

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'I', NEW DELHI**

**BEFORE SH. SAKTIJIT DEY, VICE PRESIDENT  
AND  
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.3791,4126,7775/Del/2019  
Assessment Year: 2012-13, 2013-14 & 2014-15,

<b>Dabur India Limited 8/3, Asaf Ali Road, New Delhi-110002 PAN No.AAACD0474C</b>	<b>Vs.</b>	<b>DCIT Circle – 7 (1) New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

ITA No.4073,5272,8273/Del/2019  
Assessment Year: 2012-13, 2013-14 & 2014-15,

<b>DCIT Circle – 7 (1) New Delhi</b>	<b>Vs.</b>	<b>Dabur India Limited 8/3, Asaf Ali Road, New Delhi-110002 PAN No.AAACD0474C</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Rohit Jain, Advocate Ms. Deepashree Rao, CA Mr. Shaurya Jain, CA
Respondent by	Sh. Rajesh Kumar, CIT DR

Date of hearing:	11/03/2024
Date of Pronouncement:	18/03/2024

**ORDER**

**PER BENCH:**

The captioned cross appeals by the assessee and the revenue pertain to A.Y. 2012-13, 2013-14 and 2014-15.

2. Since common issues are involved all these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

**ITA No.3791/Del/2019 A.Y. 2012-13 (Appeal by the assessee)**

3. Ground No. 1 to 5 read as under :-

*1. That the CIT (Appeals) has erred in sustaining the alleged service fee because of the corporate guarantee in the case Dabur Egypt Ltd on the loans availed from QNB ALAHLI @ 0.25%, is arbitrary, unjust, without any basis and at any rate very excessive.*

*2. That the CIT (Appeals) has erred in sustaining the alleged service fee on account of the corporate guarantee in the case of Dabur International ltd, UAE on the loans availed from Credit Agricole Corporate Singapore, ANZ Bank Singapore, Citi Bank Bahamas and Standard Chartered Bank @0.25%, 0.68%, 0.28% and 0.28% respectively is arbitrary, unjust, without any basis and at any rate very excessive.*

*3. That the CIT (Appeals) has erred in sustaining the alleged service fee on account of the corporate guarantee in the case of Dermoviva Essentials Inc, USA on the loans availed from Bank of America and ANZ Bank Singapore @0.38% and 0.68% respectively is arbitrary, unjust, without any basis and at any rate very excessive.*

*4. That the CIT(Appeals) has erred in sustaining the alleged service fee on account of the corporate guarantee in the case of Dabur Sri Lanka Pvt. Ltd., Sri Lanka on the loans availed from Citi Bank Sri Lanka @0.38% is arbitrary, unjust without any basis and at any rate very excessive.*

5. *That without prejudice to grounds no. 1 to 4 above the assessee submit that CIT(A) and TPO erred in holding corporate guarantee as “International Transactions”. Since the transaction of corporate guarantee is not international transaction, there is no question of applicability of Chapter X of Income tax Act.”*

4. The underlying facts in the issue show that during the year the assessee has issued the corporate guarantee on behalf of AE's i.e. Dabur Egypt, Dabur International Limited UAE, Dermovivia Essentials Inc. USA and Dabur SriLanka Private Limited.

5. The TPO has applied the interest saved approach i.e. interest saved by the AE's on account of corporate guarantee given by the assessee. Based on this approach the TPO has computed the guarantee fees in the hands of the assessee @ 75% of interest saved. When the matter was agitated before the CIT(A) the CIT(A) followed the order of his predecessor for A.Y. 2009-10 wherein the directions were given to the AO to split interest saved between AE's company on 50-50% ratio. Thus we have to see the findings of this Tribunal in A.Y. 2009-10.

6. On perusal of the records we find that this issue is coming from A.Y. 2007-08 wherein the Tribunal with regard to Corporate Guarantee (CG) issued to Dabur Egypt held as under :-

*“23. So far as corporate guarantee issued on behalf of Dabur Egypt Ltd., Egypt is concerned, we find the assessee had issued corporate guarantee of Rs.4.899 crores (EGP 3.55 million) to HSBC Bank,*

*Egypt, SAE against the loan of EGP 3.55 Million and USD 4,50,000/- raised by Dabur Egypt Ltd., Egypt. A perusal of the letter dated 11th September, 2013 issued by HSBC Bank, Egypt, SAE copy of which is placed at page 345 of the paper book shows that on account of release of corporate guarantee requested for by Dabur Egypt Ltd., Egypt, the bank increased the interest rate from 11.90% to 12.50%. Thus, an inference can be drawn from the said letter that the incremental interest saved due to guarantee provided by the assessee was 0.60%. We find merit in the argument of the Id. Counsel for the assessee that the benefit of an explicit guarantee accrue to both the guarantor and the borrower, therefore, the interest should be split between the parties to the transaction, i.e., the borrower and the guarantor and as per rule of thumb such benefit should be in 50:50 basis. Although the Id. CIT(A) has attributed 50% of such savings as the service fee on account of guarantee, however, he had taken the savings on interest due to such guarantee provided by the assessee at 1%. Under these circumstances, we find merit in the argument of the Id. Counsel that charging of service fee at an ad hoc rate of 0.5% should be reversed and may be restricted to 0.30% in respect of corporate guarantee issued to Dabur Egypt Ltd., as against 0.5% held by the CIT(A). Thus, the ground raised by the Revenue on this issue is dismissed and the ground raised by the assessee is partly allowed.”*

7. It can be seen that the coordinate Bench has approved the savings of interest benefit between the assessee and the AE in the ratio 50:50. We find that during the year the CIT(A) has wrongly taken the interest saving @ 1% corporate to 0.3% because the total interest saved was 0.6%.

8. Similar view was taken in A.Y. 2008-09 and in A.Y. 2009-10 the Tribunal followed its earlier orders given in A.Y. 2007-08 and 2008-09.

9. Similar is with the CG issued in the other case natural LLC UA/Dabur International Limited UAE wherein again interest benefit was split between the guarantor and borrower on 50: 50 basis. The relevant findings read as under ;-

*“127. So far as the corporate guarantee issued on behalf of Naturalle LLC, UAE is concerned, a perusal of the details furnished by the assessee in the paper book shows that the assessee has saved incremental interest of 1.025% due to guarantee provided by the assessee which was only with effect from September, 2007, Therefore, we find merit in the argument of the Id. Counsel that the proportionate interest saved by the Naturalle, LLC was only for a period of 7 months and accordingly, interest saving on only 0.60% was made by Naturalle, LLC. We have held in the preceding years that interest benefit can be attributed to inter and borrower on 50:50 basis. Therefore, applying the said rule, the benefit can be attributed to the service fee on account of guarantee 0.30%. We accordingly modify the order of the CIT(A) and direct the AO to restrict the service fee/ commission for providing such corporate guarantee at 0.30% on the amount of Rs.13.06 crores provided to Naturalle LLC, UAE. The grounds of appeal Nos. 7 and 8 filed by the assessee are accordingly partly allowed.*

10. After giving a thoughtful consideration to the orders of the coordinate Bench we are of the considered view that the basis of interest split benefit between guarantor and borrower is 50:50 basis,

therefore, we direct the AO to restrict the addition by splitting the interest benefit for the year under consideration on 50:50 basis. In our considered view whatever mistake which has happened inadvertently in earlier years cannot be allowed to perpetuate indefinitely.

11. Considering the fact that the coordinate Bench has principally decided the split on 50:50 basis.

12. With these directions ground No.1 to 5 are allowed.

13. Ground No. 6 to 10 are as under :-

*6) That the Lat. CIT(Appeals) and Ld. TPO failed to take into account the reciprocal arrangement and the Transfer Pricing Analysis before notionally holding the charge of brand royalty of 0.75% in case Dabur International Ltd and 2% composite royalty in case of Asian Consumer Care Ltd.*

*7) That the Ld. CIT (Appeals) and Ld. TPO failed to consider the geographical conditions of working of Dabur International Ltd and Asian Consumer Care Ltd having no substantial awareness about the Dabur brand in the area and consequently the presumption and assumption about the chargeability of royalty by invoking the provision of Section 92CA of the Act from Dabur International Ltd and Asian Consumer Care Ltd. is arbitrary, unjust and without any basis.*

*8) That the Ld CIT (Appeals) and Ld, TPO have failed to consider that in the absence of any expenditure incurred by the assessee for the establishment of brand in the geographical area of working of Dabur International Ltd and Asian Consumer Care Ltd, no brand royalty can be said to have accrued to the assessee when Dabur International Ltd and Asian Consumer Care Ltd, have incurred heavy expenses on advertisement, marketing and sales promotion in their respective area for promotion of the brand/ different product.*

*9) That both Ld. CIT(Appeals) and Ld TPO failed to appreciate through the Transfer Pricing Analysis that incurrence of Advertisement, Marketing and Promotional expenditure by the assessee of its foreign subsidiaries would have been prejudicial to the interests of revenue and waiver of brand of royalty by the assessee is ultimately not harmful practice from the angle of Transfer Pricing provisions u/s. 92 (1) and 92 (3) of the I. T. Act.*

*10) That the Ld. CIT(Appeals) and Ld. TPO failed to consider that the manufactured products by Asian Consumer Care ltd. are with its own technical know-how and R & D and consequently, there cannot be any charge of royalty from the assessee.”*

14. The quarrel relates to the transfer pricing adjustment on account of royalty the TPO/ CIT(A) held charge of brand royalty of 0.75% in the case of Dabur International Limited and 2% composite royalty in case of Asian Consumer Care Ltd. This issue was considered by this Tribunal in ITA No.7154/Del/2017 A.Y.2010-11. The relevant findings read as under :-

4. *Apropos the issue of royalty: Grounds No.1 to 5 of assessee's appeal and Ground No.2 of Revenue's appeal. Assessee in this case is a flagship company of Dabur Group. It is primarily engaged in manufacturing operations, product development and marketing/selling etc. On the issue of royalty, the AO noted that during the year, assessee has not received any royalty from its Associated Enterprises (AEs). He referred to earlier years record wherein assessee has received royalty from Dabur Nepal (P) Ltd., Dabur International UAE and Asian Consumer Care Ltd.. AO proceeded to compute royalty in the hands of assessee by concluding as under :-*

*"6.7 In this case there is all arrangement for using the brand name / trade name "Dabur" by the associated enterprises, The brand name is owned by the assessee. Agreements were in existence for payment or royalty and the royalty was being paid in accordance with the terms and conditions of these agreements fill F.Y. 2004-05 and FY 2005-06, However for reasons best known to the assessee the royalty was not received by the assessee during the current year. The argument of the assessee that it has no right to receive royalty is devoid of any evidence or merits, It is an admitted fact that the brand name is owned by the assessee company and the AEs were using the brand name of the assessee in the year under consideration. Under arm's length situation no independent party shall allow the use of brand name by any third party without any consideration. The benefits of the brand name are derived by the AEs for which the assessee company has not been compensated.*

*6.8 In view of the above discussion I am of the considered view that the AEs have used the trade name/brand name owned by the assessee without any compensation accordingly there is a need to*

determine the arm's length price. I therefore compute the arm's length price of the royalty for use of brand name on the basis of data available. The assessee has furnished the value of sales made to the AEs. Keeping in view above finding I have computed the arm's length price of the royalty in the year under consideration as under in following table:

<i>Company</i>	<i>FOB sales Rs. in Lakhs</i>	<i>Royalty Rs. in Lakhs</i>	<i>Royalty</i>	<i>Difference Rs. in lakhs</i>
<i>Dabur Nepal (P) Ltd.</i>	<i>10061.1</i>	<i>301.83</i>	<i>--</i>	<i>301.83</i>
<i>Dabur International UAE @ 3%</i>	<i>10815.31</i>	<i>324.46</i>	<i>--</i>	<i>324.46</i>
<i>Asian Consumer Care Ltd. @ 2%</i>	<i>1875.53</i>	<i>365.11</i>	<i>--</i>	<i>375.11</i>
<i>Total</i>				<i>1001.40</i>

5. Upon assessee's appeal, Ld. CIT(A) observed that ITAT, Delhi in assessee's own case for AY 2006-07 has dealt with the issue regarding payment of royalty by the assessee to its AEs. Following ITAT's order, he directed the AO/ TPO to delete the transfer pricing adjustment made by the TPO in respect of royalty to assessee by Dabur Nepal (P) Ltd. As regards royalty to assessee's AE, Dabur International UAE, following the said IEAT order, M. CIF (A) directed that AOFTPO should charge royalty 0.759. As regards royalty payment to the assessee by Asian Consumer Care End, he CIT (A) noted that for AYX 2007-08 to 2009-10 ITAT have directed that 2% royalty should have been charged. He directed accordingly.

6. Against the above order, Revenue and assessee are in cross appeals

7. *We have heard both the parties and perused the record.*
8. *Ld. counsel of the assessee submitted that the issue is squarely covered by the orders of ITAT in assessee's own case for AYs 2006-07 to 2009-10. Referring to the earlier orders of ITAT for the AY 2009-10, he submitted that the Tribunal quantified the royalty adjustment to Dabur Nepal (P) Ltd. at nil, Dabur International UAE @ 0.75% of FOB sales and Asian Consumer Care Ltd., Bangladesh @ 0.75% of FOB sales.*
9. *Ld. DR for the Revenue on the other hand submitted that in earlier years, ITAT has not properly appreciated the issue and the agreements in this regard. As regards agreement with Dabur International UAE, he submitted that 1% royalty as per the clauses of the agreement has to be upheld by the ITAT. As regards royalty from Asian Consumer Care Ltd., Bangladesh, he submitted that the royalty charged by the TPO should be upheld and without prejudice he submitted that at least 1% should be confirmed.*
10. *We find that on the same agreement, ITAT in earlier years have given a finding and has directed the rates at which royalty should be charged. Now, Id. DR for the Revenue is finding fault in the aforesaid order and arguing that the same need not to be followed. However, we are of the considered opinion that order of the ITAT in assessee's own case in earlier years need to be followed for the principles of judicial discipline. It is also not the case that Hon'ble Delhi High Court has reversed the orders of ITAT. In fact, Id. counsel of the assessee has pointed out that Hon'ble jurisdictional High Court has upheld the order of ITAT in ITA No.1142 of 2017 vide order dated 13.12.2017 ((2018) 89 taxmann.com 78 (Delhi)). We may gainfully refer to the order of ITAT for AY 2009-10 in this regard wherein vide order dated 24.11.2021, ITAT has adjudicated the issue as under :-*

"10. We have heard both the parties and perused the relevant material available on record. As regards to agreement with Dabur Nepal Pvt. Ltd. Nepal, it is pertinent to note that the issue stands covered in favour of the assessee by the order of the Tribunal in the assessee's own case in ITA No. 3257/Del/2013 for the A.Y. 2006-07, wherein the Tribunal held that no royalty was payable assessee by M/s Dabur Nepal Pvt. Ltd and deleted the addition made by TPO/CIT(A). The relevant findings of the Tribunal is as under:

"36. As regards to the royalty charged from M/s Dabur Nepal Ltd. is concerned, it is not in dispute that earlier the royalty, was @ 7.5% as the assessee was bearing the cost of marketing expenses inter to penetrate the market and the agreement was amended w.e.f. 1st April, 2004 vide which the royalty ht reduced from 7.5% 3% (copy of the same is placed at page no. 113 of the assessee s paper book), In the preceding year, basis of the said amended agreement, the royalty was charged (a), 3%. Therefore, the TPO was not justified by alborning royalty @ 7.5% as provided in the original agreement dated 05.11.1992 (copy of which is placed at page nos. 111&112 assessee's paper book), For the year under consideration, M/s Dabur Nepal Pvt. Ltd has not paid any royalty to the asses the reasons that it had to incur the expenses to penetrate the market. In this regard, vide letter written in May 2005, it was informed to the assessee that no royally will be payable from Financial Year 2005-06. It was also claimed that as per the Clause of the original agreement dated 05.11.1992, the agreement shall become effective only after the approval by HMG Nepal and shall remain valid for a period of 10 years from the said date, unless renewed by mutual consent in writing and with prior approval of HMG Nepal. In the present case, it is not brought on record that the original agreement dated 05.11.1992 valid for 10 years, was renewed for further period

*and approval of HMG Nepal was taken. In the present case, the contention of the assessee that 80% products manufactured by M/s Dabur Nepal Pvt. Ltd. were purchased by the assessee has not been rebutted. It is also not in dispute that the royalty was payable earlier on the sales, therefore, it is unbelievable that the assessee charged the royalty on the purchases made by it from M/s Dabur Nepal Pvt. Ltd. to increase the cost of purchases. Even if it is presumed that the royalty was to be charged by the assessee then same amount was to be added in the purchases thus the impact will be revenue neutral i.e. on the one hand, income will be increased by crediting the royalty and on the other hand, the cost of purchases will be increased by that amount, since the sale was made by M/s Dabur Nepal Pvt. Ltd. to the assessee. In the present case, it is an admitted fact that there was no agreement in existence between the assessee and the AE i.e. M/s Dabur Nepal Pvt. Ltd. and nothing is brought on record to substantiate that the assessee incurred any expenditure which benefited M/s Dabur Nepal Pvt. Ltd. in any manner. Therefore, no royalty was payable to the assessee by M/s Dabur Nepal Pvt. Ltd. By considering the totality of the facts as discussed herein above, we are of the view that the royalty @ 2% directed to be charged by the ld. CIT(A) was not justified, therefore, the addition made on the said basis is deleted."*

*Following the order passed for A.Y. 2006-07, the Tribunal, vide order dated 18.02.2021 passed in assessee's own case for the AYs 2007-08 and 2008-09 in ITA Nos. 3241, 3114, 6525 & 6256/Del/2014 deleted similar addition of royalty in respect of Dabur Nepal Pvt. Ltd. The order of the Tribunal is as under:-*

*"81.6 We find identical issue had come up before the Tribunal in assessee's own case in the immediately preceding assessment year,*

*i.e. 2006-07. We find, the Tribunal vide ITA No.3257 Del 2003 and ITA No.3492/Del/2013, order dated 12.04.2017 has thoroughly discussed the issue and has deleted the royalty receivable by the assessee from Dabur Nepal and had restricted the Royalty receivable from Dabur International Ltd., UAE at 0.75% by observing as under:-*

*81.7 Since the facts of the present appeal are identical to the facts decided by the Tribunal in assessee's own case in the preceding assessment year, therefore, in absence of any distinguishable features brought before it by either side, we, respectfully following the same, hold that no royalty is receivable by the assessee from Dabur Nepal and, therefore, the order of the CIT(A) sustaining the addition on account of Royalty receivable from Dabur Nepal (P) Ltd., at 2% is directed to be deleted. So far as royalty receivable from Dabur International, UAE is concerned, the same is directed to be restricted to 0.75% as held by the Tribunal.*

*The facts in the present assessment is also similar and no distinguishing facts were pointed out by the Ld. DR, therefore, the finding of the CIT(A) that royalty @ 2% is to be charged from Dabur Nepal Pvt. Ltd. is not correct and has to be deleted.*

*11. As related to agreement with Dabur International Ltd., UAE operations, it is pertinent to note that the said issue is covered partly in favour of the assessee by the order of the Tribunal in assessee's own case in ITA No. 3257/Del/2013 for A.Y. 2006-07, wherein the Tribunal, on similar fact held that royalty @ 0.75% is to be charged from Dabur International Ltd. The Tribunal held as under:-*

"35 From the co-joint reading as contemplated u/s 92C of the Act read with Rules 10B and 10C of the Income Tax Rules, 1962, it would be clear that for the purpose of making transfer pricing adjustments, the arm's length price has to be determined on finding out similar type of payments received by similarly situated and comparable independent entities. But in the present case no comparable case has been brought on record by the TPO or the Id. CIT(A) while making adjustment on account of royalty. Moreover, no agreement was in force to charge royalty from the AEs and that the FMCG products are new to the assessee who is known for its Herbal and Aurvedic products. In the instant case, it is not brought material and medium used in the manufacture. At the same time, the brand name of the assessee was used by the All and in the earlier years the assessee provided the R&D support, know-how technologies etc, which helped the AB for the year under consideration also to some extent, It is also noticed that the assessee received the royalty @ 1% in the preceding year, The TPO also while working out the royalty rate for the year under consideration was of the view that the royalty @ 1% was chargeable on the products manufactured without the aid and support of assessee company but marketed by using "Dabur" name, however, no basis has been given for the same. In our opinion the estimate made by the TPO for the rate of royalty was highly excessive. We therefore, after considering the totality of the facts are of the view that the Id. CIT(A) was not justified in directing the AO to charge the royalty from Dabur International UAE @ 2%. Particularly, when the assessee was not using the technical know how or R&D support from the assessee, in our opinion it will be fair and reasonable to charge the royalty @ 0.75% by considering this fact that in the year under consideration the assessee had incurred huge expenses marketing. on advertisement & brand building etc. and that in the preceding year the royalty was although charged @

*1% on the products manufactured without R&D support and technical know-how from the assessee but the aforesaid expenses were comparability less."*

*Following the said order passed for A.Y. 2006-07, the Tribunal, vide order dated 18.02.2021 in assessee's own case for A.Ys. 2007-08 and 2008-09 restricted the adjustment of royalty @ 0.75% of FOB sales in respect of Dabur International Ltd. The Tribunal held as under:*

*"81.6 We find identical issue had come up before the Tribunal in assessee's own case in the immediately preceding year, i.e. 2006-07. We find, the Tribunal vide ITA No.3257/Del/2003 and ITA No. 3-192 Del 2013, order dated 12.04.2017 has thoroughly discussed the issue and has deleted the royalty receivable by the assessee from Dabur Nepal and had restricted the Royalty receivable from Dabur International Ltd.. UAE at 0.75% by observing as under:-*

*81.7 Since the facts of the present appeal are identical to the facts decided by the Tribunal in assessee's own case in the preceding assessment year, therefore, in absence of any distinguishable features brought before us by either side, we, respectfully following the same, hold that no royalty is receivable by the assessee from Dabur Nepal and, therefore, the order of the CIT(A) sustaining the addition on account of Royalty receivable from Dabur Nepal (P) Ltd. at 2% is directed to be deleted. So far receivable from Dabur International, UAE is concerned, the same is directed to be restricted to 0.75% as held by the Tribunal.*

*81.8. So far as the argument of the Id. Counsel that the order of the Tribunal cannot be accepted because the same is not based on correct appreciation of facts is concerned, we do not find any merit in the argument of the Id. Counsel since as fairly conceded by the Id. Counsel at the time of hearing before us, the Hon'ble High Court has*

*already dismissed assessee on this very issue." the appeal filed by the*

*The facts in the present assessment is also similar and no distinguishing facts were pointed out by the Ld. DR or the Ld. AR, therefore, the finding of the CIT(A) that royalty @ 2% is to be charged from Dabur International Ltd., appears to be not correct. It is pertinent to note that in this year also the AE was not using the technical know-how or R&D support from the assessee, therefore it will be appropriate to charge the royalty @ 0.75% by considering this fact that in the year under consideration the assessee had incurred huge expenses on marketing, advertisement & brand building etc. and that in the preceding year the royalty was although charged @ 1% on the products manufactured without R&D support and technical know-how from the assessee but the aforesaid expenses were comparability less. Thus, royalty to be charged at 0.75% in respect of agreement with Dabur International UAE.*

*12. As regards to Asian Consumer Cure Pvt. Ltd. Bangladesh, again it is to be noted that the issue is covered partly in favour of the assessee by the order of the Tribunal in assessee's own case for A.Ys. 2007-08 and 2008- 09 in ITA Nos. 3241, 3114, 6525 & 6256/Del/2014. The Tribunal held that royally @ 0.75% is to be charged from Asian Consumer Care Pvt. Ltd. The Tribunal held as under:*

*"81.4. So far as Asian Consumer Care Pvt. Ltd. Bangladesh is concerned, it is his submission that the assessee was having 100% ownership in ACCPL, directly indirectly and thus, it could not have received any royalty from itself. The agreement with ACCPL entered on 01.12.2003 which was for a period of two years became defunct in December, 2005 as the same was not renewed thereafter. Therefore, in the absence of any contractual agreement, the assessee was not eligible to receive any royalty from ACCPL. It is*

*his submission that products manufactured by ACCPL using technical knowhow of the assessee did not meet the requirements of customers in Bangladesh. Accordingly, after 2006, ACCPL entered into an agreement with Dabur Dubai to provide technical know. It is also his submission that merely on the basis of trade name of Dabur the products manufactured by ACCPL were not accepted in Bangladesh and that it had to manufacture the products as per the local needs and taste of the public residing in the public area. It is also his submission that in order to penetrate the Bangladesh market, ACCPL adopted its own market strategy and had made all the efforts for the establishment of 'Dabur name in the Bangladesh which was very little known in that geographical area and incurred lot of expenses on advertisement, market establishment and had borne all the risks of market, manufacture and finance. Accordingly the assessee had neither made any efforts in establishing the trade name in Bangladesh nor had made any contribution towards the same.*

*81.9 So far as the royalty from Asian Consumer Cure Pvt. Ltd., Bangladesh is concerned, we find, the facts and salient features of the agreement are identical to that of the facts and agreement with Dabur International Ltd., UAE. Since the Tribunal already restricted such royalty to 0.75% in case of Dabur International Ltd., UAE, therefore, respectfully following the ratio of the decision of the Tribunal in assessee's own case for the immediately preceding assessment year while restricting such royalty to 0.75% in case of Dabur International Ltd., UAE, we restrict the royalty from Asian Consumer Care Pvt. Ltd., Bangladesh to 0.75%.*

*81.10 In view of the above discussions, the grounds relating to the issue of Royalty by the Revenue are dismissed and it raised by the assessee are partly allowed."*

*The facts in the present assessment is also similar and no distinguishing facts were pointed out by the Ld. DR or the Ld. AR, therefore, the finding of the CIT(A) that royalty @ 2% is to be charged from Asian Consumer Care Pvt. Ltd., appears to be not correct. Therefore, following the earlier years order by the Tribunal, we are restricting the said royalty to 0.75% in case of Asian Consumer Care Pvt. Ltd., Bangladesh."*

*11. Following the aforesaid decision of the ITAT in assessee's own case, we direct that in case of Dabur Nepal (P) Ltd., royalty is quantified at nil, the case of Dabur International UAE, royalty is quantified at 0.75% of FOB sales."*

15. On finding parity of facts, respectfully following the decision of the coordinate Bench (supra) we hold accordingly.

16. Ground No.6 to 10 are allowed.

17. Ground No.11 relates to the disallowance on account of delay in deposit of ESI / EPF.

18. This issue is now squarely covered in favour of the revenue and against the assessee by the decision of the Hon'ble Supreme Court in the case of Check Mate Services Private Limited 448 ITR 518.

19. Respectfully following the same ground No. 11 is dismissed.

20. Ground No.12 relates to the addition of Rs.67156645/-u/s. 43B based on audit report.

21. Having heard the Counsel we find that this addition has been made by the AO and confirmed by the CIT(A) on not understanding the facts in true perspective it would be pertinent to consider the following chart :-

PARTICULARS	PRE-EXISTED ON THE FIRST DAY OF PREVIOUS YEAR	PAID DURING THE PREVIOUS YEAR	NOT PAID DURING THE PREVIOUS YEAR
Bonus	24,036,085.00	19,694,052.00	4,342,033.00
Sales Tax/ VAT/ Entry Tax /State Development tax*	15,859,448.94	-	15,856,591.00
Excise	76,836,575.00	76,836,575.00	-
Interest*	95,979.75	-	-
Contribution to Gratuity Fund	90,560,613.00	48,545,354.00	42,015,259.00
Profession Tax *	43,929.00	-	-
Contribution To Superannuation Fund*	379,347.00	-	-
Service Tax*	1,536.00	-	-
Leave Encashment	19,940,707.00	14,997,945.00	4,942,762.00
<b>TOTAL</b>	<b>227,754,220.69</b>	<b>160,073,926.00</b>	<b>67,156,645.00</b>

Notes:  
 \* Amount pre-existed on the first day of the previous year and was not allowed in the assessment of the preceding previous year  
 has not been taken in account as balance carried forward for Sales Tax /VAT Rs 2858/-, Professional Tax Rs 43929/-, service tax RS 1536, Contribution to Superannuation Fund Rs 379347/- Interest Rs 95979.75.

22. It can be seen from the above chart the liability as on the first day of the previous year was Rs.227754220/- out of which Rs.160073926/- were paid during the year and Rs.67156645/- was not paid during the year which means that this amount was never charged to the P & L account, therefore, there is no question of any disallowance. We have verified from the computation of income and we are of the considered view that there is no need of addition of Rs.67156645/- which we direct the AO to delete.

23. Ground No. 12 is allowed.

24. Ground No.13 relates to the addition of Rs.63 lacs for change of accounting policy. This addition has also been made on wrong

appreciation of facts the same can be understood from the following chart :-

(All amounts in Indian Rupees in lacs except share data)

d. Particulars on financial assets/liabilities where fair value/amortized cost differ from book balance.

	Original value / contract rate	Fair value	Amortized value	Profit/ (loss)	Head of account profit/(loss) being accounted for
<b>A. Financial Assets</b>					
a. Held for Trading					
Equity Instruments					Opening General Reserve
Mutual Funds	12,165	12,231		65	----do----
Other Listed Securities					----do----
b. Available for Sale					
Government Bond	8,714	8,792		78	Investment Revaluation Reserve
<b>B. Financial Liabilities</b>					
Long term Borrowing	212	164		48	Opening General Reserve
<b>C. Financial Instruments</b>					
a. Instrument hedging adverse currency fluctuation against Off Balance Exposure in Foreign Currency	0	10		10	Finance Cost
b. Instrument hedging adverse currency fluctuation against borrowing in foreign currency	0	(63)		(63)	Finance Cost

e. This being the first financial year of implementation of above accounting standard figures of previous years are not

25. It can be seen from the above chart that Rs. 10 lacs is a positive figure and Rs.63 lacs is a negative figure which means it is a loss.

26. In the computation of income the assessee has made addition on account of instrument hedging adverse currency fluctuation against of balance sheet exposure in FG Rs.52,93,552/- which means the assessee has already added the loss and that there was no need of any further addition by the AO. We accordingly direct the AO to delete the addition of Rs.63 lacs.

27. Ground No.13 is allowed.

28. Ground No.14 and 15 are additional ground raised before the CIT(A) in respect of claim of deduction of Rs.86.62 lacs as capital subsidy on statutory exemption from payment of excise duty.

29. Perusal of our record show that identical additional ground was raised in A.Y. 2007-08 and 2008-09 wherein it was admitted and the matter was remanded back. In ITA No.6525/Del/2014 for A.Y. 2008-09 the coordinate Bench held as under :-

*“152. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee is excluded from the income assessed.*

**153. The issue in our opinion, is legal in nature. The Hon'ble Supreme Court in the case of NTPC Ltd. vs. CIT reported in 229 ITR 383 has held as under-**

*154. We find, the Hon'ble Delhi High Court in the case of CIT vs, Jai Parabolic Springs Ltd. (supra), while adjudicating the claim of deduction of entire deferred revenue expenses raised as additional ground has held as under-*

*155. We find, the Hon'ble Bombay High Court in the case of CIT vs. Pruthvi Brokers & Shareholders (P) Ltd. (supra), while adjudicating the powers of appellate authorities to consider a claim not made in the return has held as under:-*

**156. In view of the above discussion and keeping in mind the ratio laid down by the Hon'ble Supreme Court in the case of NTPC Ltd. (supra), the Hon'ble Delhi High Court in the case of Jai Parabolic Springs Ltd. (supra) the decision of Hon'ble Bombay High Court in the case of Pruthvi Brokers and Shareholders (P) Ltd. (supra) and various other decisions relied on by the Id Counsel for the assessee, we admit the additional ground raised by the assessee. However, it is an admitted fact that this issue has been raised by the assessee for the first time before the Tribunal and the authorities below had no occasion to deal with this issue. We, therefore, deem it proper to remand this issue to the file of the 40/TPO to dechte this issue in after providing due and reasonable opportunity of being heard to the assessee. The second additional ground raised by the assessee is accordingly allowed for statistical purposes."**

Similarly, the Tribunal, vide its subsequent order dated 24.11.2021, passed in the assessee's own case for the assessment years 2009. 10 in ITA Nos, 3423 & 3790/Del/2015 again admitted the additional ground raised by the assessee on the issue of exclusion of the amount of excise duty subsidy received in respect of Glucose Unit, laddi from the assessed income and remanded the issue to the file of the assessing officer to decide in accordance with law. (refer pages 284 to 320 of the CLPB page 315)

It is imperative to note here that in the set aside proceedings for the assessment year 2008-09, the assessing officer, on examination of records, was pleased to allow the claim of the assessee and the amount of excise duty subsidy received int

was excluded from the assessed income respect of Glucose Unit, Baddi of the assessee. The relevant observations of the assessing officer in this regard is re-produced as under:

**“(.....In view of the above facts, the documents submitted by the assessee have been examined thoroughly vis-à-vis purpose test as elaborated by Hon’ble Supreme Court in its various judgments, the claim of the assessee of Rs.5,85,61,165/- on account being the exempted excise duty embedded in sules of Glucose Unit, Baddi(UP), be excluded from the income assessed is allowed.** Further assessee have to reduce its assets value as per Explanation 10 of the section 43 of the Income Tax Act, 1961, If applicable.

Similarly, the Tribunal, vide its order dated 20.09.2022 passed in the assessee's own case for the years 2010-11 and 2011-12 in Nos. 7154 & 7431/Del/2017 and 7253/Del/2017 & 183/Det/2018 respectively, again admitted the additional ground raised b assessee on the issue of exclusion of the amount of excise duty subsidy received from the assessed income and remanded the is the file of the assessing officer to decide in accordance with law.”

30. Respectfully following the decision of the Coordinate Bench (supra) we hold accordingly and direct the AO to decide the issue fresh after affording a reasonable and adequate opportunity of being heard to the assessee.

31. Ground No. 14 and 15 are allowed for statistical purpose.

32. In the result, the appeal of the assessee is allowed in part for statistical purpose.

**ITA No.4073/Del/2019 A.Y. 2012-13 (Revenue's appeal)**

33. Issues raised vide ground No.1 are similar to the issues raised by the assessee in its appeal vide ground No. 1 to 5. For a detailed discussion in ITA No. 3791/Del/2019 (supra) this ground is dismissed.

34. Issues raised vide ground No. 2 to 4 are similar to issues raised by the assessee in ground No.6 to 10 of its appeal. For a detailed discussion therein ground No.2 is dismissed.

35. Ground No.5 relates to the deletion of the notional interest imputed on trade receivables.

36. The underlying facts show that during the year under consideration the assessee interalia raised invoices on account of sales made to its associates enterprises. The TPO recharacterized the delay in receipt of receivables as deemed unsecured loans advanced to the AE and sought to impute notional interest on the delay in receipt of receivables @ 12.65% and made addition of Rs.9601920/-.

37. When the addition was challenged before the CIT(A), the CIT(A) accepted it to be an international transaction but since no interest was charged on receivables due from unrelated parties, the CIT(A) deleted the addition. The CIT(A) further observed that the international transactions have been bench marked separately for its two segments namely FMCG and non-FMCG which have been accepted by the TPO there is no reason to separately bench mark receivables.

38. We find that an identical quarrel was considered by this Tribunal in assessee's own case in A.Y. 2010-11 and 2011-12 in ITA Nos. 7154, 7431/Del/2017, 7253/Del/2017 and 183/Del/2018 respectively. The relevant findings read as under :-

*“30. Per contra, ld. Counsel for the assessee supported the order of the Ld. CIT(A) and submitted that assessee's net margin is considerably higher than the comparables. Upon careful consideration, we are not in agreement with the submission of Ld. DR. It is no doubt that after the amendment, receivables are an international transaction which needs to be benchmarked separately but as rightly pointed out by the ld. CIT(A) above that margin of the assessee both in FMCG and non-FMCG segment is much higher than the comparables. Hence, since benchmarking under both the segments has been accepted in the transfer pricing, we do not find any infirmity in the order of ld. CIT(A) that there is no reason to separately benchmark receivables”.*

39. The following chart also shows that the margin of the assessee both in the FMCG and non- FMCG segment is much higher than the comparables as demonstrated here under :-

International Transaction	Segment / Activity Name	Transfer Pricing Method	Profit Level Indicator ["PLI"]	Total Value of International Transaction (Amount in ₹ Lakhs)	Dabur India	Companies
					Margin	Arithmetic Mean
Export of raw material / intermediates	FMCG and non-food segment	Transactional net margin method ["TNMM"]	Operating Profit / Operating Income ["OP/OI"]	2,463.61	17.98%	13.99%
Import of intermediates				10,396.27		
Export of finished goods				2,485.11		
Import of finished goods				1,416.95		
Payment of royalty				9.59		
Export of raw material / intermediates	Food segment			71.61	10.70%	2.03%
Import of finished goods				17,893.10		

40. Considering the facts of the case in totality we do not find any reason to interfere with the findings of the CIT(A) this ground is dismissed.

41. Ground No.6 relates to the direction to re-compute the deduction 80IB and 80IC of the Act without further allocation of the head office expenses. The under lying facts under consideration are that assessee had 28 industrial unit under taking manufacturing of products out of which 15 units were eligible for deduction 80IB and 80IC of the Act. The assessee has maintained separate books of accounts. During the course of the scrutiny assessment proceedings

the AO observed that selling and distribution expenses amounting to Rs.10.56 crores were not allocated to the units, the AO further observed that depreciation of Rs.6.71 crores on the asset of head office was also not allocated to the units. Accordingly the AO allocated these expenses and depreciation in the ratio of sales and restricted the deduction u/s. 80 IB and 80IC of the Act to Rs.31149 lacs.

42. When the matter was agitated before the CIT(A) the CIT(A) following the principal of consistency followed the order of his predecessor for the assessment year 2007-08 to 2009-10. This Tribunal in ITA No.3241, 3114, 6525 and 6256/Del/2014 has considered the quarrel and the relevant findings read as under :-

*“93. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, during the year under consideration, had 18 industrial units undertaking manufacturing of products out of which 10 units were eligible for deduction u/s 801B/80IC of the Act, the details of which were given at para 83 of this order. During the year, the assessee declared profit and gains from eligible business on the basis of separate books of account and claimed deduction aggregating to Rs.27,209.71 lakhs u/s 801B and 80IC of the Act. According to the AO, the Head Office expenses amounting to Rs.2214.02 lakhs were not allocated to the units. Further, according to the AO, depreciation to the tune of Rs. 704.49 lakhs on assets of the Head Office was not*

*allocated to the units. Accordingly, the AO allocated the Head Office expenses and depreciation in the ratio of sales of eligible units for computing the deduction u/s 80IB/80IC and restricted such deduction to Rs.25,404.88 lakhs as against Rs.27,207.71 lakhs claimed by the assessee. We find, the ld. CIT(A) reversed the action of the AO and directed him to recompute the deduction u/s 80IB/80IC of the Act without further allocation of head office expenses and depreciation to various units by observing that the assessee has itself added back the depreciation as per Companies Act, 1956 and claimed depreciation as per the Act and, therefore, the AO was wrong in allocating difference of depreciation available under the Companies Act and the Income-tax Act to the eligible units. So far as the head office expenses aggregating to Rs.2,214.02 lakhs is concerned, he noted that expenses aggregating to Rs.1,563.02 lakhs were suo motu disallowed by the assessee and added back in the computation of income. Therefore, once these expenses were not claimed by the assessee, the same cannot be allocated to the eligible units for computation of deduction u/s 80IB/80IC of the Act. The Id.CIT(A) also further noted that scientific research expenses of Rs.651 lakhs, which was included in the head office expenses allocated by the AO are not connected with the units eligible for deduction u/s 80IB/80IC of the Act and, therefore, cannot be allocated to the eligible units.*

*93.1 We do not find any infirmity in the order of the CIT(A) reversing the action of the AO in allocating the head office expenses and depreciation to various eligible units for the purpose of recomputing the deducting u/s 80IB/80IC. The factual finding of the ld.CIT(A) that the assessee has added back the depreciation as per Companies Act, 1956 and claimed depreciation as per the Income-tax and, therefore, the AO was wrong in allocating the difference of*

*depreciation available under the Companies Act and the Income-tax Act to the eligible units could not be controverted by the ld. DR. Similarly, the ld. DR also could not controverted the factual finding given by the CIT(A) that expenses aggregating to Rs. 1,563.02 lakhs being head office expenses were suo motu disallowed by the assessee and added back in the computation of income and once these expenses were claimed by the assessee the same cannot be allocated to the eligible units for computation of deduction u/s 80IB/80IC and, therefore, cannot be allocated to the eligible units.*

*93.2 A perusal of page 67 of the paper book Volume I shows that during the financial year under consideration, depreciation amounting to Rs.2,197.81 lakhs was debited to the P&L Account. A perusal of the computation of income, copy of which is placed at page 425 of the paper book Volume II, shows that the assessee has added back the aforesaid depreciation under Companies Act and claimed depreciation of Rs.2,902.3 lakhs in accordance with the provisions of section 32 of the Act. The depreciation as claimed in the return of income was duly allocated among all the units including the eligible units. We, therefore, find no infirmity in the order of the CIT(A) in reversing the action of the AO in allocating the difference of depreciation available under the Companies Act and Income-tax Act to the eligible units.*

*93.3 So far as the Head office expenses are concerned, we find the AO has allocated the head office expenses of Rs.2,214.02 lakhs the details of which are as under.....*

*93.4 perusal of page 425 of paper book, Volume-II shows that Miscellaneous expenses written off, donation and provision for bad debts were suo motu disallowed by the assessee in its return of*

income. Therefore, once the aforesaid expenses were not claimed as a deduction by the assessee, the same, in our opinion, cannot be allocated to the eligible units and be considered for computing the deduction u/s 80IB/80IC of the Act.

So far as scientific research expenses of Rs.651 lakhs is concerned, the finding of the Id. CIT(A) that such expenses have no nexus with the units eligible for deduction has not been controverted by the Revenue. We find, the Hon'ble Bombay High Court in the case of Zandu Pharmaceuticals Works Ltd. vs. CIT, 350 ITR 366 (Bom) has held that once the expenses have no nexus with the units eligible for deduction, such expenses cannot be allocated to units for the purpose of computing deduction w/s 80IB/801C of the Act. Since the scientific research expenses of Rs.651 lakhs which were included in the head office expenses allocated by the AO are not connected with the units eligible for deduction u/s 801B/80IC, the same, in our opinion, cannot be allocated to the eligible units. In this view of the matter, the order of the CIT(A) is upheld and the ground raised by the Revenue on this issue is dismissed

**131. After hearing both the sides, we find the assessee in the instant case has already disallowed depreciation under Companies Act and has claimed depreciation under Income-tax Act and has duly allocated to various units. Similarly, selling and distribution expenses of Rs.789.37 lakhs was suo moto disallowed in the computation of income, the sales tax expenses of Rs. 135.78 lakhs which does not have any impact on profit cannot be allocated to the eligible units. The miscellaneous expenses of Rs.566.79 lakhs was suo motu disallowed in the computation of income. We find, the above ground is identical to ground of appeal No.6 in ITA**

**No.3114/Del/2014 filed by the Revenue. We have already decided the issue and the ground raised by the Revenue has been dismissed. Following similar reasonings, this ground filed by the Revenue is dismissed" (emphasis supplied)."**

43. Ground No. 7 relates to the deletion of the addition made by the AO u/s. 14A r.w.r. 8D.

44. The facts on record show that the assessee has not earned any exempt income during the year under consideration, therefore, the ratio laid-down by the Hon'ble High Court of Delhi in the case of Cheminvest and Cortech Energy Limited squarely apply and respectfully following the same no interference is called for ground No.7 is also dismissed.

45. In the result, the appeal filed by the revenue is dismissed.

**ITA No.4126/Del/2019 (A.Y.2013-14) (Assessee's appeal)**

46. Ground No. 1 to 7 relates to the addition on account of corporate guarantee.

47. Identical issues were considered by us in ITA No.3791/Del/2019 (supra) for A.Y.2012-13. For a detailed discussion therein these ground are allowed.

48. Ground No.8 to 12 relates to the TP adjustment on account of royalty identical issues were considered by us in ITA

No.3791/Del/2019 for A.Y. 2012-13 (supra) qua ground No. 6 to 10 of that appeal. For a detailed discussion therein these ground are allowed.

49. Ground No.13 and 14 relate to the claim of deduction of Rs.98.57 crores as capital subsidy on statutory exemption from payment of excise duty similar claim was set aside by us in A.Y.2012-13 qua ground No.14 and 15 of that appeal. For a detailed discussion therein these grounds are set aside as per similar directions. These grounds are set aside to the files of the AO as per directions.

**ITA No.5272/Del/2019 ( A.Y. 2013-14) (Revenue's appeal)**

50. Ground No.1 relates to the corporate guarantee which is similar to the grievance of the assessee considered in ITA No.4126/Del/2019 wherein we have followed the decision given by us in A.Y. 2012-13 in ITA No. 3791/Del/2019 (supra) for similar reasons this ground is dismissed.

51. Ground No. 2 relates to the TP adjustment on account of royalty. Similar grievance has been considered by us in assessee's appeal vide ground No.8 to 12 wherein we have followed our decision given in A.Y. 2012-13 in ITA No.3791/Del/2019 (supra). For a detailed discussion therein these ground is dismissed.

52. Ground No.5 relates to the deletion of the notional interest imputed on trade receivables. On identical issues were consider by us in A.Y.2012-13 (supra) vide ground No.5 in ITA No.3791/Del/2019 (supra) wherein we have followed the earlier decisions of coordinate Benches. For a detailed discussion therein this ground is dismissed.

53. Ground No.6 relates to the claim of deduction u/s. 80IB and 80IC.

54. A similar claim was considered by us in revenue's appeal for A.Y. 2012-13 vide ground No.6 of its appeal in ITA No.4073/Del/2019 wherein we have followed the orders of the coordinate Benches for earlier years. For a detailed discussion therein ground No.6 is dismissed.

55. Ground No.7 relates to the deletion of the addition of Rs.2696112 u/s. 40(a)(ia) of the Act.

56. The facts on record show that the assessee has incurred an expenditure of Rs.2696112/- on account of bank guarantee commission/ fee the AO disallowed the claim u/s.40(a)(ia)for alleged failuer to deduct tax at source.

57. The addition was challenged before the CIT(A) on account of ground that the principal-agent relationship does not exist and the bank guarantee commission is not in the nature of commission so

as to attract provision of section 194H of the Act the CIT(A) was convinced and deleted the addition.

58. We have given a thoughtful consideration to the underlying facts. We find that the issue is squarely covered by the decision of Hon'ble Jurisdictional High Court of Delhi in the case of JDS Apparels 370 ITR 450 wherein the Hon'ble Court has held that amount charged by bank as a fee for rendering banking services to its client could not be treated as commission or brokerage u/s. 194H of the Act.

59. Respectfully following the same we decline to interfere ground No.7 is dismissed.

60. Ground No.8 relates to the deletion of the addition made by the AO u/s. 14A r.w.r. 8D of the Act.

61. Since there is nil exempt income no disallowances called for in the light of the ratio laid down by the Hon'ble Delhi High Court in the case of Chem Invest and Cortech Energy Ground No.8 is dismissed.

62. In the result, the appeal of the assessee is allowed in part for statistical purpose and that of the revenue is dismissed.

**ITA No.7775/Del/2019 (A.Y.2014-15 ) ( Assessee's appeal)**

63. Ground No. 1 to 5 relates to the TP adjustment on account of corporate guarantee fee.

64. Similar grievance was considered by us in A.Y. 2012-13 in ITA No.3791/Del/2019 (supra) vide ground No. 1 to 5 of that appeal. For a detailed discussion therein these grounds are allowed.

65. Ground No.6 to 10 relate to the TP adjustment on account of royalty.

66. Similar grievance was considered by us in A.Y.2012-13 in ITA No.3791/Del/2019 (supra) vide ground No. 6 to 10 of that appeal. For a detailed discussion therein these grounds are allowed.

67. Ground No.11 and 12 relates to the claim of deduction u/s. 80G of the Act.

68. During the year under consideration the assessee has claimed deduction u/s. 80G of the Act amounting to Rs.51771655/- being 50% of Rs.103543310/- paid as donation to various trust/ organizations.

69. The AO denied the claim of exemption to the extent of Rs.89.25 lacs holding that the organizations did not have valid 80G certificates.

70. When the certificates were produced before the CIT(A) he refused to admit the same as they were not produced before the AO.

71. We are of the considered view that the CIT(A) ought to have admitted the evidences. In the interest of justice and fair play we restore this issue to the files of the AO. The assessee is directed to furnish the certificates of eligibility and the AO is directed to consider the same and decide the issue as per the provisions of the law.

72. Ground No.11 and 12 are allowed for statistical purpose.

73. In the result, the appeal of the assessee is allowed in part for statistical purpose.

**ITA No.8273/Del/2019 (A.Y.2014-15) (Revenue's appeal)**

74. The first ground No.1 relate to the corporate guarantee fee. This issue has been considered by us in A.Y.2012-13 in ITA No.3791/Del/202019 and 4073/Del/2019 vide ground No.1 to 5 of the appeal. For a detailed discussion therein ground No.1 is dismissed ground No.2 relates to the TP adjustment on account of royalty.

75. Similar issue is considered by us in A.Y.2012-13 in ITA No.3791/Del/2019 and 4073/Del/2019. For a detailed discussion therein this ground is dismissed.

76. Ground No.3 relates to the notional interest imputed on trade receivables. This issue has been consider by us in A.Y.2012-13 in ITA No.3791/Del/2019 and 4073/Del/2019. For a detailed discussion therein this ground is also dismissed.

77. In the result, the appeal of the revenue is dismissed.

78. Before parting, the assessee in all its appeal (supra) has claimed the subsidy as capital receipt. Following the principles of judicial discipline we have set aside the issue to the files of the AO for verification following the orders of the coordinate Benches of earlier assessment years.

79. We are of the considered view that if the impugned subsidy is a capital subsidy then the assessee would not be eligible to claim deduction u/s. 80IC/ 80IB of the Act as the same is available to revenue income. The AO is directed to examine the issue in the light of the above.

Order pronounced in the open court on 18.03.2024.

Sd/-  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

Sd/-  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

\*NEHA\*

Date:- .03.2024

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
 ITAT NEW DELHI