In the transfer pricing report (TPR) the assessee has benchmarked this transaction by selecting Transaction Net Margin Method (TNMM) with PLI of

OP/OC. The assessee selected the following comparables in the transfer pricing report:

Sl No	Company Name	Margin (OP/OC)			Weighted Average
		2017-18	2016-17	2015-16	
1	Rheal Software Ltd	-13.39%	-12.16%	3.20%	-7.01%
2	Evoke Technologies Pvt Ltd.	2.87%	4.65%	-8.31%	-0.15%
3	Kireeti Soft Technologies Ltd	NA	1.72%	2.31%	1.99%
4	Ksolves India Ltd	2.82%	3.92%	12.32%	5.34%
5	Maveric Systems Ltd	10.43%	5.39%	4.51%	6.97%
6	Harbinger Systems Pvt Ltd	NA	9.63%	7.04%	8.24%
7	8K Miles Software Services Limited	8.38%	10.14%	9.54%	9.20%
8	Orangescape Technologies Ltd.	12.44%	8.34%	6.21%	9.74%
9	Infomile Technologies Ltd	8.64%	11.50%	9.86%	9.81%
10	Asite Solutions Pvt. Ltd.	13.98%	9.69%	11.43%	11.74%
11	C G-V A K Software & Exports Ltd.	13.61%	9.99%	13.21%	12.31%
12	Mindtree Limited	13.99%	14.10%	19.24%	15.54%
13	Fuzen Software Pvt Ltd	NA	15.01%	16.01%	15.55%
14	E-Zest Solutions Ltd	21.83%	12.80%	9.84%	15.80%
15	Great Software Laboratory Pvt. Ltd	NA	20.93%	14.46%	18.20%
16	Orion India Systems Private Limited	16.81%	NA	NA	16.81%
17	Sagarsoft (India) Ltd.	29.06%	5.68%	6.41%	17.52%
18	Indium Software India Ltd	21.63%	20.47%	12.74%	18.59%
	35th Percentile				9.20%
	Median				10.77%
	65th Percentile				15.54%

6. The assessee's PLI is computed as under as per the TPR:

Particulars	Amount in INR
Income	
Sales	1,052,858,961
Operating Income	**1,052,858,961**
Expenditure	
Employee benefits expense	543,468,846
Other Expenses	274,423,150
Depreciation and amortization expense	98,570,761
Operating Cost (OC)	**916,462,758**
Operating Profit (OP)	**136,396,203**
OP/OC	**14.88%**

7. Since the PLI of the comparables is in the range of 9.2% to 15.54% and assessee's PLI being 14.88%, the assessee treated the transactions with the AE to be at ALP. The TPO rejected five (5) of the comparables as selected by the assessee in serial no. 1, 3, 4, 9 & 12. The TPO made a fresh search of comparables to add Twelve (12) more comparables by relying on the T.P. order for the AY 2017-18 and accordingly arrived at the following list of final comparables:

Sl.No.	Name of the Company	OP/OC
1	Evoke Technologies Pvt. Ltd.	-0.15%
2	Maveric Systems Ltd.	6.97%
3	Harbinger Systems Pvt. Ltd.	8.24%
4	8K Miles Software Services Ltd.	9.20%
5	Orangescape Technologies Ltd.	9.74%
6	Asite Solutions Pvt. Ltd.	11.74%
7	C G-V A K Software & Exports Ltd.	12.31%
8	Fuzen Software Pvt. Ltd.	15.55%
9	E-Zest Solutions Ltd.	15.80%
10	Great Software Laboratory Pvt. Ltd.	18.20%
11	Orion India Systems Pvt. Ltd.	16.81%
12	Sagarsoft (India) Ltd.	17.52%
13	Indium Software India Ltd.	18.59%
14	Nihilent Ltd.	20.91%
15	Infobeans Technologies Ltd.	26.59%
16	Cadsys (India) Ltd.	27.18%
17	Cybage Software Pvt. Ltd.	57.03%
18	Interglobe Technology Quotient Pvt. Ltd.	70.80%
19	Dun & Bradstreet Technologies & Data Services Pvt. Ltd.	84.77%
20	E-Infochips Pvt. Ltd.	67.71%
21	Cygnet Infotech Pvt. Ltd.	24.86%
22	Dynamic Digital Technology Pvt. Ltd.	0.19%
23	Gislen Software Pvt. Ltd.	49.49%
24	Endeavour Software Technologies Pvt. Ltd.	33.77%
25	Sonata Software Ltd.	35.73%
	Count	**25**
	35th percentile	**15.55%**
	Median	**18.20%**
	65th Percentile	**26.59%**

8. Accordingly, the TPO arrived at the T.P. Adjustment of Rs. 3,03,99,153/- as per below working:

Particulars	**Amount**
Total Operating Income	1,05,28,58,961
Total Operating Expenditure	91,64,62,758
Operating Profit of assessee (A)	13,63,96,203
OP/OC of assessee	14.88%
Arm's Length Rate (Median of comparable)- ALP	18.20%
ALP Profit (B)	**16,67,95,356**
Transfer Pricing Adjustment (B-A)	**3,03,99,153**

9. The ld. Authorized Representative (AR) during the course of hearing submitted a chart contending the inclusion of twelve (12) comparables added by the TPO. The ld. AR submitted that all the comparables have been added by the TPO based on the T.P. order for the earlier AY i.e. AY 2017-18 and that the Co-ordinate Bench in assessee's own case for AY 2017-18 (ITA No. 510/Mum/2022 dated 27.12.2023) has excluded all the twelve comparables for the reason that certain comparables fails Related Party Transaction (RPT filter) and certain comparables are functionally not comparables. The ld. AR further submitted that since the TPO has added the comparables based on the TP order for AY 2017-18, the decision of the Co-ordinate Bench for AY 2017-18 in assessee's own case will be applicable for the year under consideration for the purpose of exclusion of comparables on the similar ground.

10. The ld. Departmental Representative (DR) on the other hand, submitted that each AY is separate and therefore, the decision of the Co-ordinate Bench in earlier AY cannot be directly applied for the year under consideration for the purpose of exclusion of comparables. The ld. DR further prayed that the specific finding with regard to the comparables by the TPO need to be considered while deciding the

exclusion/inclusion of the comparables. The ld. DR also prayed that the order of the Co-ordinate Bench for AY 2017-18 would be challenged by the Revenue before the Hon'ble High Court and therefore, the decision cannot be treated as final.

11. We have heard the parties and perused the material on record. We noticed that out of the final list of comparables selected by the TPO as listed in the earlier part of this order Sonata Software Ltd., Dynamic Digital Technology Pvt. Ltd., Endeavour Software Technologies Pvt. Ld., and Gislen Software Pvt. Ltd., are sought to be excluded for the reason that they fail the RPT filter. On the examination of the T.P. Report (page 26 to 135 of PB), we noticed that the assessee while choosing the comparables has applied RPT filter of more than 25%. The TPO while choosing the said comparables has simply relied on the T.P. order for AY 2017-18 and has not examined the RPT figures of the comparables for the year under consideration. It is well settled position that the companies having RPT of more than 25% are to be excluded for the purpose of comparison.

12. For the year under consideration the related party transactions of Sonata Software Ltd (page 668 to 670 of PB) is as a percentage of sales more than 90%. Dynamic Digital Technology Pvt. Ltd (page 431 of PB) is 93.28%, Endeavour Software Technologies Pvt. Ld. (page no. 36, 663 to 667 of PB) is 96.10% and RPT of Gislen Software Pvt. Ltd. (page no. 1918 & 1994 of PB) is 35%. Therefore, we see merit in the contention of the ld. AR that the above four companies are to be excluded for the reason that they fail the RPT filter. We also noticed that the Co-ordinate Bench in assessee's own case has excluded Sonata Software Ltd. and Dynamic Digital Technology Pvt. Ltd. from the list of comparables for AY 2017-18 for the same reason that they fail the RPT filter of

more than 25%. Therefore, we hold that Sonata Software Ltd., Dynamic Digital Technology Pvt. Ltd., Endeavour Software Technologies Pvt. Ld., and Gislen Software Pvt. Ltd., are to be excluded from the list of comparables since they fail the RPT filter of more than 25%.

13. The assessee is seeking exclusion of Cadsys (India) Ltd., Cygnet Infotech Pvt. Ltd., Dun & Bradstreet Technologies & Data Services Pvt. Ltd., E-Infochips Ltd., Interglobe Technology Quotient Pvt. Ltd., Cybage Software Pvt. Ltd. , Nihilent Ltd. andInfoBeans Technologies Ltd. (Formerly known as InfoBeans Systems India Pvt. Ltd.), for the reason that these comparables are functionally dissimilar to the assessee and therefore, cannot be included in the list of comparables. In this regard, we noticed that the Co-ordinate Bench of the Tribunal in assessee's own case has considered the issue of exclusion of the above comparables based on functional dissimilarity and has held that

> *"33.1.*****
>
> *33.2 **Dun & Bradstreet Technologies & Data Services Pvt. Ltd**. is not functionally comparable since it is engaged in rendering predictive analytics, software development and related technology services and solutions.*
>
> *33.3 **Interglobe Technology Quotient Pvt. Ltd.** is not functionally comparable since it is engaged in data processing export services travel technologies, and other support services. Further it is noted that the employee cost to total sales ratio of this company is less than 25% which shows that the business model of this company is different.*
>
> *33.4 **Cybage Software Private Limited** is not functionally comparable since it is a technology consulting company specializing in outsourced product engineering services.*
> *33.5. *****

*33.6 **Cadsys (India) Ltd.** is not functionally comparable since it is engaged in providing solutions for GIS & mapping services, Telecom & CATV services, Engineering and project management services and digital media & Project management services and balancing Cognitive strength of human mind and computing power of Machine to its clients.*

*33.7 **Cygnet Infotech Pvt. Ltd.** is not functionally comparable as it is engaged in the business of providing enterprise solutions, Application, Content Management services and IT enabled services and no separate segment are reported by the Company. The list of services provided by Cygnet pertains to blockchain, Artificial Intelligence, Robotic process Automation, Cloud, Internet of Things, Tax Technology, Augmented / Virtual Reality, Digital Transformation, Content Management, Microsoft, etc.*

*33.8 **InfoBeans Technologies Limited** is not functionally comparable as it is engaged in the software engineering services primarily in Custom Application Development ITA No.510/Mum/2022 M/s. Varian Medical Systems International (India) Pvt.Ltd. 37 (CAD), Content Management Systems (CMS), Enterprise Mobility (EM), and Big Data Analytics (BDA)*

*33.9.*****

*33.10 **Nihilent Ltd.** is not functionally comparable since it is engaged in rendering diversified services including software services, business consulting in the area of enterprise transformation, change and performance management and providing related IT services.*

34. We have considered the functional profile of the assessee and the functional profile of 10 companies as discussed above. We find that all these companies are not comparable to the assessee for the reasons recorded above. We direct the TPO to exclude all the 10 companies mentioned above. We hold accordingly."

14. Since there is no change to the functional profile of the assessee as compared to the previous year, we are of the considered view that the decision of the Co-ordinate Bench in excluding these comparables on the basis of functional dissimilarity is squarely applicable for the year under consideration also. Accordingly, we direct the TPO to exclude Cadsys (India) Ltd., Cygnet Infotech Pvt. Ltd., Dun & Bradstreet Technologies & Data Services Pvt. Ltd., E-Infochips

Ltd., Interglobe Technology Quotient Pvt. Ltd., Cybage Software Pvt. Ltd. , Nihilent Ltd. & InfoBeans Technologies Ltd. (Formerly known as InfoBeans Systems India Pvt. Ltd.)

15. The TPO is also directed the re-compute the ALP based on the directions given above.

T.P. Adjustment towards interest on receivables - Ground No. 4 (4.1 to 4.6)

16. The TPO during the course of T.P. Proceeding noticed that the assessee is having outstanding receivables from its AE and called on the assessee to show-cause why ALP interest should not charged on the receivables. The assessee submitted the Ageing Analysis of the outstanding to submit that the outstanding of Varian Medical System Inc., USA and Varian Medical Systems, GMBH, Germany are less than 20 days. The assessee further submitted that it is also having outstanding payable to AEs for which no interest is charged. Accordingly, the assessee submitted that no interest shall be charges on the outstanding receivables. The TPO accepted the submission of the assessee with regard to Varian Medical System Inc,. USA and Varian Medical Systems, GMBH, Germany and held that no interest is attributable on these receivables. However, with regard to outstanding receivable from other AEs, the TPO made a T.P Adjustment of Rs. 98,89,700/- by applying Swiss LIBOR+400 basis points.

17. On further appeal the DRP gave partial relief to the assessee by holding that the interest should not be applied on the closing balance but on the invoice-wise ageing of the receivables and according the TP adjustment was reduced to Rs. 35,49,775.

18. The ld. AR in this regard submitted that the similar is considered by the Co-ordinate Bench in assessee's own case where it has been held that

"42. We have considered the facts of the case and the arguments of both the sides. It is not the argument of the Ld. AR that there is no international transaction. Therefore, the short point to be decided here is (a) the amount and days on which the interest should be charged; (b) the grace period and (c) the rate of interest applicable.

43. As far as the amount and days on which the interest should be charged there is no doubt that the interest can be charged only on the actual amount outstanding for each and every invoice beyond the grace period. Charging of interest by the TPO on the closing balance without looking into delay of each and every invoice is incorrect. Therefore, we direct the TPO to compute the amount and number of days outstanding beyond the grace period for each and every invoice. The assessee shall provide complete information in this regard to the TPO.

44. Turning to the number of days of grace period, there is no thumb rule that grace period of 30 days, 60 days or 90 days should be allowed. It should be dependent upon (i) the terms and conditions of agreement with the AE and/or (ii) the terms and conditions of comparable business transactions with the Non-AEs. On being asked, the Ld. AR submitted that the assessee is a captive service provider and there are no comparable transactions with the Non-AEs. Thus, we are left with no choice but to remand this issue to the file of the TPO to examine if there are any agreements with the AE and what is the grace period in those agreements. If there are no agreements with the AEs, the TPO should consider the market practice in the relevant sector and then grant the grace period. We, however, clarify that in business world there is always a grace period and therefore non-granting of grace period is ignoring the business realities.

45. Coming to the last issue of rate of interest we have considered the arguments of both the sides. Following various judicial precedents, we hold that the rate of interest of Libor + 200 bps should be applied. We hold accordingly."

19. Respectfully following the above decision of the Co-ordinate Bench in assessee's own case we direct the AO to re-compute the interest on receivable with similar directions. It is ordered accordingly.

<u>Disallowance of employee contribution to PF in the intimation under section 143(1) - Ground No. 5 (5.1 to 5.3)</u>

20. In the intimation under section 143(1) a sum of Rs. 27,58,890/- has been disallowed on account of employee contribution to PF under section 2(24)(x) r.w.s. 36(1) (va) of the Act. The ld. AR in this regard submitted that the disallowance could not be made in the intimation under section 143(1) as a prima facie adjustment. The ld. DR on the other hand submitted that the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case Checkmate Services Pvt. Ltd. Vs. CIT (2022) 448 ITR 518 (SC)

21. We heard the parties and perused the material on record. With regard to contention of the assessee that adjustment made by way of addition is beyond the scope of section 143(1)(a) of the Act meaning thereby addition/adjustment could not have been made by the CPC by taking refuge of the provisions of section 143(1)(a) of the Act we notice that Pune Bench of Tribunal in the case of Cemetile Industries vs. ITO in ITA No.693/PUN/2022 and others dated 23.11.2022, has considered the similar issue issue and held that –

> ***6**..*
> *………………………………………………………………………………………*
> *………………………………………………………………………………………*
> *……………………………………………………………………It was argued that no prima facie adjustment can be made in the Intimation issued u/s 143(1) of the Act unless a case is covered within the specific four corners of the provision. It was stressed that the action of the AO in making the extant disallowance does not fall in any of the clauses of section 143(1).*
> ***7.** We fully agree with the proposition bolstered by the ld. AR that adjustment to the total income or loss can be made only in the terms indicated specifically u/s.143(1) of the Act. Now, we proceed to examine if the case falls under any of the clauses. The rival parties are consensus ad idem that the case can be considered as falling either under clause (ii) or (iv) of section 143(1). For*

ready reference, we are extracting the relevant provision as under: '143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:— (a) the total income or loss shall be computed after making the following adjustments, namely:— (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return; (iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return'
8. *Sub-section (1) of section 143 states that a return shall be processed to compute total income by making six types of `adjustments' as set out in sub-clauses (i) to (vi). As noted supra, we are concerned only with the examination of two sub-clauses, viz., (ii) and (iv). Sub-clause (ii) talks of 'an incorrect claim, if such incorrect claim is apparent from any information in the return". The expression "an incorrect claim apparent from any information in the return" has not been generally used in the provision. Rather, it has been specifically defined in Explanation (a) to section 143(1) as under: `Explanation.—For the purposes of this sub-section,— (a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,— (i) of an item, which is inconsistent with another entry of the same or some other item in such return; (ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;'*
9. *Clause (i) of Explanation (a) refers to a situation in which there is a claim of income or expenditure at two places in the return of income and there is inconsistency in them. For example, if deduction is claimed under a specific section for a sum of Rs.100/- in the Profit and loss account accompanying the return, but in the computation of income, the amount has been taken as Rs.110/-, leading to inconsistency, requiring an adjustment. Clause (ii) of Explanation (a) covers a situation in which claim is made, say, for a deduction u/s.80IA for which audit report is required to be furnished, but such report has not been furnished along with the return. Clause (iii) contemplates a situation in which deduction exceeds specified statutory limit. For example, section 24(a) provides for a standard deduction for a sum equal to 30% of the ITA No.1242/Del/2022 National Housing Bank vs. ADIT 9 annual value, but the assessee has claimed deduction at 40%. These situations warrant an adjustment. It is obvious that none of the three clauses of Explanation (a), defining an incorrect claim apparent from any information in the return, gets magnetized to the facts of the present case.*
10. *Now we turn to clause (iv) of section 143(1)(a) which provides for `disallowance of expenditure or increase in income indicated in the audit*

report but not taken into account in computing the total income in the return'. The words "or increase in income" in the above provision were inserted by the Finance Act, 2021 w.e.f. 01- 04-2021. As such, this part of the provision cannot be considered for application during the years under consideration, which are anterior to the amendment. We are left with ascertaining if the disallowance made u/s 36(1)(va) in the Intimation under section 143(1)(a) can be construed as a `disallowance of expenditure indicated in the audit report not taken into account in computing the total income in the return'. Point 20(b) of the audit report in Form 3CA has columns – Serial number; Nature of fund; Sum received from employees; Due date for payment; The actual amount paid; and The actual date of payment to the concerned authorities. A copy of audit report in one of the cases under consideration, namely, S.M. Auto Stamping Pvt. Ltd. (ITA No.521/PUN/2022) has been placed on record. Point 20(b) of the audit report gives the `Sum received from employees' at Rs.21,800/-. `Due date for payment' has been reported as 15-07- 2017 and `The actual date of payment to the concerned authorities' has been given as 20-07-2017. Similar is the position regarding other items disallowed u/s.36(1)(va) having `The actual date of payment' after the `Due date for payment'. Thus, it is manifest that the audit report clearly points out that as against the due date of payment of the employees' share in the relevant fund on 15.7.2017 for deduction u/s 36(1)(va), the actual payment is delayed and deposited on 20.7.2017. The legislature, for the disallowance under sub-clause (iv) of section 143(1)(a), has used the expression `indicated in the audit report'. The word `indicated' is wider in amplitude than the word `reported', which envelopes both the direct and indirect reporting. Even if there is some indication of disallowance in the audit report, which is short of direct reporting of the disallowance, the case gets covered within the purview of the provision warranting the disallowance. However, the indication must be clear and not vague. If the indication in the audit report gives a clear picture of the violation of a provision, there can be no escape from disallowance. Turning to the facts of the case, it is clear from the mandate of section 36(1)(va) that the employees' share in the relevant funds must be deposited before the due date under the respective Acts. If the audit report mentions the due date of payment and also the actual date of payment with specific reference in column no. 20(b) having heading: `Details of contributions received from employees for various funds as referred to in section 36(1)(va)', it is an apparent indication of the disallowance of expenditure u/s 36(1)(va) in the audit report in a case where the actual date of payment is beyond the due date. Though the audit report clearly indicated that there was a delay in the deposit of the employees' share in the relevant funds, which was in contravention of the prescription of u/s.36(1)(va), the assessee chose not to offer the disallowance in computing

the total income in the return, which rightly called for the disallowance in terms of section 143(1)(a) of the Act.

11. The ld. AR vehemently argued that it was a case of "increase in income" which has been enshrined in clause (iv) of section 143(1)(a) w.e.f. 01-04-2021 and hence cannot be take note of for the year under consideration. In our considered opinion, the contention is ill-founded. We have noted above that clause (iv) of section 143(1)(a) talks of two different limbs, namely, `disallowance of expenditure' and `increase in income' by means of indication in the audit report. Both the limbs are independent of each other. The indication in the audit report for `Increase of income' should be qua some item of income and not increase of income because of the `disallowance of expenditure'. Every disallowance of expenditure leads to increase of income. If the contention of the ld. AR is taken to a logical conclusion, then the second expression `or increase in income' inserted by the Finance Act, 2021 would be rendered a redundant piece of legislation. It is trite interpretation has to be given to the statutory provisions in such a manner that no part of the Act is rendered nugatory. Distinction in the scope of the two aspects can be understood with the help of the present context only. We have noted that point no. 20(b) of the audit report, dealing with section 36(1)(va), has columns, inter alia, (i) `Sum received from employees'; (ii) `Due date for payment'; and (iii) `The actual date of payment to the concerned authorities'. The column (i) having details of the amounts received from employees indicates about the `increase in income' as per sub-clause (iv) of section 143(1)(a) if the assessee does not take this sum in computing total income. The columns (ii) and (iii) having details of due date for payment and the actual date of payment indicate about `disallowance of expenditure' if the assessee does not make suo motu disallowance in computing total income. Right now, there is no case of `increase in income' because the AO did not make adjustment for non-offering of income of the `Sums received from employees', but made the adjustment for `disallowance of expenditure' with the remarks that :`Amounts debited to the profit and loss account, to the extent disallowance under section 36 due to non-fulfillment of conditions specified in relevant clauses'. Thus, it is evident that it is a case of `disallowance of expenditure' and not `increase of income'. Further, the entire challenge by the assessee throughout has been to the disallowance of expenditure made by the AO. It set up a case before the authorities below, including the ld. CIT(A), taking shelter of section 43B of the Act by arguing that the disallowance cannot be made because such payment was made before the due date u/s.139(1) of the Act. As such, the contention of adjustment u/s 143(1)(a)(iv) due to `increase in income' is jettisoned.

12. Another argument point was put forth on behalf of the assessee that the assessee did not claim any deduction in the Profit and loss account of the amount under consideration and hence no disallowance should have been

made. This argument is again bereft of force. The assessee claimed deduction for salary on gross basis, inclusive of the employees' share to the relevant funds. To put it simply, if gross salary is of Rs.100, out of which a sum of Rs.10 has been deducted as contribution to relevant fund, then the debit of Rs.100 in the Profit and loss account means deduction has been claimed for Rs.10 as well. Ex consequenti, if deduction of Rs.10 is not allowed u/s 36(1)(va) for late deposit of the amount before the due date under the respective Act, it would mean that the claim of Rs.10 included in Rs.100 is not allowed deduction.

13. The ld. AR referred to section 5 of the Payment of Wages Act, 1936, to contend that deduction made from an employee's salary for the month of October should suffer disallowance only if it is not paid by 15th December. This argument was premised on the language of section 5, which says that the wages of every person employed upon or in any railway, factory or industrial or other ITA No.1242/Del/2022 National Housing Bank vs. ADIT 12 establishment upon or in which less than one thousand persons are employed, shall be paid before expiry of the seventh day, after the last day of the wage-period in respect of which the wages are payable. It was contended that salary for the month of October, 2022 will be paid before the 7th of November, which will result into income of the employer only at the time of payment, making the due date of payment into relevant fund as on or before 15th December and not 15th November.

14. There is no merit in the contention of linking the date of deposit of the employees' share in the relevant funds with the date of payment of wages. Section 5 of the Payment of Wages Act simply deals with the 'Time of payment of wages'. It does not stipulate any time limit for deposit of the employees share in the relevant funds. For that purpose, the relevant Acts give a window for depositing the contribution within 15 days of the last month's salary. Thus, contribution to the relevant fund towards the salary for the month of October-ending should be deposited before 15th November.

15. In view of the foregoing discussion, we are satisfied that the ld. CIT(A) was justified in sustaining the adjustment u/s 143(1)(a) by means of disallowance made in these cases for late deposit of employees' share to the relevant funds beyond the date prescribed under the respective Acts.

22. Respectfully following the judgment of Hon'ble Bench of the Tribunal in Cemetile Industries (supra), the said contention raised by the Assessee to the effect that addition involved is beyond the scope of section 143(1)(a) of the Act is untenable, hence the same is rejected.

23. On merits it is noticed that in assessee's case the Employees' contributions for Provident Fund and ESI has been deposited after the due date, as prescribed in the respective statutes, which resulted into making the disallowance/addition of Rs. 27,58,890/- u/s. 36(1) (va) read with section 2(24)(x) of the Act. The Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra) has laid down the dictum that payment towards Employees' contribution on account of PF/ESIC made after the due dates, as prescribed under the relevant statutes, is not allowable as deduction under section 36(1)(va) of the Act, by concluding as under:

> *"52. When Parliament introduced section 43B, what was on the statute book, was only employer's contribution (Section 34(1)(iv)). At that point in time, there was no question of employee's contribution being considered as part of the employer's earning. On the application of the original principles of law it could have been treated only as receipts not amounting to income. When Parliament introduced the amendments in 1988-89, inserting section 36(1)(va) and simultaneously inserting the second proviso of section 43B, its intention was not to treat the disparate nature of the amounts, similarly. As discussed previously, the memorandum introducing the Finance Bill clearly stated that the provisions - especially second proviso to Section 43B - was introduced to ensure timely payments were made by the employer to the concerned fund (EPF, ESI, etc.) and avoid the mischief of employers retaining amounts for long periods. That Parliament intended to retain the separate character of these two amounts, is evident from the use of different language. Section 2(24)(x) too, deems amount received from the employees (whether the amount is received from the employee or by way of deduction authorized by the statute) as income - it is the character of the amount that is important, i.e., not income earned. Thus, amounts retained by the employer from out of the employee's income by way of deduction etc. were treated as income in the hands of the employer. The significance of this provision is that on the one hand it brought into the fold of "income" amounts that were receipts or deductions from employees income; at the time, payment within the prescribed time - by way of contribution of the employees' share to their credit with the relevant fund is to be treated as deduction (Section 36(1)(va)). The other important feature is that this distinction between the employers' contribution (Section 36(1)(iv)) and employees' contribution required to be deposited by the employer (Section 36(1)(va)) was maintained - and continues to be maintained. On the other hand, section 43B covers all deductions that are*

permissible as expenditures, or outgoings forming part of the assessees' liability. These include liabilities such as tax liability, cess duties etc. or interest liability having regard to the terms of the contract. Thus, timely payment of these alone entitle an assessee to the benefit of deduction from the total income. The essential objective of section 43B is to ensure that if assessees are following the mercantile method of accounting, nevertheless, the deduction of such liabilities, based only on book entries, would not be given. To pass muster, actual payments were a necessary pre-condition for allowing the expenditure.

53. The distinction between an employer's contribution which is its primary liability under law - in terms of section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of section 2(24)(x) - unless the conditions spelt by Explanation to section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts - the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under section 43B.

54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. ***That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out.*** *They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which*

is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.

55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed.

24. Respectfully following the decision rendered by Hon'ble Supreme Court in case of Checkmate Services P. Ltd. vs. CIT (supra), we are of the considered view since the assessee has failed to comply with the condition precedent for depositing the employees contribution on account of PF & ESI before the due date prescribed under the Act, the assessee is not entitled for any deduction. Accordingly, we dismissed the ground raised by the assessee in this regard.

Addition on account of accretion to reserves under LTCG - Ground No.6 (6.1 to 6.6)

25. During the year under consideration Varian Medical Systems India Software Pvt. Ltd. (VMSS) was merged with assessee w.e.f. 01.04.2017 the said scheme of amalgamation was approved by the National Company Law Tribunal vide order dated 20.12.2017 pursuant to such merger all assets and liability of VMSS were transferred to assessee against which the assessee allotted shares in the ratio of 1:2 to the shareholders of VMSS whereby 315000 shares in assessee company at a face value of Rs.10 were allotted. The assessee recorded the said transactions in the books of accounts following the "pooling of interest method" as per the Accounting Standard (AS) issued by the Institute of Chartered Accountants of

India (ICAI). The above transactions were also duly disclosed in the TPSR of the assessee. The AO after perusing the financial statements observed that the assessee has not given proper explanation for the adjustment to and accretion to capital reserve and security premium reserve. The AO further held that the transfer in assessee's case does not fall within the purview of section 47(vii), (vi), (v) of the Act and therefore, not exempt. Therefore the AO proceeded to make an addition of Rs. 48,12,24,652/- as tabulated below under section 68 r.w.s. 115BBE on account of non-furnishing of information / documents in relation to accretion to reserves and surplus.

Particulars	**Amount (Rs.)**
Closing reserves and surplus balance as on March 31st 2018 (including securities premium reserves of Rs. 6,04,36,500	109,13,37,797/-
(-) Opening reserves and surplus balance as 1sat April 2017	50,99,52,664/-
(-) Profits for the year (AY 2018-19)	15,96,97,018/-
Total	**42,16,88,112/-**
Securities Premium Reserve	6,04,36,500/-
Total addition	**48,21,24,652/-**

26. The assessee raised objections before the DRP contending the treatment of accretion to reserves and surplus as LTCG and taxing the same as unexplained under section 68. The assessee also objected to the AO adding the securities premium reserves twice while arriving at the above addition. The assessee filed evidences in support of the merger before the DRP and submitted that the assessee has followed the AS issued by ICAI and therefore the transaction cannot be treated as unexplained. The DRP after admitting the additional evidences submitted by the assessee gave partial relief to the assessee and restricted the addition to Rs. 1,26,00,000/- which is credited to the account "Capital reserve on account of the merger" shown under "Reserved and Surplus".

27. The ld. AR submitted that the amount of Rs. 1.26 crores is credited to the Capital Reserve account as a difference between the net assets received and the value of shares allotted to the shareholders of VMSS. The ld AR further submitted that the difference in the face value of the shares which is recorded under capital reserve has been erroneously treated by the AO as capital gains in the hands of the assessee. The ld. AR also submitted that the difference between the net asset and shares allotted in the scheme of amalgamation will form part of capital reserve and will not be credited to the P&L A/c which is evident from the order of the NCLT itself. The ld. AR in this regard drew our attention to Note 2 & Note 3 in the financials of the company in which the accounting treatment of the transaction pursuant to the merger is explained. The ld. AR submitted that the transaction is not considered as transfer as per the provisions of section 47(vi) and therefore, the AO is not correct in treating the amount as capital gain and making addition under section 68.

28. The ld. DR on the other hand vehemently supported the order of the AO. The ld. DR further submitted that the assessee has submitted additional evidences before the DRP and the AO did not get an opportunity to examine these additional evidences and therefore, prayed that the issue should be remitted back to the AO for re-examination.

29. We have heard the parties and perused the material on record. During the year under consideration the assessee has merged with VMSS pursuant to which the shares of the assessee were allotted to the shareholders of VMSS. The face value of the shares of VMSS was Rs. 100/- per share whereas the share value of the assessee is Rs. 10/- per share. As per the scheme of amalgamation the shares

were issued to the shareholders of the VMSS at 1:2 ratio. Accordingly the shareholders of VMSS were allotted 315000 shares against 157500 shares of VMSS. The difference arising in the face value of shares i.e. Rs. 80/- multiplied by the numbers of shares issued i.e. 1,57,500 totaling to Rs. 1,26,00,000/- was shown under Capital Reserve which was treated as a capital gain to be charges to tax as confirmed by the DRP. The AO made the addition of the said amount under section 68 for the reason that the assessee has not produced any documentary evidence in support of the scheme of amalgamation. The claim of the assessee is that the said amount is credit to the capital reserve as part of the scheme of amalgamation and therefore, should not be treated as capital gain. During the course of hearing our attention was drawn to Note No.3 of statement of financials for the year ended 31.03.2018 (page 11 of PB), as per which the reserves and surplus of the assessee includes a capital reserve on account of merger of Rs. 1,26,00,000/-. Our attention was also drawn to Note No.23 containing other information of the financials where the scheme of amalgamation has been explained. The relevant part of the same is extracted below:

NOTE NO. 23 OTHER INFORMATION

		Year ended 31st March 2018 ₹	Year ended 31st March 2017 ₹
1	Contingent Liabilities, not provided for: (As certified by the Management) Claims against the Company not acknowledged as debts	Nil	Nil
2	a) The sanction of the National Company Law Tribunal (NCLT) is sought u/s 230 to 232 read with Rule 15(1) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of the Companies Act, 2013 on 1 April 2017 (i.e. appointed date) for scheme of Amalgamation between Varian Medical Systems India Software Private Limited, the Transferor Company (engaged in software development, information Technology enabled services and computer services) and Varian Medical Systems International (India) Private Limited, the Transferee Company and their respective Shareholders and Creditors.		
	b) The Certified copy of order of National Company Law Tribunal (NCLT) was are filed with registrar of Companies on 20th December 2017 (i.e effective date). The amalgamation has been accounted under the "Pooling of Interest Method" as prescribed under Accounting Standard 14-"Accounting for Amalgamations" (AS 14) issued by the Institute of Chartered Accountants of India and as notified under section 133 of the Companies Act 2013. Under pooling of interest method all the assets, liabilities and reserves of transferor Company , were recorded in the books of the transferee Company at their respective carrying amount.		
	c) The transferee Company to issue and allot 2 (Two) fully paid-up equity share of Rs 10 each for every 1 (One) equity share of Rs 100 each held in transferor Company to the respective shareholders, holding fully paid-up equity shares and whose names appear in the Register of Members of the transferor Company as on the Effective date.		
	d) Pursuant to above scheme, 3,15,000 equity shares were issued to the shareholders of transferor Company. Assets, liabilities and reserves amounting to ₹ 572,585,234, ₹ 147,747,123 and ₹ 409,088,111 respectively were transferred in the scheme of amalgamation and a sum of Rs. 1,26,00,000 has been credited to 'capital reserve on account of merger' to account for the difference between the share capital of the transferor Company and the value of shares allotted		
3	The Company has Working Capital Facility of Rs. 60 Million out of which fund based facility cannot exceed Rs. 36 Million and by way of non fund based facility such as bank gaurantee/standby letter of credit upto Rs. 60 Million. These limits are inter usable between fund based and non fund based facility within the overall limit of Rs. 60 Million and are secured by corporate gurantee from Varian Medical Systems Inc USA.		

30. From the above it is clear that the amount of Rs. 1,26,00,000/- is credited to the capital reserve account as a difference between the share capital of VMSS and value of shares allotted in assessee. The assessee has followed Pooling of interest method" as per accounting standard-14 for the purpose of recording the scheme of amalgamation in the books of accounts. Under the pooling of interests method, the assets, liabilities and reserves of the transferor company are recorded by the transferee company at their existing carrying amounts and therefore the difference in the face value between the assessee's shares and VMSS has been recorded under Capital Reserve by the assessee following AS-14 issued by the ICAI. Considering these facts in our view the amount Rs.1.26 crores which is credit to the capital reserve as part of the scheme of amalgamation cannot be treated as capital gain. The assessee also claims that the same does not amount to transfer within the meaning of section 47(vi) of the Act and therefore we will look at the provisions of section 47(vi):

*"**Transactions not regarded as transfer**.*
47. Nothing contained in section 45 shall apply to the following transfers :—
******
(vi) any transfer, in a scheme of amalgamation of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company;"

31. The plain reading of the provisions of section 47(vi) also leads as to the conclusion that the amount recorded as part of amalgamation scheme is not to be treated as transfer and therefore does not result in capital gains. In view of these discussions, we hold that the addition made towards amount credited to capital reserve account as part of merger of assessee and VMSS cannot be treated as LTCG and the addition made in this regard is hereby deleted. This ground is held in favour of the assessee.

32. Through Ground No. 6.6 the assessee is contending that the AO while preparing the computation statement of assessed income has considered the addition of Rs.1,26,00,000/- sustained by the DRP twice. In this regard our attention was drawn to page no.14 of the final assessment order wherein the AO has computed the proposed total income at Rs. 40,58,90,210/- (page 14 of final assessment order) which includes the addition of Rs. 1.26 crores. Our attention was further drawn to the computation-sheet of the AO (page 1 of PB3) wherein the AO has considered the income from Business or Profession at an amount as mentioned in the assessment order and has further made an addition of Rs. 1.26 crores under the head "Income from Capital Gains". We have already held that the addition of Rs. 1.26 crores is not tenable and that the same does not result in capital gains. We therefore direct the AO examine the issue of double addition claimed to be made in the statement of computation and to give relief to the assessee accordingly.

<u>Disallowance of Finance Cost under section 37(1) of the Act - Ground No.7 (7.1 to 7.3)</u>

33. The AO based on the information furnished by the assessee with regard to the amount reflected as outstanding from the AEs disallowed the finance cost incurred by the assessee to the tune of Rs. 31,97,466/- by adopting SBI Prime Lending Rate at 11%. The assessee raised objections before the DRP submitted that the amount outstanding from AEs is towards receivables and are not in the nature of loans and advances. The assessee further submitted that the TPO has already considered the issue of interest on trade receivables and has accordingly proposed an adjustment towards the same. Therefore, the assessee submitted that the AO is not correct in levying interest once again on the amount receivable treating the same as loans and advances. The DRP gave partial relief to the assessee by holding that

> *"**10.3 Discussions and Directions of DRP:***
> *10.3.1 We have carefully considered the rival contentions on this issue. We find that the issue concerns the disallowance on account of finance cost on account of trade receivables. The AO has noted that the TPO has already made additions on account of notional interest on trade receivables. However, he says that two accounts of trade receivables do not figure in the TPO's chart, namely, an amount of Rs 28,63,40,829/- of Varian Medical Systems International AG and of Rs 11,33,74,136/- of Varian Medical Systems Inc. We have checked the TPO's order. It is found that the amount of Rs 28,63,40,829/-, in fact, is the very first entry in the table. However, we do find that the next figure of Rs 11,33,74,136/- indeed does not figure in the list. Accordingly, the AO's observations are only partly correct. So, we direct to delete the disallowance with reference to Rs 28,63,40,829/- and confine it to the amount of Rs 11,33,74,136/- only. This objection is accordingly partly allowed in these terms."*

34. Accordingly, the disallowance was revised to Rs. 9,06,801/-. The ld. AR in this regard submitted that the addition sustained by DRP is towards the amount outstanding from Varian Medical Systems Inc. and that the TPO while arriving at the interest on receivables has already held that the amount outstanding from Varian Medical Systems Inc. is less than 20 days thereby accepted that no interest is attributable on the amount outstanding. The ld. AR in this regard drew our attention to the relevant observations of the TPO which is extracted below:

> ***"6.4 Rebuttal of the Reply and Comments of the TPO:***
> *The issue of charging interest on receivables has been examined with reference to the above submissions of assessee. The contention of the assessee that credit period issued to Varian Medical Systems Inc, USA and Varian Medical Systems Pt Gmbh, Germany are less than 20 days is accepted and no interest is attributable on these receivables, as the credit period allowed is reasonable. In respect of other receivables, the contentions of the assessee are found to be not acceptable for the following reasons:"*

35. Therefore, the ld. AR argued that the amount of interest levied on the amount outstanding from Varian Medical Systems Inc. should also be deleted. The ld. DR on the other hand, supported the order of the DRP.

36. We have heard the parties and perused the material on record. The AO levied interest by applying SBI Prime Lending Rate on the amount outstanding from Varian Medical Systems International AG and Varian Medical Systems Inc. The DRP gave relief to the assessee stating that no interest is leviable on the amount outstanding from Varian Medical Systems International AG and sustained the interest on amount outstanding from Varian Medical Systems Inc. However from the above extracted observations of the TPO, we noticed that the TPO did not propose any TP Adjustment towards interest on amount receivable from Varian Medical Systems Inc. for the reason that the aging of amount outstanding is less

than 20 days. Therefore, we see merit in the contention of the ld. AR that the interest levied by the AO as sustained by the DRP on the amount outstanding from Varian Medical Systems Inc. is not correct. Accordingly, we delete the interest charged on the amount receivable from Varian Medical Systems Inc. This ground of the assessee is allowed.

37. Ground No. 8 and 9 pertain to short grant of advance tax credit and credit towards TDS. In this regard the ld. AR submitted that the AO failed to give credit towards advance tax paid by VMSS, which merged with assessee and that the AO did not consider the TDS deducted in the name of VMSS. Our attention in this regard was drawn to the relevant evidences in page 6 to 8 and page 29 of PB to substantiate the claim. Accordingly, we issue direction to the AO to consider the claim of the assessee based on the documentary evidences and give credit in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard.

38. Ground No. 1 & 11 with regard to levy of interest under section 234B & 234C and Ground No. 12 with regard to initiation of penalty under section 270A of the Act are consequential not warranting as separate adjudication.

39. In the result, the appeal of the assessee is partially allowed.

Order pronounced in the open court on 13-02-2024.

Sd/-	**Sd/-**
(NARENDER KUMAR CHOUDHRY)	**(MS. PADMAVATHY S)**
Judicial Member	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai