IN THE INCOME TAX APPELLATE TRIBUNAL
"I' BENCH, MUMBAI

SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 6671/MUM/2017
(Assessment Year: 2013-14)

M/s. Vodafone India Limited,
Peninsula Corporate Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai – 400 013, Maharashtra
[PAN:AAACH5332B] ..... **Appellant**

Deputy Commissioner of Income Tax- 8(3)(2)
R. No.620, Chitra Soeji,
Aayakar Bhavan, M. K. Road,
Mumbai – 400 020, Maharashtra ..... **Respondent**

Vs

Appearance

For the Appellant/Appellant	**:**	Shri Ketan Ved
For the Respondent/Department	**:**	Shri T. Shankar

Date

Conclusion of hearing	**:**	29.07.2024
Pronouncement of order	**:**	22.10.2024

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. The present appeal has been preferred by the Assessee against the Final Assessment Order, dated 26/10/2017, passed by the Assessing Officer under Section 143(3) read with Section 92CA and 144C(13) of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'], as per the direction issued by Dispute Resolution Panel (2), Mumbai [for short '**DRP'**] on 21/09/2017 under Section 144C(5) of the Act for the Assessment Year 2013-14.

2. The Appellant has raised following grounds of appeal :

> *"On the facts and the facts and circumstances of the case and in law, the learned Dispute Resolution Panel -11. Mumbai ('DRP') has erred in passing the order under section 144C(13) of the Income*

Tax Act, 1961 ("Act), partly confirming the adjustments proposed by the Deputy Commissioner of Income Tax, Circle 8(1)(2), Mumbai ('AO') in the draft assessment order, and the learned AO has accordingly erred in passing the assessment under section 143(3) read with section 144C of the Act.

Each of the ground is referred to separately, which may kindly be considered independent of each other.

1. Disallowance under section 14A of the Act

1.1. On the facts and circumstances of the case and in law, the learned DRP/AO has erred in invoking the provisions of section 14A of the Act and thereby, has erred in making a disallowance of INR 4,42,12,40,500 under section 14A of the Act.

1.2. On the facts and in the circumstances of the case and in law, the learned DRP/AO has grossly erred in making disallowance under section 14A of the Act, when an amount of INR 488.1 crores as management support services has already been recovered from the subsidiaries of the Appellants and as the same is already offered to tax, any disallowance under section 14A of the Act results in double disallowance.

1.3. Without prejudice to ground 1.1 and 1.2 above, on the facts and in circumstances of the case and in law, the learned AO has erred in making disallowance under section 14A of the Act while computing the book profits under section 115JB when no such addition was proposed in the draft assessment order.

2. Disallowance of discount extended to pre-paid distributors under section 40(a)(ia) of the Act

2.1. On the facts and in the circumstances of the case and in law, the learned DRP/AO have erred in making an addition u/s 40(a)(ia) of the Act on account of non-deduction of tax at source on the discount of INR 54,85,13,184 extended to distributors of pre-paid services during the financial year relevant to the subject assessment year.

2.2. *On the facts and in the circumstances of the case and in law the DRP/AO have erred in concluding that the relationship between the Appellant and its distributor is that of a 'Principal and agent'.*

2.3. On the facts and in the circumstances of the case and in law, the learned DRP/AO have erred in not holding that no disallowances can be made u/s.40(a)(ia) of the Act since the Appellant is of a bonafide belief that no tax was required to be deducted at source on discount extended to distributors of pre-paid services.

3. Disallowance of depreciation on 3G Spectrum

3.1. On the facts and in the circumstances of the case and in law, the learned DRP/AO has erred in disallowing the tax depreciation claimed by the Appellant under section 32(1) of the Act on the one-time expenditure incurred by the Appellant on acquisition of 36 spectrum amounting to INK 4,08,01,38,956.

3.2. On the facts and in the circumstances of the case and in law, while the learned DRP/AO has clearly held that one-time expenditure incurred on acquisition of 3G spectrum is 'capital expenditure which is in nature of 'intangible asset and is also not in nature of telecom license, he has erred in holding that such expenditure is still amortizable under section 35ABB of the Act, solely on reason that specific provision of 35ABB of the Act overrides general provision of section 32 of the Act.

3.3. On the facts and in the circumstances of the case and in law, the learned DRP/AO has erred in not following tax treatment in the year of acquisition of 3G spectrum which was accepted by the office of the AG after a detailed discussion.

4. Transfer Pricing ('TP") adjustment-General Grounds

4.1. On the facts and circumstances of the case and in law, the learned DRP has erred in confirming the adjustments aggregating to INR 38,23,33,655 made by the Joint Commissioner of Income Tax, Transfer Pricing 4(1), Mumbai ('the learned TPO learned AO under section 92CA of the Act.

4.2 On the facts and circumstances of the case and in law, the directions passed by the learned DRP are bad in law to the extent the same are prejudicial to the Appellant.

5. TP adjustment amounting to INR 31,13,67,878 on account of brand royalty payment made for grant of right to use of 'Vodafone' trademark and trade name

5.1. On the facts and circumstances of the case and in law, the learned TPO/AO/DRP have erred in determining the arm's length price (ALP) of royalty payment made to associated enterprise (AE') for grant of right to use 'Vodafone' trademark and trade name at Nil price. While doing so, the learned TPO/AO/DRP have violated the principle of consistency.

5.2. On the facts and circumstances of the case and in law, the learned TPO/AO/DRP have erred determining the ALP of royalty payment made to AE for grant of right to use 'Vodafone' trademark and trade name at Nil price by holding that all the development, enhancement, maintenance

protection and exploitation ('DEMPE') functions (including incurrence of AMP expenses) in relation to 'Vodafone' trademark and trade name in India are performed by the Appellant only and the AE does not perform any functions or bear or control the risks and rewards related to DEMPE functions performed by the Appellant.

5.3. On the facts and circumstances of the case and in law, the learned TPO/AO/DRP have erred in determining the ALP of royalty payment for 'Vodafone' trademark and trade name at Nil price without application of any method as prescribed under section 92C of the Act.

6. TP adjustment amounting to INR 7,49,45,777 on account of re-imbursement expenses to AE

6.1. On the facts and circumstances of the case and in law, the learned TPO/AO/DRP have erred in determining the ALP of the international transaction pertaining to reimbursements made in relation to GMAC costs, PwC consulting charges and people survey costs at Nil price without appreciating the fact that these payments represent cost to cost reimbursement of payments made by AE on behalf of the Appellant and cannot be termed as shareholder services or payments made for extra business purposes as GMAC charges.

7. Levy of interest under section 234D and 244A of the Act

7.1. On the facts and in circumstances of the case and in law, the learned AO has erred in levying interest under section 234D and 244A of the Act.

8. Non-grant of full credit in respect of Tax Deducted at Source (TDS)

8.1. On the facts and in the circumstances of the case and in law, the learned AO has erred in not considering the additional TDS certificates amounting to INR 31,11,526 filed by VIL during the course of the assessment proceedings pertaining to income accrued during the subject assessment year.

8.2. On the facts and in the circumstances of the case and in law, the learned AO has failed to follow the direction of the learned DRP whereby he was directed to allow the credit of additional TD certificate after due verification.

9. Initiation of Penalty Proceedings u/s 271(1)(c) of the Act

On the facts and in circumstances of the case and in law, the learned AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act against the Appellant."

3. The relevant facts, in brief, are that Appellant is a company engaged, inter alia, in providing cellular telecommunication services. The Appellant filed its return of income for the Assessment Year 2013-14 on 29/11/2013 declaring total income of INR 7,20,37,88,924/-. The case of the Appellant was selected for scrutiny. During the assessment proceedings, the Assessing Officer noted that the Appellant has entered into international transactions with its Associated Enterprises (AEs) and therefore, a reference was made under Section 92CA(1) to the Transfer Pricing Officer (TPO) for the determination of Arm's Length Price (ALP) of the international transactions. The TPO, vide order, dated 17/10/2016, passed under Section 92CA(3) of the Act proposed, inter alia, the following transfer pricing adjustments:

SNo.	Additions/Disallowances	Amount (INR)
1	On account of payment of royalty for brand name and mark	31,13,67,878/-
2	On account of payment for GMAC costs, PwC consulting charges and People Survey charges	70,965,777/-
	Total	38,23,33,655/-

3.1. On 29/12/2016, the Assessing Officer passed Draft Assessment Order under Section 143(3) read with Section 144C(1) of the Act incorporating the above transfer pricing adjustment. In addition the Assessing Officer also proposed other additions/disallowances as per the provisions of the Act.

3.2. The Appellant filed objections before the DRP against the Draft Assessment Order, dated 29/12/2016. On 21/09/2017, the DRP disposed off the objections granting partial relief to the Appellant. As per the directions of the DRP, the Assessing Officer passed the Final Assessment Order, dated 26/10/2017, under Section 143(3) read with Section 92CA read with Section 144C(13) of the Act,

assessing total income of the Appellant at INR 7,20,37,88924/- computed as under:

Particulars	Amount (INR)	Amount (INR)
Income under the head business or profession (as per computation)		(-) 7,45,47,18,865
TP adjustment	38,23,33,655	
Disallowance under Section 14A	4,42,12,40,500	
Disallowance of Interest on Capital Work-In-Progress & capital advance	18,84,24,131	
Disallowance under Section 40(a)(ia) for non deduction of TDS on Discount extended to prepaid distributors	54,85,13,184	
Penalty payment DoT disallowed under Section 37(1)	7,54,000	
Disallowance of depreciation on spectrum fees	4,08,01,38,956	
Total Disallowances		9,62,14,04,426
Taxable income under the head business or profession		2,16,66,85,561
Income from Other Sources (as per revised computation)		
Interest on fixed deposit	4,19,03,514	4,19,03,514
Total income		25,09,29,739
Total Income		241,76,15,300
Less deduction u/s 80IA		Nil
Total income (as per Normal Provisions)		2,41,76,15,300

3.3. Being aggrieved the Appellant had preferred the present appeal before the Tribunal against the Final Assessment Order, dated 26/10/2017, on the grounds reproduced in paragraph 2 above.

Ground No. 1 to 1.3

4. Ground No. 1 to 1.3 raised by the Appellant are directed against the disallowance of INR.4,42,12,40,500/- made by the Assessing

Officer under Section 14A of the Act by invoking provisions contained in Rule 8D of the Income Tax Rules [for short '**IT Rules**'].

4.1. The facts relevant for adjudication of the above grounds are that during the assessment proceedings, the Assessing Officer noted that the Appellant has earned exempt dividend income of INR 404.98 Crores. Therefore, the Appellant was asked to explain why disallowance should not be made under Section 14A of the Act read with Rule 8D of the IT Rules. In response, it was submitted by the Appellant that during the relevant previous year no fresh investments were made by the Appellant. Further, no finance cost has been incurred in relation to investments made in the prior years. The investments in the prior years were sourced from shares swap, issue of shares by way of rights issue and internal cash accruals. Further, during the relevant previous year the Appellant had earned exempt dividend income of INR 404.98 Crores from Indus Towers Limited. However, no expenditure was incurred in relation to earning the said dividend income. It was further contended the management/administrative expenses incurred by the Appellant during the relevant previous year were recovered by the Appellant from its subsidiaries, and in relation to the same income of INR 488.1 Crores was offered to tax as management support services income under the head other income. Therefore, no disallowance under Section 14A of the Act was warranted. On a without prejudice basis, it was also contended by the Appellant that even in a case where investments were made from common pool of funds it was to be presumed that the investments were made from Appellant's own funds. It was also contended that even while applying provisions contained in Rule 8D of the IT Rules, only the investments yielding exempt income were to be taken into consideration. However, the

Assessing Officer rejected the aforesaid contention of the Appellant and proceeded to compute disallowance at INR 4,42,12,40,500/- as per provisions contained in Rule 8D of the IT Rules. Thus, in the Draft Assessment Order, dated 29/12/2016, the Assessing Officer proposed disallowance of INR.4,42,12,40,500/- under Section 14A of the Act.

4.2. In the objections filed by the Appellant against the Draft Assessment Order, dated 29/12/2016, on this issue, the DRP agreed with the Assessing Officer and decline to issue any directions. Accordingly, the Assessing Officer passed the Final Assessment Order, dated 26/10/2017, making disallowance of INR 4,42,12,40,500/- under Section 14A of the Act read with Rule 8D(2)(ii)/(iii) of the IT Rules. In addition the Assessing Officer also concluded that addition made under Section 14A of the Act was also to be made to the 'Book Profits' (computed as per Section 115JB of the Act.)

4.3. Being aggrieved, the Appellant has carried the issue in appeal before us.

4.4. The Learned Authorized Representative for the Appellant reiterated the submissions made before the authorities below in relation to additions/disallowance made by the Assessing Officer under Section 14A of the Act while computing profits under normal provision of the Act. As regards adjustment to Book Profit computed under Section 115JB of the Act in respect of additions/disallowance made under Section 14A of the Act is concerned, it was submitted that no such adjustment was proposed in the Draft Assessment Order.

4.5. Per contra the Learned Departmental Representative placed reliance on the orders passed by the Assessing Officer and the

DRP. It was submitted on behalf of the Revenue that the contention of the Appellant that no expenditure was incurred for earning exempt income was rejected by the Assessing Officer on the ground that it was not possible to earn exempt income of INR 404.98 Crores without deployment of resources. The provisions of Section 14A(2) of the Act provided that once the Assessing Officer was not satisfied with the claim of the Assessee and expenditure incurred on income which does not form part of total income has been debited to the Profit and Loss Account, the amount of disallowance to be made was to be computed in accordance with method prescribed in Rule 8D of the IT Rules. Therefore, the action of the Assessing Officer in making disallowance under Section 14A of the Act by invoking the computation mechanism provided in Rule 8D of the IT Rules cannot be found fault with. Thus, the Learned Departmental Representative supported the disallowance made by the Assessing Officer under Section 14A of the Act.

4.6. We have considered the rival submissions and perused the material on record.

4.7. It is admitted position that the Appellant has earned exempt dividend income of INR 404.98 Crores from investments made in 'Indus Towers Limited' during the relevant previous year. It is also admitted position that no investments were made by the Appellant during the relevant previous year. Further, it has not been disputed by the Revenue that total investments of INR 7,122.51 Cores were made by the Appellant in prior years either by share swap arrangement, or by issuance of shares by way of rights issue or by way of internal cash approvals. On perusal of paragraph 5.2.25 of the Assessment Order we find that the investments made by the Appellant as on 01/04/2012 and 31/03/2013 stood

at INR 7,122.60 Crores and INR 7,122.40 Crores, respectively. At the same time the Aggregate Share Capital and Reserves & Surplus of the Appellant stood at INR 8,043.90 Crores and 7,701.10 Crores as on 01/04/2012 and 31/03/2013, respectively. The contention of the Appellant is that no disallowance of interest in terms of Rule 8D(2)(ii) of the IT Rules can be made in respect of interest expenses since the Appellant had sufficient own funds. On the other hand, the Assessing Officer has made proportionate disallowance of interest on the premise that the Appellant has utilised funds from common pool of funds comprising of interest bearing borrowed funds and interest free own funds for making investment yielding tax free income. We note that in the case of **South Indian Bank Ltd. Vs. CIT [2021] 438 ITR 1 (SC)**, cited on behalf of the Appellant, it has been held by the Hon'ble Supreme Court that where the interest-free owned funds available with the assessee are more than the investments made in the tax-free securities, the presumption would be that investments in tax-free securities have been made out of interest-free own funds and proportionate disallowance of interest under Section 14A of the Act was not warranted on the ground that separate accounts were not maintained by assessee for making investments and for other expenditure incurred for earning tax-free income. In the present case, the Revenue has failed to bring any material on record to rebut the aforesaid presumption which is in the favour of the Appellant given the facts and circumstances of the present case. Accordingly, we accept the contention of the Appellant that no disallowance under Rule 8D(2)(ii) of the IT Rules was warranted in the present case and therefore, addition of INR 406.51 Crores made by the Assessing Officer by disallowing proportionate interest cost is deleted.

4.8. As regards disallowance of INR 35.61 Crores made by the

Assessing Officer under Rule 8D(2)(iii) of the IT Rules is concerned, we find that Special Bench of the Tribunal in the case of **ACIT Vs. Vireet Investments Pvt. Ltd. (2017) 82 taxmann.com 415 (Delhi Trib.) (SB)** has held that for computing the disallowance under Rule 8D(2)(iii) of the IT Rules only the investments yielding exempt income are to be taken into consideration. Accordingly, we direct the Assessing Officer to re-compute the disallowance under Rule 8D(2)(iii) of the IT Rules read with Section 14A of the Act as per the decision of Special Bench of the Tribunal in the case of Vireet Investments Pvt. Ltd (supra).

4.9. As regards the adjustment in respect of addition/disallowance under Section 14A of the Act to the Book Profits computed under Section 115JB of the Act in the Final Assessment Order is concerned, we find that no such adjustment was proposed in the Draft Assessment Order. The directions received from DRP on 21/09/2017 also do not contain any directions to the Assessing Officer to make any adjustment to Book Profits computed in terms of Section 115JB of the Act. Accordingly, the adjustment made by the Assessing Officer in respect of addition/disallowance under Section 14A of the Act to the Book Profits computed under Section 115JB of the Act in the Final Assessment Order is deleted.

4.10. In terms of paragraph 4.7 to 4.9, Ground Nos. 1, 1.1 and 1.2 are partly allowed, while Ground No.1.3 is allowed.

Ground No. 2 to 2.2.

5. Ground No. 2 to 2.2 raised by the Assessee is directed against the disallowance of discount extended to Pre-paid Distributors under Section 40(a)(ia) of the Act.

5.1. During the relevant previous year, discount amounting to INR 54,85,13,184/- were extended by the Assessee to its distributors of pre-paid products (for short 'Pre-paid Distributors'). The discount extended represented the difference between the Maximum Retail Price (MRP) of the talk-time & pre-paid connections; and the price at which these were transferred to the Pre-paid Distributors.

5.2. In the Draft Assessment Order, dated 29/12/2016, the Assessing Officer proposed disallowance under Section 40(a)(ia) of the Act in respect of the upfront discount extended to the Pre-paid Distributors. The Assessing Officer treated the arrangement between the Appellant and Pre-paid Distributors as a 'Principal to Agent' arrangement instead of 'Principal to Principal' arrangement as claimed by Appellant on the basis of certain clauses of the agreement pertaining to exclusivity, right to inspect, etc. and therefore, the upfront discount given to the Pre-paid Distributor was held to be in the nature of 'commission' liable to withholding of tax at source under section 194H of the Act. The objections filed by the Appellant on this issue were rejected by the DRP. Accordingly, the Assessing Officer passed the Final Assessment Order, dated 26/10/2017, making disallowance of INR 54,85,13,184/- under Section 40(a)(ia) of the Act in respect of disallowance of discount extended to Pre-paid Distributors under Section 40(a)(ia) of the Act.

5.3. Being aggrieved, the Assessee has carried the issue in appeal before the Tribunal.

5.4. We have considered the rival submissions and perused the material on record.

5.5. Having considered the rival submissions and on perusal of the

record we find that identical issue has been decided by the Mumbai Bench of the Tribunal in the case of the Appellant for the Assessment Year 2009-10 *[**ITA No. 1121/Mum/2014 and ITA No. 1885/Mum/2014**]*, vide **order dated 08/11/2023**. The relevant extract of the aforesaid order read as under:

> *"11. The next issue urged in Ground no.9 relates to disallowance of discount extended on pre-paid cards/recharge vouchers u/s 40(a)(ia) for non-deduction of tax at source. It was brought to our notice that an identical issue was examined by the co-ordinate bench in ITA No.3425/Mum/2014 relating to AY 2009-10 in the case of M/s Vodafone Idea Ltd (As successor to Spice Communications Ltd) and the Tribunal, vide its order dated 24-02-2023, has held that the TDS is not deductible from the discount paid on prepaid cards. The relevant observations are extracted below:-*
>
> > *"3.30. In view of the above observations, we hold that the decision rendered by us in assessee's own case for A.Y.2008-09 in ITA No.2285/Mum/2014 dated 12/10/2022 would be squarely applicable to the facts of the assessee"s case before us for the year under consideration also. The relevant operative portion of the said order of this Tribunal is reproduced hereunder:-*
> >
> > > *"2.8.2. We find that in the case before the Co-ordinate Bench of Pune Tribunal in the case of Idea Cellular Limited vs DCIT (TDS) in ITA Nos. 1041, 1042, 1953 -1955/Pun/2013 and ITA Nos. 1867 19 M/s. Vodafone India Ltd. 1870 /Pun/2014 dated 04/01/2017, the lower authorities had held that relationship between assessee and its distributors was Principal and Agent. It was only the Pune Tribunal which after examining the distributors agreement came to the conclusion that the relationship is that of Principal to Principal. In fact Pune Tribunal also examined the very same agreement which is the subject matter of agreement before us in the instant case before us, as it is not in dispute that all the distributors agreements are standard agreements across India. We also find that the Pune Tribunal relied on para 62 of the decision of Hon'ble Karnataka High Court in the case of Bharti Airtel Ltd vs DCIT reported in 372 ITR 33 (Kar). We find that the Pune Tribunal had taken note of the fact that Hon'ble Karnataka High Court in 372 ITR 33 had distinguished all the three High Court judgements (i.e. Kerala, Calcutta and Delhi) relied upon by the ld. DR hereinabove. Effectively Pune Tribunal adopted the decision of Hon'ble Karnataka High Court. The ld. DR relied on para 64 of decision of Hon'ble Karnataka High Court*

and argued that it is against assessee for the first 7 months since discount is separately shown in the books of the assessee as an expenditure. In our considered opinion, what is to be seen is the broader question raised before the Hon'ble Jurisdictional High Court in Income Tax Appeal No. 1129 of 2017 dated 13/01/2020 in assessee's own case against the order of Pune Tribunal. For the sake of convenience, the entire order is reproduced hereunder:-

> *"Heard learned counsel for the parties.*
>
> *2. The Appellant-Revenue challenges the order dated 4 January 2017 passed by the Income Tax Appellate Tribunal in Income Tax Appeal No.1041, 1042 and 1953 to 1955/PUN/2013.*
>
> *3. This Appeal pertains to the Assessment Year is 2010-11.*
>
> *4. The Appellant-Revenue has raised the following questions as a substantial questions of law :-*
>
> > *"(a) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal erred in holding the discount given by the assessee to its distributors on prepaid SIM Cards does not require deduction of tax under Section 194H of the Income Tax Act ?*
> >
> > *(b) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal erred in setting aside the case to the Assessing Officer?"*
>
> *5. The Tribunal noted the observations of the Assessing Officer that the discount allowed to the distributors by the Respondent - assessee company is on account of principal to principal relationship and not that of principal to agent. The Tribunal followed the decision of the Karnataka High Court in the 20 M/s. Vodafone India Ltd. case of Bharati Airtel Ltd. vs. DCIT [372 ITR 33] and held that the sale of SIM cards/recharge coupons at discounted rate to the distributors was not commission and therefore not liable to deduct the TDS under Section 194H. The Tribunal noted that there was no decision of this Court on this issue on that date.*
>
> *6. Learned counsel for the parties have tendered the copy of the order passed in Income Tax Appeal No. 702 of 2017 subsequently in the case of Pr.*

Commissioner of Income Tax-8 vs. M/s. Reliance Communications Infrastructure Ltd ., where same issue arose for the consideration of this Court. The Division Bench of this Court while holding against the Appellant - Revenue observed thus :-

> *"3. Having heard the learned Counsel for the parties and having perused the documents on record, we do not find any error in the view of the Tribunal. The Tribunal, as noted, besides holding that the Commissioner's order setting aside the order passed under Section 201 was not carried in appeal, had also independently examined the nature of the transaction and come to the conclusion that when the transaction was between two persons on principal to principal basis, deduction of tax at source as per section 194H of the Act, would not be made since the payment was not for commission or brokerage."*
>
> *7. In view of the finding of fact rendered by the Tribunal which we have noted above, the same principle would apply in the present case. Therefore, the questions of law as proposed do not give any rise to substantial question of law. The Appeal is disposed of. (emphasis supplied by us)*

2.8.2.1. It is also pertinent to note that the Distribution Agreement of Maharashtra Circle was subject matter of examination and adjudication by the Pune Tribunal wherein the Pune Tribunal had recorded a finding of fact that the relationship between assessee and distributor is that of Principal to Principal. This Order has been approved by the Hon'ble Jurisdictional High Court. We find that the Hon'ble Jurisdictional High Court held that once Principal to Principal relationship is established, there could be no commission or discount and consequently no deduction of tax at source in terms of section 194 H of the Act is warranted.

2.8.3. With regard to reliance placed by the ld. DR vehemently on the decision of Hon'ble Delhi High Court in assessee's own case reported in 325 ITR 148 (Del) is concerned, we find that the Hon'ble Karnataka High Court in the case of Bharti Airtel Ltd (372 ITR 33) referred supra had after considering the decision of Hon'ble Delhi High Court referred supra and decided the issue in favour of the assessee. We find that the Hon'ble Karnataka High Court had also followed the decision of Hon'ble Jurisdictional High Court in the case of Qatar Airways reported in 332 ITR 21 M/s. Vodafone India Ltd. 253 (Bom). Hence the reliance placed on

the decision of Hon'ble Delhi High Court by the ld. DR does not advance the case of the revenue. In any case, the decisions of Hon'ble Delhi High Court, Hon'ble Kerala High Court and Hon'ble Calcutta High Court referred supra had been considered and distinguished by the Hon'ble Karnataka High Court referred supra.

2.8.4. We further find that the Hon'ble Rajasthan High Court in the case of Hindustan Coca Cola Beverages (P) Ltd vs CIT III Jaipur reported in 402 ITR 539 (Raj) which had rendered a comprehensive judgement on the impugned issue together with various other assesses including Idea Cellular Ltd (assessee herein). The relevant Income Tax Appeal Nos. 168/2015, 169/2015, 170/2015 and 171/2015 which were admitted by the Hon'ble Rajasthan High Court on 18/10/2016 relates to assessee herein for Rajasthan Circle in respect of the identical issue. The question no.1 raised before the Hon'ble Rajasthan High Court is as under:-

> *1. Whether in the facts and circumstances of the case, the Tribunal was justified in holding that whether the assessee is liable to deduct TDS u/s. 194-H of IT Act, as the relation between assessee and distributor is that of Principal to Agent?*

2.8.4.1. We find that the Hon'ble Rajasthan High Court after considering the plethora of judgements on the impugned issue of various High Courts (which includes the three High Court decisions of Kerala, Delhi and Calcutta relied upon by the ld. DR before us herein) had rendered its decision as under:-

> *Idea Cellular*
>
> *58. As the agreement is produced, issues are answered in favour of assessee in the departmental appeals.*
>
> *59. Even the contention which has been raised by the counsel for the assessee that the final tax is paid by the Distributor and not by the agent, the revenue is not at loss in any form.*
>
> *……*
>
> *61. In view of the above discussion, all the appeals of assessees are allowed and those of Department are dismissed.*

2.8.5. We further find that the Hon'ble Rajasthan High Court in the case of CIT (TDS) Jaipur vs Idea Cellular Ltd in Income Tax Appeal No. 90/2018 dated 12/04/2018 had taken an

identical view on the identical set of facts. Further we find that the Hon'ble Jurisdictional High Court in the case of CIT(TDS) Pune vs Vodafone Cellular Ltd (assessee's own case) in Income Tax Appeal Nos. 1152 , 1274, 1995, of 2017 & Income Tax Appeal Nos. 571, 1266 of 2018 dated 27/01/2020 had also taken an identical view in respect of identical issue.

2.8.6. The ld. DR before us placed heavy reliance on the decision of Hon'ble Supreme Court in the case of Union of India vs Association of Unified Telecom Service Providers of India and Others reported in (2020) 3 SCC 525 dated 24/10/2019 to drive home the point that the assessee had erred in accounting the discounted price of sales as its revenue when sim cards are sold to distributors. We have gone through the said decision and we find that the said decision was rendered in the context of determination of Annual Gross Revenue for the purpose of fixing the licence fee payable to Government by the telecom service providers. It further held that while reckoning the Gross Revenues, no deduction would be available such as discount, commission etc. First of all, we have already held that the assessee had not made any payment of discount to the distributors. In any case, we have already held that the entries in the books of accounts are not determinative of tax liability of an assessee by placing reliance on various decisions of Hon'ble Apex Court. Those decisions still rule the field as they were not overruled by the latest Supreme Court decision relied upon supra by the ld. DR. It is trite law that though the decision of Hon'ble Apex Court would be binding as per Article 141 of the Constitution of India, still the judgement of the Hon'ble Supreme Court should be understood from the issue raised before it. In our considered opinion, this decision has got absolutely nothing to do with the applicability of provisions of section 194H of the Act. Hence we hold that the reliance placed by the ld. DR on the said decision is grossly misplaced.

2.8.7. The ld. DR before us vehemently submitted that the orders of Hon'ble Rajasthan High Courts and Hon'ble Jurisdictional High Courts and Hon'ble Karnataka High Court had not attained finality as they had been appealed by the revenue before the Hon'ble Supreme Court. This argument of the revenue, in our considered opinion, cannot be a deterrent for this Tribunal to follow those High Court orders. We find that the similarly worded distribution agreement had been subject matter of adjudication and examination by the Hon'ble Rajasthan High Court and Hon'ble Jurisdictional High Court

wherein the Hon'ble High Courts had taken a categorical view that the relationship between assessee and distributor is only that of Principal to Principal. Hence this finding cannot be disturbed by this tribunal by respectfully following the judicial hierarchy. Infact no contrary materials on facts were even brought on record by the revenue before us to disturb the findings of Hon'ble High Courts. Hence we have no hesitation in holding that the relationship between assessee and distributor is only that of Principal to Principal and not that of Principal to Agent and accordingly there is no obligation for the assessee to deduct tax at source in terms of section 194H of the Act.

2.8.8. In view of the aforesaid observations and findings given thereon, we do not deem it fit to adjudicate other arguments advanced by the ld. AR on the applicability of second proviso to section 40(a)(ia) read with section 201 of the Act, as it would become academic in nature. This aspect of the issue is left open."

3.31. In view of the aforesaid observations and respectfully following the various judicial precedents relied upon hereinabove, we hold that the sale of prepaid sim cards/recharge vouchers by the assessee to distributors cannot be treated as commission/discount to attract the provisions of section 194H of the Act and hence there cannot be any obligation on the part of the assessee to deduct tax at source thereon and consequentially there cannot be any disallowance u/s 40(a)(ia) of the Act. Accordingly, the Ground No. II raised by the assessee is allowed. The Ground No. I raised by the assessee is only supporting the Ground No. II for furnishing of additional evidences, the adjudication of which becomes academic in nature. Hence Ground No. I is also allowed." (Emphasis Supplied)

11.1 Facts being identical, following the above said decision of the coordinate bench in the case of M/s Vodafone Idea Ltd (As successor to Spice Communications Ltd), we hold that the assessee is not liable to deduct tax at source from the discount paid on prepaid sim card/recharge vouchers. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance made u/s 40(a)(ia) of the Act."

5.6. On perusal of above extract of the decision of the Tribunal it can be seen that in the above case the Tribunal had concluded that

tax was not required to be withheld under Section 194H of the Act from the upfront discount offered to Pre-paid Distributors, and consequently, no disallowance could be made under Section 40(a)(ia) of the Act for failure to deduct tax at source.

5.7. The above decision of the Tribunal was followed by the Tribunal while deciding identical issue in favour of the Appellant in appeal preferred by the Appellant for the Assessment Year 2011-12 (ITA No.884/Mum/2016) and Assessment Year 2012-13 (ITA No.2834/Mum/2017) vide a common order, dated 17/05/2024.

5.8. Both the sides agree that there is no change in facts and circumstances, therefore, respectfully following the above decisions of the Tribunal in the case of the Appellant, the disallowance of INR 54,85,13,184/- made under Section 40(a)(ia) of the Act in respect of discount extended to Pre-paid Distributors is deleted. Ground No. 4 raised by the Assessee is allowed.

Ground No. 3 to 3.3.

6. Ground No. 3 to 3.3 raised by the Appellant pertains to disallowance of depreciation on 3G Spectrum.

6.1. During the Financial Year 2010-11 the Appellant had paid charges for allotment of right to commercially utilize the 3G spectrum allotted to it for a period of 20 years in the telecom circle of Mumbai. Since the right to use 3G spectrum did not itself entitle a company to provide telecom services for which a telecom license was required, the Appellant treated such right as an 'Intangible Asset' for the purpose of Section 32 of the Act and accordingly, tax depreciation per the prescribed rate was claimed on such capitalized cost. According to the Appellant, the allowability of depreciation of such right was examined by the Assessing Officer

in the assessment proceedings for Assessment Year 2011-12, [i.e year of acquisition of right to use spectrum] and after due examination, tax depreciation as claimed by the Appellant was allowed. However, for the Assessment Year 2013-14, while passing the Draft Assessment Order, dated 29/12/2016, the Assessing Officer disallowed the depreciation of INR 586,86,93,018/- claimed by the Appellant and allowed the Appellant to amortized the same under Section 35ABB of the Act concluding as under:

(a) Right to use the spectrum emanates from the license and is part and parcel of the license;

(b) Since 2G and 3G spectrum are similar in nature then there is no basis for different tax treatment of the two spectrum;

(c) In the case of a telecom license the specific provision, i.e. section 35ABB would apply and not the general provision of the commercial rights in the nature of license covered under section 32(1)(ii).

6.2. In the objections filed by the Appellant against the Draft Assessment Order on the above issue, the DRP declined to grant any directions and concluded that the Assessing Officer had rightly amortized the expense of 3G spectrum over the period for which the spectrum was allocated to the Appellant. However, deferring from the view taken by the Dispute Resolution Panel for the Assessment Year 2012-13, the DRP observed that (a) telecom license was different from the spectrum; (b) the spectrum, by its very nature, did not depreciate and (c) the provisions related to depreciation do not apply assets acquired for a limited period.

6.3. As per the directions of the DRP the Assessing Officer passed Final Assessment Order, dated 26/10/2017, denying claim of depreciation in respect of 3G Spectrum Charges and allowing amortization to the Appellant.

6.4. Being aggrieved the Appellant is now in appeal before us.

6.5. We have considered the rival submission and perused the material on record. It is admitted position that 3G spectrum charges were paid by the Appellant during the previous year 2010-11 relevant to the Assessment Year 2011-12. For the Assessment Year 2011-12, the depreciation in respect of spectrum charges as claimed by the Appellant was allowed by the Assessing Officer. Subsequently, order of revision was passed under Section 263 of the Act on the ground that depreciation in respect of the 3G spectrum charges was incorrectly allowed to the Appellant by the Assessing Officer and that the Appellant could only be allowed the benefit of amortization. In appeal preferred against the aforesaid order passed under Section 263 of the Act for the Assessment Year 2011-12, the Mumbai Bench of the Tribunal concluded that depreciation in respect of 3G spectrum charges was correctly allowed by the Assessing Officer [vide **order dated 28/08/2020**, passed in **ITA No. 3327/Mum/2018**[1]] holding as under:

> *"29. Accordingly, we can safely conclude that on the merits of the issue, the Mumbai Bench of the ITAT in the case of Idea Cellular Ltd. (ITA No. 360/Mum/2016) has already held that the provisions of section 35ABB are not applicable on the cost of acquisition of the 3G Spectrum and no specific arguments have been made on the said decision of the ITAT on the merits of the issue by the Revenue.*
>
> *30. This decision has also been followed by the ITAT in the case of Tata Teleservices Maharashtra Ltd.(ITA No. 3567/Mum/2016 and 4392/M/2017).*
>
> *31. With regard to reliance of the ld. DR on the decision of Hon'ble Supreme Court in the case of Britania Industries Ltd.(278 ITR 546), we observe that the question before the Supreme Court in the said*

[1] Vodafone India Ltd. Vs. Principal Commissioner of Income Tax-8

case was whether expenses towards rent, repairs, depreciation and maintenance of a building used as a guest house, was to be governed by the provisions of section 30 to 36 of the Act or whether the specific provisions of section 37(4) r.w.s. 37(3) and 37 (5) of the Act would be applicable. The Hon'ble Supreme Court held that the specific provisions would be applicable. In the instant case, the provision of section 35ABB of the Act, which is sought to be applied by the Revenue, do not specifically cover allowability of payments for cost of acquisition of the 3G Spectrum and hence the decision of the Supreme Court cannot be made applicable in the instant case. In fact a specific section viz., 35ABA has been brought on the statute books subsequently, by the Finance Act, 2016 with effect from 01 April 2017 (i.e. AY 2017-2018) on the issue of allowability of cost of acquisition of the 3G Spectrum. This amendment too clearly indicates that the provisions of section 35ABB of the Act cannot be made applicable thereon.

32. We also observe that if the argument of the Revenue that payment for spectrum was covered by Section 35ABB is to be accepted, it would render the provisions of Section 35ABA to be otiose to say the least and this too highlights the fallacy of the said argument. To sum up, we observed that Section 35ABA of the Act is specific to expenditure for obtaining right to use spectrum and not Section 35ABB of the Act. Accordingly, the decision of the Mumbai Bench of the ITAT in the case of Idea Cellular Ltd. (ITA No. 360/Mum/2016) and also the decision of Tata Teleservices Ltd. (ITA No. 3567/Mum/2016 and 4392/Mum/2017) cannot be faulted with and the same has to be followed.

33. ***In view of the above, we hold that this issue is squarely covered in favour of the assessee by the decision of the Jurisdictional Bench of the Tribunal in the case of Idea Cellular Limited (ITA No. 360/Mum/2016) dated December 6, 2017. In this context, we highlight that the Tribunal in identical fact pattern for the same assessment year has not only upheld claim of depreciation on the 3G spectrum fees under section 32(1)(ii) of the Act treating the right to use 3G spectrum as an intangible asset, but has also quashed the revisionary proceedings initiated by the Revenue authorities. The key observations of the Hon'ble Tribunal are as under****:*

> *a. On maintainability of revisionary proceedings under section 263 of the Act: The Hon'ble Tribunal categorically held that since the assessment order was passed after conducting a*

detailed enquiry and adopting one of the legally permissible view, the revisionary proceedings initiated on such issue has no legs to stand on and is thus liable to be quashed. Refer paras 13 to 16 of the order (page no 19 to 25 of the order).

b. On merits of allowability of depreciation claimed on 3G spectrum fees: The Hon'ble Tribunal observed that the telecom license and spectrum are independent of each other and 3G spectrum fee merely provides a right to use a particular frequency/spectrum while providing telecommunication services. The assessee has rightly claimed depreciation under section 32 of the Act and the provisions of section 35ABB of the Act are clearly not applicable. Refer paras 17 to 20 of the order (page no 25 to 30 of the order).

It was further highlight that the Jurisdictional Tribunal in the case of Tata Teleservices Maharashtra Limited (ITA 3567/Mum/2016 and 4392/Mum/2017), for AYs 2011-12 and 2012-13, has followed the decision of Idea Cellular (supra) and directed the AO to allow the depreciation claim under section 32(1)(ii) of the Act in respect of the amount paid to DOT for purchase of 3G spectrum and quashed the order passed u/s 263 of the Act by the learned CIT." (Emphasis Supplied)

6.6. Reliance was placed on the above decision of the Tribunal while deciding identical issue raised in appeal preferred by the Appellant for the Assessment Year 2012-13 (ITA No.2834/Mum/2017) in favour of the Appellant vide a common order, dated 17/05/2024.

6.7. Both the sides agree that there is no change in facts and circumstances. Therefore, respectfully following the above decisions of the Tribunal, we direct the Assessing Officer to allow depreciation in respect of the 3G spectrum charges capitalize by the Appellant under Section 32(1)(ii) of the Act. Thus, Ground No. 3 to 3.3 raised by the Appellant are allowed.

Ground No. 4 to 4.2

7. Ground No. 4 to 4.2 raised by the Appellant are general grounds relating to transfer pricing adjustment which do not require

separate adjudication. Accordingly, Ground No. 4 to 4.2 are dismissed as being general in nature.

Ground No. 5 to 5.5

8. Ground No. 5 to 5.5 raised by the Appellant pertains to transfer pricing adjustment of INR 31,13,67,878/- made in respect of the payment of brand royalty for obtaining the right to use of Vodafone trademark and trade name.

8.1. During the relevant previous year, the Appellant made royalty payments of INR 31,13,67,878/- [computed @ 1 % of net revenue] to its AE [i.e., Vodafone Sales and Services Limited (VSSL)] for grant of right to use "Vodafone" trademark and trade name. The Appellant contended that as per Comparable Uncontrolled Price Method (for short 'CUP Method') the royalty payment was at arm's length since on analysis of the comparables selected, the Appellant found that the mean of the royalty payments being made under comparable third-party arrangements was 1.25% which was more than the rate of royalty payment made by the Appellant to its AE. However, the TPO was not convinced. The TPO noted that till Assessment Year 2012-13, the Appellant used to pay royalty to VSSL @ 0.70%. The Appellant also used to pay royalty to Rising Groups Limited (an Essar Group company) @ 0.35%. Hence, in the assessment proceedings the royalty payments to VSSL were benchmarked by the Transfer Pricing Officer at 0.35% for VSSL also till AY 2012-13. However, for the Assessment Year 2013-14, no royalty payment have been made to Rising Groups Limited because the agreement with Rising Groups Limited was valid only till June 2011. The Appellant has entered into a fresh agreement with VSSL and has provided comparable rates of royalty paid by the third parties which are more than what the Appellant had paid to its AE in the earlier

years. TPO noted that the Appellant had adopted CUP Method for benchmarking royalty transactions which according to the TPO was not the Most Appropriate Method. The TPO also rejected all the comparables selected by the Appellant on account of significant differences in the functions, geography and level of operations. The TPO observed that the Appellant was performing Development, Enhancement, Maintenance, Protection and Exploitation functions (for short 'DEMPE functions') for the brand in India and was bearing the related costs and risks. No compensation was received by the Appellant for the aforesaid DEMPE functions either presently or at the time of termination of agreement. In view of the aforesaid, the TPO concluded that no independent third party would pay royalty for the use of trade name and trademark and therefore, the TPO arrived at ALP of 'Nil' for the transaction under consideration.

8.2. The objections filed by the Appellant on this issue did not yield favourable results as the DRP declined to give any direction and therefore, in the Final Assessment Order, dated 26/10/2017, transfer pricing adjustment of INR 31,13,67,878/- was made by the Assessing Officer in respect of royalty payment.

8.3. The Appellant is now before us in appeal challenging the above transfer pricing addition.

8.4. When the issue was taken up for hearing both the sides submitted that issue relating to the transfer pricing adjustment related to royalty payment made by the Appellant for the for the Assessment Year 2011-12 (ITA No.884/Mum/2016) and Assessment Year 2012-13 (ITA No.2834/Mum/2017) had also come up for consideration before the Tribunal and vide common order dated 17/05/2024, the Tribunal had remanded the issue back to the file of TPO/Assessing Officer with directions. Though the facts and

circumstances in the relevant previous years differ from those prevailing in the preceding assessment years *(to the extent stated in paragraph 8.1 hereinabove)*, we find that similar approach has been adopted by the Appellant and the TPO/Assessing Officer. As was the case in the Assessment Years 2011-12 and 2012-13, the benchmarking done by the Appellant using the CUP Method has been rejected by the TPO. The TPO has rejected the comparables selected by the Appellant on account of significant differences in the functions, geography and level of operations. There is nothing on record to controvert the findings returned by the TPO in this regard. However, we note that during the course of hearing the Appellant had filed a fresh benchmarking study as per the directions of the Tribunal. The Revenue has again objected to the selection of comparables by the Appellant. Further, it was also contended on behalf of the Appellant that the corroborative benchmarking using Transaction Net Margin Method has also not been considered either by the TPO or DRP. Given the aforesaid factual matrix and keeping in view the fact that for the Assessment Years 2011-12 and 2012-13 the issue of benchmarking of the royalty transaction has been remanded back to the file of the TPO/Assessing Officer, we deem it appropriate to remand this issue back to the file of TPO / Assessing Officer with the directions to decide the issue of transfer pricing adjustment in relation to international transaction of royalty payment afresh after granting the Appellant reasonable opportunity of being heard. The Appellant is directed to file before the TPO/Assessing Officer such documents/details/report as the Appellant may deem fit to support the contention that the royalty payment made by the Appellant to its AE are at arm's length while the TPO is directed to examine the same afresh for determining the ALP and consequent transfer pricing adjustment, if any, as per law. All the rights and contentions of both the sides are left open. In terms of

aforesaid, Ground No. 5 to 5.5 raised by the Appellant are allowed for statistical purposes.

Ground No.6 and 6.1

9. Ground No. 6 to 6.1 raised by the Appellant pertains to transfer pricing adjustment pertaining to reimbursement of expenses.

9.1. During the relevant previous year, the AEs of the Appellant incurred certain expenses relating to salary and other related costs of the employees who were seconded to the Appellant and who worked under the supervision, management and control of the Appellant. Subsequently the Appellant reimbursed these expenses incurred by its AEs on cost to cost basis. Out of the aforesaid expenses, the TPO determined the payments pertaining to GMAC Costs, PWC Consulting and people survey cost aggregating to INR 7,09,65,777/- as 'Nil'. Therefore, the ALP of international transaction pertaining to reimbursement of salary and related cost of the personnel on deputation with the Appellant was determined at INR 20,84,34,389/- as against INR 27,94,00,166/- claimed by the Appellant. Since DRP declined to grant any relief. The Appellant has carried the issue in appeal before the Tribunal challenging the transfer pricing addition of INR 7,09,65,777/-.

9.2. Having heard the rival submission and on perusal of the record we find that this is a recurring issue. Both the sides agreed that for the Assessment Year 2008-09 and 2009-10, in identical facts and circumstances, this issue was restored to the file of TPO/Assessing Officer with directions. The relevant extract of the decision of Mumbai Bench of the Tribunal in the case of the Appellant [**ITA No. 1121 & 1885/MUM/2014**, **dated 08/11/2023**] read as under:

"13. The next issue urged by the assessee in ground no.10.3 relates to the transfer pricing adjustment made in respect of reimbursement of salary and related costs on deputation of personnel to India.

13.1 The assessee had claimed reimbursement of salary and other related costs incurred on employees seconded by Associated Enterprises. The TPO determined ALP of the same at NIL. The Ld DRP allowed in part. We notice that an identical issue was examined by the co-ordinate bench in the assessee's own case in 2008-09 in ITA No 6718/Mum/2012 dated 08-05-2023 and the matter was restored to the file of AO/TPO with the following observations:-

> *"18. In the instant case, the DRP in principle has accepted the fact that the payments were made towards reimbursement of salary and related cost of seconded employees on cost to cost basis and thus allowed substantial part of assessee's claim. However, Rs.3,63,31,007/- has been disallowed for the reason that the assessee has not been able to substantiate back to back payment of the said amount. Once it has been accepted that the five employees were seconded to India by overseas AEs, the relocation of those employees to India is a consequential step. There would be cost attached to relocation of such employees. The said cost has either to be borne by the AE or the assessee. This fact can be determined from the terms and conditions of secondment of employees. In case relocation costs/travel costs are borne by the assessee, the same deserves to be allowed if they are reimbursed on cost to cost or are paid directly to the seconded employees. Taking into consideration entire facts, we deem it appropriate to restore this issue back to the file of Assessing officer for re-examination. The assessee is directed to furnish relevant documents to substantiate that the costs disallowed by the DRP were in fact cost paid by the assessee towards relocation/travel of the seconded employees. The assessing officer shall decide this issue after affording reasonable opportunity of hearing/to make submissions to the assessee, in accordance with law. Ergo, ground no.13 of the appeal is allowed for statistical purpose."*

13.2 The facts available in this year, being identical, following the decision rendered by the co-ordinate bench in the assessee's own

case in AY 2008-09, we restore this issue to the file of AO/TPO with similar directions."

9.3. The above decision, was relied upon by the Tribunal while restoring identical issue back to the file of TPO/ Assessing Officer with directions in appeal preferred by the Appellant for the Assessment Year 2011-12 (ITA No.884/Mum/2016) and Assessment Year 2012-13 (ITA No.2834/Mum/2017) vide common order, dated 17/05/2024.

9.4. In view of the above, we deem it appropriate to grant to the Appellant another opportunity to substantiate its claim that the INR 7,09,65,777/- were incurred in relation to the employees deputed with the Appellant and that the same, having being recovered on cost to cost basis from the Appellant, was at arm's length. The Appellant is directed to furnish relevant documents/details to substantiate its claim. The TPO/Assessing Officer shall grant reasonable opportunity of hearing to the Appellant and shall decide the issue in accordance with law after taking into consideration the details/documents furnished by the Appellant and as per the directions issued by the Tribunal in the case of the Appellant for the Assessment Year 2008-09 in ITA No 6718/Mum/2012, dated 08/05/2023. In terms of the aforesaid, we restore this issue to the file of TPO/Assessing Officer with the aforesaid directions. Ground No.6 and 6.1 raised by the Appellant in appeal are allowed for statistical purposes.

Ground No. 7 and 7.1

10. Ground No. 7 and 7.1 raised by the Appellant pertains to levy of interest under Section 234D and 244A of the Act and the same are disposed off as being consequential in nature with the directions to the Assessing Officer to re-compute the same as per law.

Ground No. 8 to 8.2

11. Ground No. 8 to 8.2 raised by the Appellant pertains non-grant of additional credit of TDS as claimed by the Appellant on the basis of TDS Certificates filed during the course of assessment proceedings. The Assessing Officer is directed to grant credit of tax deducted at source as per law after verifying the claim of additional TDS Credit of INR 31,11,526/- made by the Appellant during the assessment proceedings. Thus, Ground Nos. 8 to 8.2 raised by the Appellant are allowed for statistical purposes.

Ground No. 9

12. Ground No. 9 raised by the Appellant pertains to initiation of penalty proceedings under Section 271(1)(c)of the Act and the same is dismissed as being premature.

13. In result, for the Assessment Year 2013-14, the appeal preferred by the Assessee is partly allowed

Order pronounced on 22.10.2024.

Sd/-	***Sd/-***
(Narendra Kumar Billaiya)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 22.10.2024
Milan, LDC

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai