

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'के', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI AMIT SHUKLA, JM

आयकर अपील सं./ITA No.7680/Mum/2012

(निर्धारण वर्ष / Assessment Year :2008-2009)

Satellite Television Asian Region Limited, C/o STAR India Private Limited, Star House, off Dr. E.Moses Road, Mahalaxmi, Mumbai-400011	Vs.	DDIT(International Taxation)-2(1), Scindia House, Mumbai-400038
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACS 5680 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.7679/Mum/2012

(निर्धारण वर्ष / Assessment Year :2008-09)

Channel V Music Networks Limited Partnership (Channel V) C/o Star India Pvt. Limited, Star House, Office Dr. E Moses Road, Mahalaxmi, Mumbai-400011	Vs.	Asstt. Director of Income Tax (International Taxation)1 (2) Scindia House, Mumbai-400038
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAEFC6136H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.7681/Mum/2012

(निर्धारण वर्ष / Assessment Year :2008-09)

Star International Movies Limited(SIML) C/o STAR India Private Limited, Star House, off Dr. E.Moses Road, Mahalaxmi, Mumbai-400011	Vs.	DDIT (IT) 2(1) Scindia House, Mumbai-400038
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAICS3256P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.7682/Mum/2012

(निर्धारण वर्ष / Assessment Year :2008-09)

Star Asian Movies Limited (amalgamated with STAR India Private Limited) C/o STAR India Private Limited, Star House, off Dr. E.Moses Road, Mahalaxmi, Mumbai-400011	Vs.	DDIT (IT) 2(1) Scindia House, Mumbai-400038.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACN1335Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.7683/Mum/2012

(निर्धारण वर्ष / Assessment Year :2008-09)

Star Asia Region FZ LLC (Since amalgamated with Star India Pvt. Ltd.) C/o STAR India Private Limited, Star House, off Dr. E.Moses Road, Mahalaxmi, Mumbai-400011	Vs.	Deputy Director of Income Tax (International Taxation) 2(1) Scindia House Mumbai-400038
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACN1335Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.7684/Mum/2012

(निर्धारण वर्ष / Assessment Year :2008-09)

Star Television Entertainment Limited (Since amalgamated with Star India Pvt. Ltd. C/o STAR India Private Limited, Star House, off Dr. E.Moses Road, Mahalaxmi, Mumbai-400011	Vs.	Deputy Director of Income Tax (International Taxation) 2(1) Scindia House Mumbai-400038
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACN1335Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND**आयकर अपील सं./ITA No.32/Mum/2013****(निर्धारण वर्ष / Assessment Year :2008-09)**

SGL Entertainment Limited, C/o STAR India Private Limited, Star House, off Dr. E.Moses Road, Mahalaxmi, Mumbai- 400011	Vs.	Deputy Director of Income Tax (International Taxation) 2(1) Scindia House Mumbai- 400038
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAJCS6874N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Porus Kaka/Divesh Chawla
राजस्व की ओर से /Revenue by : Shri Rupinder Brar

सुनवाई की तारीख / Date of Hearing : 22/06/2016
घोषणा की तारीख/Date of Pronouncement 16/09/2016

आदेश / O R D E R**PER R.C.SHARMA (A.M):**

The above captioned appeals have been preferred by different assesses against the direction of the Dispute Resolution Panel-1, Mumbai (in short "DRP"), for the assessment years 2008-09.

2. Since the issues involved in all the appeals are common, therefore, appeals have been heard altogether and are being disposed off by this consolidated order. For the sake of convenience the grounds as well as facts mentioned in ITA No.7680/Mum/2012 have been taken into consideration for deciding the above appeals *en mase*.

Grounds :-

"Based on the facts and circumstances of the case, Satellite Television Asian Region Limited (hereinafter referred to as the 'Appellant') respectfully craves leave to prefer an appeal against the

order passed under Section 143(3) read with Section 144C(13) of the Income-tax Act, 1961 ('Act') by the Deputy Director of Income-tax (International Taxation) - 2(1) ('AO') in pursuance of the directions issued by Dispute Resolution Panel - I (,DRP'), Mumbai, under Section 253 of the Act on the following grounds which are independent and without prejudice to each other:

On the facts and in the circumstances of the case and in law, the learned DRP/learned Additional Commissioner of Income-tax (Transfer Pricing)-1I(1 &6) (TPO) and the learned AO has-

(Ground number 1

erred in determining the FAR based income of the Appellant at Rs 149,31,07,251 instead of Rs 114,42,29,521 as declared by the Appellant.

Ground number 2

erred in applying transfer pricing provisions to profit arrived after the application of Profit Split Method ('PSM') ignoring that such profit effectively represents profits from transactions entered into with third parties.

Ground number 3

erred in determining the arms length profitability rate (,ALP rate') of 22.57% as against the ALP rate of 17.30% computed by the Appellant and its Group Entities (hereinafter referred to as 'STAR Group Entities').

Ground number 4

erred in rejecting the comparability analysis carried out by the Appellant and thereby deviating from their own position in earlier years without any change in facts or in law.

Ground number 5

erred in holding that PSM is applicable to determine the arms length profits in respect of revenues from Associated Enterprises ('AE') only and not applicable for determining arm's length profits in respect of transactions with non-AEs.

Ground number 6

erred in holding that revenues of Rs 208,28,90,828 from sale of advertisement airtime, as revenue from Non AEs and income! profits needs to be separately computed therefrom.

1 STAR Television Entertainment Limited, STAR International Movies Limited, STAR Asian Movies Limited, STAR Asia Region FZ LLC and Channel V Music Networks Limited Partnership

Ground number 7

erred in applying an arbitrary profitability rate of 28% to the advertising revenues of Rs 208,28,90,828 from non AEs, contrary to law.

Ground number 8

failed to carry out the directions of the learned DRP resulting in double taxation of profits from revenues of Rs 208,28,90,828.

Ground number 9

erred in doubly taxing the profits from revenues of Rs 208,28,90,828 at the profitability rate of 28% rather than restricting the addition to the difference between 28% (Rs 58,32,09,432) and 22.57% (Rs 47,01,08,460) of the said revenues as assessed in the hands of STAR Group Entities in the assessment order.

Ground number 10

erred in computing the arm's length price for the international transactions by ignoring the provisions of the Rule 10B(4) of the Rules, which authorizes usage of multiple year data of comparable companies for the purpose of determination of arm's length price under Section 92F of the Act.

Ground number 11

erred in considering the financial results and data of the comparable companies which were not in existence in the public domain at the time of determination of the ALP profit rate as is mandated under Section 92F of the Act.

Ground number 12

erred in computing the arm's length price for the international transactions without considering the 5 percent bandwidth available under the proviso to Section 92C(2) of the Act.

Ground number 13

erred in adopting a divergent position with respect to adjustments made under Section 40(a)(i) of the Act for AY 2007-08 and AY 2008-09 and not granting a deduction for Rs 1,10,35,39,414 disallowed in AY 2007-08 on which taxes were admittedly paid in AY 2008-09.

Ground number 14

erred in providing a finding that no disallowance was made in AY 2007-08 under Section 40(a)(i) of the Act and thereby not allowing a deduction of Rs 1,10,35,39,414 in AY 2008-09 on which taxes have been paid in the current year

Ground number 15

erred in disallowing an amount of Rs 20,28,50,187, over and above the ALP profit rate of 17.30%, under Section 40(a)(i) of the Act representing transponder hire fees paid to Asia Satellite Telecommunications Company Limited.

Ground number 16

erred in disallowing the gross sum of transponder hire charges amounting to Rs 34,96,00,000 paid to Asia Sat under Section 40(a)(i) of the Act.

Ground number 17

Without prejudice to ground number 16, erred in not restricting the disallowance under Section 40(a)(i) of the Act to the amount attributable to India as Rs. 34,96,00,000 is the global amount.

Ground number 18

Without prejudice to ground numbers 16 and 17, erred in not restricting the disallowance of transponder hire charges under Section 40(a)(i) of the Act to net income chargeable to tax in the hands of non-resident recipient, ie, Asia Sat.

Ground number 19

Without prejudice to ground numbers 16,17 and 18, erred in disallowing of transponder hire charges under Section 40(a)(i) of the Act in the hands of the Appellant, as Asia Sat has been regularly discharging its tax liabilities in India.

Ground number 20

The learned DRP erred in not disposing off objection numbers 18, 19, 20 and 21 of the DRP Application.

Ground number 21

erred in charging interest amounting to Rs 1,73,42,755 under Section 234C of the Act without appreciating the fact that the Appellant is a non-resident and accordingly, its entire income is liable for TDS, and is not liable to pay advance tax.

Ground number 22

erred in not granting the credit of taxes deducted at source amounting to Rs 1,19,13,016.

Ground number 23

erred in not granting interest under Section 244A of the Act on the tax refund due to the Appellant.

Ground number 24

erred in initiating penalty proceedings under Section 271 (1)(c) of the Act without appreciating the fact that the Appellant has neither concealed any income nor furnished any inaccurate particulars of its income.

Ground number 25

erred in initiating penalty proceedings under Section 271A of the Act without appreciating the fact that the Appellant is a non-resident and not required-to maintain India specific books of accounts.

Ground number 26

erred in initiating penalty proceedings under Section 271 B of the Act without appreciating the fact that the Appellant is a non-resident and accordingly, is not required to get the accounts audited.

3. Rival contentions have been heard and record perused. Facts in brief are that assessee-Star Limited, a foreign company in Hong Kong and part of News Crop Group, is engaged in the business of distribution of channel and advertising airtime at a global level. The assessee is an aggregator and distributor of channels which consolidates numerous channels into a network and negotiations carriage with the distribution platforms. It relies on the reputation of the STAR brand (which it develops) and its technical capability to effectively broadcast channels to negotiate favourable terms with distribution platforms. The assessee grants channel distribution rights to various distributors across Asia. Under the terms of

distribution agreements granted, Star Ltd. is required to organize broadcasting of the channels, including uplinking and to provide a range of infrastructure services associated with the broadcasting. In addition, the Star Ltd leases transponders and provides some transponder capacity to the Chanel Companies i.e. SIML,SAML,STEL &SAR, which are responsible for acquiring for relevant content of various genres which are finally broadcast on the channels. These channels include Star Plus, Star World, Channel V, etc.

The appeal in ITA No. 7680/M/12 pertaining to Assessment Year 2008-09 is taken as the lead case.

3. Grounds No.1 to 4 of ITA No.7680/M/12 relate to rejection of three of assessee's comparables by the TPO by applying low turnover filter.

3.1. The assessee has adopted the profit split method as the most appropriate method to determine the arm's length price. For this purpose, the assessee has aggregated all its transactions with the other channel companies and the SGL Limited and determined the global profits. These profits were compared with profits earned by certain comparable companies engaged in the telecasting activity. The assessee determined the profit margin of eight companies, identified by the assessee, at 17.3%, as compared to its own margin of 5.08%. After making various adjustments, the assessee determined a profitability rate of 12.23% to which extent it increased its profits by making a suo moto transfer pricing adjustment and these profits were then divided amongst the channel companies and assessee. However, the TPO rejected the three

comparables of the assessee i.e. i) Aastha Broadcasting Network Limited; ii) Broadcast Worldwide Limited and iii) Jain Studios Limited, on the basis that the turnover of these companies was less than 10% of the assessee's turnover of Rs.13,240 crores. After excluding three companies, the TPO has calculated the comparable margin, which has come to 22.57%. In the proceeding before DRP, the action of TPO has been upheld. Now, the assessee is in appeal before the Tribunal.

3.2 Ld. AR for the assessee has submitted before us that the Transfer Pricing officer (TPO) and Dispute Resolution Panels (DRP) have accepted the Profit Split Method (PSM) for determining the arm`s length price. Admittedly, the PSM is the method for transfer pricing for the group except rejection of three comparables by the TPO viz: i) Aastha Broadcasting Network Limited; ii) Broadcast Worldwide Limited and iii) Jain Studios Limited. The TPO rejected these companies on the basis that their turnover was less than 10% of the turnover of the India revenue of Star group entities. The Ld. AR for the assessee stated that TPO has erroneously applied a one sided lower turnover margin. It is imperative to note that the assessee had not applied turnover filter while carrying out the benchmarking analysis while identifying functionally comparable Indian broadcasters. The TPO has considered the same benchmarking analysis, of functionally comparable india broadcasters, and rejected three comparables merely on the ground that their turnover was less than 10% of the turnover of Star group entities Indian revenue. If the low

turnover filter is to be applied a high turnover filter shall also be consequently applied to exclude comparables i.e. Zee Entertainment Enterprise Limited. The Ld. AR has submitted that TPO has done cherry picking by applying a turnover filter. The turnover filter is a quantitative filter i.e. it ought to have been applied during the search process and that also not a one sided one but both high and low turnover before examining the functional comparability. However, in the instant case, the TPO has applied it on a set of comparables finalized after thorough functional comparability. This kind of a selective application of turnover filter at the last step tantamount to cherry picking. Further, the Ld. AR has relied on following judicial precedents:

1. Nortel network India, 40 ITR 102 and 375 ITR 183
2. Temasek Holdings Advisors India Pvt. Limited(67 Taxmann.com 221 – Mumbai-trb)
3. CIT-II Vs. Mckinsey knowledge centre Pvt. Ltd. ITA No. 217/2014 (Delhi HC)

The sum and substance of above cited judicial precedents are that the Turnover filter must be applied not as a tool for cherry picking at a later stage but at the time of the search process and by applying a quantitative filter. It can not be one sided process to exclude companies after the qualitative level based on FAR analysis where no filter has been applied in the earlier. Consistency requires that it can not be used to exclude it in an individual given year, when it has not been applied in earlier year and subsequent year.

The Ld. AR for the assessee has also relied on the following judicial precedents in support of the rule of consistency, wherein it has been held that there can not be a pick and choose of comparables every year unless there are some material differences in facts and circumstances:

(i). Temasek Holdings Advisors India Pvt. Limited .(67 Taxmann .com 221 Mumbai-trib)

(ii). Temasek Holdings Advisors India Pvt. Limited A.Y. 2009-10 (151 ITD 458, Mumbai Trib)

(iii). General Atlantic Pvt. Ltd. 2006-07 (32 Taxmann.com 178 Mumbai-trib)

3.3 On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand of the DRP/TPO..

3.4 Having heard the rival submissions, and considering the judicial pronouncements discussed above, we are of the view that the turnover filter must be applied not as a tool for cherry picking at a later stage but at the time of the search process and by applying a quantitative filter. It can not be one sided process to exclude companies after the qualitative level based on FAR analysis where no filter has been applied in the earlier. Consistency also requires that it can not be used to exclude it in an individual given year, when it has not been applied in earlier year and subsequent year. There can not be a pick and choose of comparables every year unless there are some material differences in facts and circumstances. Therefore, based on the above cited reasoning we direct the DRP/TPO/AO to delete this addition.

3.5 The same and identical issues are involved in grounds Nos. 2 to 5 of ITA No. 7681/M/12, ITA No. 7682/M/12, ITA No. 7683/M/12, ITA No. 7684/M/12, and ITA No. 7679/M/12, all pertaining to A.Y 2008-09, therefore, these grounds cited, are allowed.

4. Ground No.5 to 9 relate to determination of higher profitability for advertisement receipts received by STAR Ltd. on the ground that it was a Non-Associated Enterprise (Non-AE) receipt, hence, outside PSM.

4.1 We have heard the rival contention and found that the TPO on the basis of directions of the DRP, while passing the final assessment order, did not apply Rule 10(i) in case of assessee for A.Y.2007-08 as all the revenues generated by the assessee during relevant year were from the transactions with AEs and the returned income of the assessee was accepted.

4.2 The DRP followed its order for assessment year 2007-08 on the reason of consistency.

4.3 Ld. AR for the assessee has submitted before us that the sale of advertisement airtime by STAR Ltd to AEs is an international transaction which is closely related to apply the PSM has not been disputed by the TPO/DRP. Therefore, advertisement revenues from Non-AEs could not be excluded from the computation of income under the PSM. The starting point of the PSM is to determine the combined net profit. This net profit finally represents the receipts from the third parties and Non-AEs as all inter-company transactions are eliminated/non-recognised. The PSM is to

determine prior to its application whether international transactions are so inter-related that they can not be evaluated separately “see Rule 10B (1) (d)” of the Rules. Once it is accepted that the transaction is so inter-related, the combined net profit has to be determined of the group. The TPO has accepted and DRP has not disputed that the transaction in respect of advertisement revenue is to be included under PSM. The DRP has however, only excluded one stream and that also in parts namely, receipts by STAR Ltd but not what has been received thereafter by the channel companies in respect of same advertisement stream from STAR Ltd. The TPO has totally approved the computation methodology of the PSM of benchmarking of transactions with AE including all inter-related international transactions relating to advertisement and distribution streams of income. The Assessee made full disclosure of the fact that its commercial uplifted profitability is 17.30% as per PSM which is as per section 92CA (4) of the Act. Once the TPO has accepted the methodology neither the AO nor the DRP can change the same in view of Section 92CA (4). The combined net profit as per the PSM under Rule 10B (1) (d) at 17.30% has been found to be at arm`s length except for the exclusion of 3 companies for 10% turnover filter applied by the TPO. On the present facts, all the international transactions in respect of the advertisement and distribution stream cannot be separated. The DRP`s reliance on Rule 10 of the Rules is contrary to the provisions of the Act and Law since if it is accepted that transactions are closely inter related then they must be included under PSM in accordance with the Act.

The arm's length price determined by the TPO is 22.57% and considering the profits earned from Non-AE's arbitrarily at 28%, is unjustified as there can not be such variation between profit from transactions with AEs and transactions with Non-AEs. If it is a Non-AE transaction then the question of estimation cannot arise. The assessee also relied on the decision in the case of Globe One India Pvt Ltd. 44 Taxmann.com 100 (ITAT Del).

4.4 On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand of the DRP/TPO, which we have already noted in earlier paras and is not being repeated for the sake of brevity.

4.5 We have heard the rival parties at length and considered the same carefully. We noticed merit in the submissions of the Ld. AR for the assessee, as the combined net profit as per the PSM under Rule 10B (1) (d) at 17.30% has been found to be at arm's length except for the exclusion of 3 companies for 10% turnover filter applied by the TPO. On the present facts, all the international transactions in respect of the advertisement and distribution stream cannot be separated. We therefore set aside the orders of lower authorities on this issue and restored the same back to AO/TPO for deciding afresh in terms of our above discussion.

4.6 In the result, the ground taken by the assessee is allowed for statistical purposes.

4.7 The same and identical issues are involved in ground No. 6 of ITA No. 7681/M/12, ITA No. 7682/M/12, ITA No. 7683/M/12, ITA No. 7684/M/12, and ITA No. 7679/M/12, all pertaining to A.Y 2008-09, therefore, following

our above contention the appeals filed by the assessee on this ground , are allowed for statistical purposes.

5. Ground No.10 to 12 relates to determining the arms length profitability rate (,ALP rate') of 22.57% as against the ALP rate of 17.30% computed by the Assessee and its Group Entities. These relate to application of certain transfer pricing principles such as the AO/TPO erred in using the single year data as against multiple year data and contemporaneous data for computation of ALP.

5.1 As we have decided this issue in favour of the assessee while deciding ground No.1-4 above, therefore, this issue is also applies *mutatis mutandis* to the above grounds. This also applies to ground No. 7 to 9 of Star group appeals (7681/M/12,7682/M/12,7683/M/12,7684/M/12, 7679/M/12,) for A.Y. 2008-09.

6. Ground No.13 & 14 relate to non-grant of reversal of disallowance of foreign content fees and uplinking cost under Section 40(a)(ia) for A.Y.2007-08 upon payment of taxes in A.Y.2008-09.

In the transfer pricing order for A.Y.2007-08 and 2008-09 in case of STAR group entities, the Ld. TPO has accepted Profit Split Method (PSM) to be the most appropriate method and has also accepted that the Transfer Pricing Study being at arm`s length. It was contention of Ld. AR that during A.Y. 2008-09, STAR Group entities have deposited taxes in respect of the following expenditure disallowed under section 40(a) (i) of the Act in A.Y. 2007-08:

1) Foreign content procurement cost amounting to USD 47.02 Million and
2) Technical cost amounting to USD 0.54 Million. Accordingly, in the light of the proviso to Section 40 (a) (i) of the Act, reversal of above expenses were claimed in the computation in A.Y. 2008-09. However, in the assessment order for A.Y. 2008-09, the learned AO has rejected the submission of STAR group entities, on the ground that profitability rate of 27.18% in 2007-08 as applied to the India revenues is as per the directions of the Honourable DRP and does not include disallowance under section 40(a) (i) of the Act. Since the profitability percentage of 27.18% does not include the disallowances under section 40(a) (i) of the Act, the issue of granting reversal in A.Y. 2008-09 does not arise.

6.1 The Ld. AR for the assessee has submitted that the stand of the Assessing Officer is wholly inconsistent with his own order for A.Y. 2007-08, wherein para 6 on page 5, he has noted the computation made by the assessee and the said computation has been upheld by the hon`ble ITAT in case of STAR Ltd for A.Y. 2007-08.

6.2 The Ld. DR for the Revenue has fairly agreed on the submissions made by the Assessee and he reiterated the stand taken by the TPO and DRP.

6.3 We have heard both the parties on this issue, gone through the facts and circumstances of the case and perused the material on record. We noticed the merit in the submissions of the Ld. AR for the assessee, hence, in the light of the order of AO and the Hon`ble ITAT for A.Y. 2007-08 in the case of assessee that disallowance under section 40(a) (i) of the

Act uplifted the profitability and increasing the assessee's profit chargeable to tax in India. It is wholly inconsistent and contrary to Law, not to allow the reversal in the years when the taxes have been deducted and paid in accordance with section 40(a) (i) of the Act, merely on the erroneous contention that no disallowance had been made by him under section 40(a) (i) of the Act in A.Y. 2007-08 while determining the final taxable income at 27.18%, therefore, we allow the appeal of the assessee on this ground.

6.4 In the result, the appeal of the assessee is allowed on this ground.

6.5 Considering the same and identical issue we also allow ground No. 10 to 11 of Star group appeals (7681/M/12,7682/M/12,7683/M/12,7684/M/12, 7679/M/12,) for A.Y. 2008-09.

7. Ground No. 15 relates to disallowance of Transponder hire charges under section 40(a) (i) paid to Asia Sat while computing the profitability of 22.57%.

7.1 The assessee while computing the profitability percentage for A Y. 2008-09, had made suo moto disallowances under section 40 (a) (i) of the Act on account of payment made to Asia Sat for transponder hire charges.

7.2 Ld. AR for the assessee has submitted that pursuant to the filing of the return of income, the Delhi High court in case of Asia Sat 332 ITR 340 has held that income of Asia Sat is not liable to tax in India. Accordingly, payments made to Asia Sat are not liable to withholding of taxes in India. In view of the above, the assessee requests not to disallow the payments

made to Asia Sat, while computing the profitability percentage for A.Y. 2008-09. The Ld. AR submitted that in view of the judgement of the Supreme Court in the case of Vodafone International Holdings BV 341 ITR 1 has held that provisions of section 195 of the Act do not apply to transaction between one non-resident to another non-resident. Ld. AR also submitted that no disallowance could be made due to the retrospective amendments made by Finance Act 2012, for years prior to A.Y. 2013-04, in view of principles laid down in the followings judicial precedents:

- a) B4U International Holding limited (52 SOT 544) Mumbai ITAT
- b) Channelc Guide India Limited 139 ITD 49 Mumbai ITAT
- c) Sterling Abrasiv Limited (140 TTJ 68) Mumbai ITAT.

7.3 On the other hand, the Ld DR for the revenue relied on the stand taken by the TPO/DRP.

7.3 We have heard both the parties on this issue, gone through the facts and circumstances of the case and perused the material available on record. We noticed that the provisions of section 195 of the Act do not apply to transaction between one non-resident to another non-resident and it is supported by the case law cited above, therefore, we allow the appeal of the assessee on this ground.

7.4 In the result, the appeal of the assessee is allowed on this ground.

7.5 Considering the same and identical issue we also allow the respective ground of Star group appeals in ITA Nos. 7681/M/12, 7682/M/12, 7683/M/12, 7684/M/12, 7679/M/12, for A.Y. 2008-09.

8. Ground No. 16 to 19 relate to Double disallowances of Transponder hire charges under section 40(a) (i) paid to Asia Sat.

8.1 The issue involved in these grounds as per assessee is that assessee has suo moto made disallowance U/s 40(a) (i) of the Act while computing PSM profit percentage and therefore it should not be disallowed further by AO.

8.2 The Ld. AR for the assessee has submitted that the assessee had already made disallowance under section 40 (a) (i) of the Act while computing PSM profit percentage and despite the same the AO also made further disallowance under section 40(a) (i) of the Act again, which is not justified.

8.3 The Ld. DR for the Revenue relied on the orders of lower authorities.

8.4 We have heard both the parties on this issue and gone through the facts and circumstances of the case. We noticed the merit in the proposition canvassed by the Ld. AR for the Assessee, as he submitted that the assessee had already made disallowance under section 40 (a) (i) of the Act while computing PSM profit percentage and despite the same the AO also made further disallowance under section 40(a) (i) of the Act again, which is not justified, accordingly we direct the AO to verify the same should delete the addition after proper verification. We direct accordingly.

8.5 In the result, the appeal filed by the assessee on this ground is allowed.

9. Ground No.20: DRP erred in not disposing certain objection raised by the assessee. This ground is general therefore it does not require separate adjudication.

10. Ground No. 1 and 2 of Assessee`s appeal No.32/M/2013 and ground No.21 of Appeal No.7680/M/2012: Issue involved is, levy of interest under section 234B and 234C of the Act.

10.1 The Ld. AR for the assessee has submitted that Assessing officer has erred in levying the interest under sections 234B and 234C of the Act on the income assessed in the hands of the assessee without appreciating the fact that the assessee, being a non-resident, was not liable to pay advance tax. If the non-resident assessee is not liable to pay advance tax then there is no any question to levy interest under sections 234B and 234C of the Act.

10.2 We have heard both the parties and gone through the facts of the case. We noticed the merit in the proposition of the assessee and found that, if the non-resident assessee is not liable to pay advance tax then there is no any question to levy interest under sections 234B and 234C of the Act. For this purpose reliance can be placed on the decision of Bombay High Court in the case of DIT Vs. NGC Network Asia LLC, (313 ITR 187 (Bom) wherein similar issue has been decided by the Bombay High Court, and therefore, we allow the assessee`s appeal on this ground.

40.4 In the result, the appeal filed by the assessee is allowed on this ground. The ground No. 21 of appeal in ITA No. 7680/M/12, on similar issue, is also allowed.

11.Ground No. 22 to 26 relating to credit of TDS,Levy of penalty U/s 271(1) (C), 271A and 271B .

11.1 These grounds of appeals are pre-mature and consequential in nature and therefore, do not require adjudication.

12. In the result, appeals of the assessee are allowed in part, in terms indicted herein above.

Order pronounced in the open court on this 16/09/ 2016.

**Sd/-
(AMIT SHUKLA)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 16/09/2016

प्र.कु.मि/pkm, नि.स/ PS

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

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

सत्यापित प्रति //True Copy//

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

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