

**आयकर अपीलीय अधिकरण, मुंबई “के” खंडपीठ**  
**Income-tax Appellate Tribunal -“K”Bench Mumbai**

सर्वश्री राजेन्द्र, लेखा सदस्य एवं सी. एन. प्रसाद, न्यायिक सदस्य

**Before S/Sh.Rajendra, Accountant Member and C.N. Prasad, Judicial Member**  
**आयकर अपील सं./I. T. A./8799/Mum/2011, निर्धारण वर्ष /Assessment Year: 2007-08**

M/s. Nielsen (India) Private Limited (formerly known as M/s. ACNielsen ORG-MARG Private Limited) 6 <sup>th</sup> Floor, Block C, Godrej IT Park, 02 Godrej Business District, LBS Marg, Phirojshanagar, Vikhroli (W) Mumbai-400 079. <b>PAN:AAACM 9279 L</b>	Vs.	Addl. Range-6(1) Aayakar Bhavan, 4 <sup>th</sup> floor, M.K.Marg Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

**Revenue by:**Shri N.K. Chand

**Assessee by:** S/Shri Saurabh Soparkar & Bandish Soparkar

सुनवाई की तारीख / **Date of Hearing:** 25.04.2016

घोषणा की तारीख / **Date of Pronouncement:** 27.05.2016

**आयकर अधिनियम, 1961 की धारा 254(1)के अन्तर्गत आदेश**

**Order u/s.254(1)of the Income-tax Act,1961(Act)**

**लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-**

Challenging the order dated 24.10.2011 of the Assessing Officer (AO), passed under section 143(3) read with section 144C (13) of the Act, the assessee has filed the present appeal. During the course of hearing before us, the Authorised Representative (AR) stated that the assessee was not interested in pursuing ground number six, considering the smallness of the tax effect. Therefore, same stands dismissed as not pressed.

2. Assessee-company is a wholly owned subsidiary of VALCON, which is part of the AC Nielsen group. It is engaged in the business of providing customised market research services including quantitative and qualitative consumer studies, print media measurement services and retail measurement services which includes retail tracking, modeling and analytics and category management. It filed its return of income on 29/10/2007, declaring total income at Rs. 18.12 crores. The AO completed the assessment on 24/10/2011, determining the income of the assessee at Rs. 33.77 crores.

**2.1.** During the assessment proceedings, the AO found that the assessee had entered into 36 International Transactions (IT.s) with its Associated Enterprises (AE.s). The IT.s pertained to market research service to AE, receipt of market research service from the AE, BPO services rendered to AE and payment of General Services Agreement (GSA). To determine the Arm's Length Price (ALP), he made a reference to the Transfer Pricing Officer (TPO), as per the provisions of section 92 of the Act.

**2.2.** The TPO found that during the year the assessee had paid Rs. 11.14 crores to its AE, that the said payment was made in view of business support services received from the AE. It was claimed that above-mentioned payment was in the nature of intra-group services payment. The assessee submitted to General services agreements before the TPO. He found that the first was signed on 02/06/2003 and it specified a Mark up of 5% in accordance with Article 4, whereas the second agreement was signed on 28/11/2007 and was stated to be effective from 01/01/2007. He found that the assessee had paid Euro 113315+339945+USD103385 under the head Regional GSA (Business Support Services) for Client Services. He further found that under the heads Finance (Euro 19,000+5700+ US dollar 45, 713) and IT (Euro 48, 851+ Euro 146552 plus US dollar 18,759) the assessee had made payments to its AE.

The TPO directed the assessee to justify the ALP in respect of the GSA charges paid to its AE and to submit the gross allocation base, computation of allocation base, key of allocation and the basis of the key of allocation. The TPO examined the regional expenses allocation of Rs.9.01 crores. After considering the submissions of the assessee dated 25/09/2010, 11/10/2010, 12/10/2010 and 19/10/2010, the TPO held that the IT was based upon components of costs, that the assessee had not disclosed the basis for the allocation, that no details of special marketing support was brought on record to show that specialist marketing and complication support service have been provided by the AE to the taxpayer, that

the cost allocation included expenses on regional information technology team consisting of hundreds of employees located in New Zealand Australia and India and 140 people in other countries, that the assessee had not brought any evidence on record regarding employees located in India, that no customised research was conducted for the year for the assessee by the regional centre, that it had paid certain amounts towards business support services to its AE's, that the total allocation could not be accepted to be India specific,that the submission of intra-group invoices could not be construed as sufficient compliance to show that payments made for GSA services were at arm's length, that actual working for general costs incurred and its components were not produced for verification, that it was not proved that the assessee had really benefited out of the services of the regional team, that no one would pay any amount without knowing the actual basis and also the actual allocation figures in a third-party situation,that the assessee had its own client/server system,that total allocation could not be accepted to be India specific. He held that adjustment had to be made in the TP order.Accordingly,he made an adjustment of Rs. 4.50 crores (50% of Rs. 9.01 crores).He calculated the ALP as under:

**Payment of GSS charges** -Rs. 11.14 crores

**Adjustment** -Rs. 4.50 crores

**Arm's length value of GSA** -Rs. 6.63 crores.

**2.3.**In response to the show cause regarding BPO services bench-marking, the assessee stated that during the year under review the turnover from RRC and Eureka division was Rs. 21.77 crores, its operating costs were Rs. 13.24 crores, that the resultant operating profit was 8.53 crores,that the operating profit/operating cost was 64.39%.The TPO furnished the assessee the details of computation of Margins(PLI)-ITES conducted by the Department wherein Everest operating profit/operating cost was worked out at 33.09%. Referring to the competition of margin,the assessee contended that operating profit/operating

cost, shown by it, was far more favourable in comparison to the 33.09%, that no addition was called for to the income from BPO operations. The TPO observed that the assessee had not provided segmental data with supporting evidences. He did not accept the cost allocation between various segments. He observed that the computation of operating costs pertaining to BPO was the key point in determination of operating profit from the segment in question, that, that GSA cost allocation was itself was more than Rs.11 crores, that the assessee had not specified as to how much cost of the indirect cost had been taken into account for arriving at the operating cost (13.25 crores), that the segmental profit shown for the TP purposes was not supported by evidences, that the sheet submitted by the assessee was a photocopy and was not at all legible, that the segmental results as per audited finances and as per TP were not reconciled as far as cost allocation between various segments was concerned, that the assessee was showing the profit margin value @61.1% to 64.39%, that in the TP study the revenue from BPO was shown at Rs.21.40 crores, that in the letter dated 26.10.10 the revenue from BPO was shown at Rs.21.77 crores, that operating cost pertaining to BPO sector could not be ascertained with reasonable certainty. So, he proceeded to determine the operating cost in the ratio of turn over. He determined the ALP for the BPO segment on the basis of TNMM as per the 25 comparable companies' Average PLI (OP to TC %). Finally, he held that the average PLI for the segment was to be taken at 33.09%. He selected the following comparables:

SN.	Company Name	Sales(Rs.Cr.)	OP/TC %
1.	Accentia Technologies Ltd.	16.57	38.26%
2.	Aditya Birla Minacs Worldwide Ltd	197.06	11.98%
3.	Allsec Technologies Ltd.	113.28	27.31%
4.	Apex Knowledge Solutions Pvt. Ltd.	4.92	20.48%
5.	Appollo Healthstreet Ltd.	47.84	-13.55%
6.	Asit C. Mehta Financial Services Ltd.	6.09	24.21%
7.	Bodhtree Consulting Ltd.(Seg.)	2.94	29.58%
8.	Caliber Point Business solutions Ltd.	39.30	21.26%
9.	Cosmic Global Ltd.	4.28	12.40%
10.	Datamatics Financial Services Ltd.(Seg.)	2.92	5.07%
11.	Eclerx Services Ltd.	86.12	103.72%

12.	Flextronics Software Systems Ltd.(Seg.)	21.41	14.54%
13.	Genesys International Corporation Ltd.	19.17	13.35%
14.	HCL Comnet System & Services Ltd. (Seg.)	260.18	44.99%
15.	ICRA Techno Analytics Ltd.(Seg.)	7.23	12.24%
16.	Informed Technologies India Ltd.	4.08	35.56%
17.	Infosys BPO Ltd.	649.56	66.14%
18.	IServices India Pvt. Ltd.	16.29	50.27%
19.	Maple Esolutions Ltd.	12.21	34.05%
20.	Mold-Tek Technologies Ltd.	11.40	113.49%
21.	R Systems International Ltd.(Seg.)	17.34	20.18%
22.	Spanco Ltd.(Seg.)	35.00	25.81%
23.	Triton Corp Ltd.	53.37	34.93%
24.	Vishal Information Technologies Ltd.	30.60	51.19%
25.	Wipro Ltd.(Seg.)	939.78	29.70%
	<b>Average</b>		<b>33.09%</b>

He reworked the IT, in the BPO segment as under :

Particulars	Amount(Rs.)
Total operating cost of the assessee company	1,248,591,404
Operating cost as it pertains to BPO segment(#)	192,012,762
Arm's length operating margin ratio	33.09%
Arm's length operating margin	63,537,023
Arm's length sales value in respect of BPO services	255,549,786
Actual sales value in BPO segment	206,750,103
Adjustment required	48,799,683

Thus,he proposed an adjustment of Rs.9.38crores(Rs.4.50crores and Rs.4.87 crores) to the total income of the assessee.The AO included the above figure in the draft order.

**2.4.**Aggrieved by the order of the AO and the draft order of the AO,the assessee objections before the Dispute Resolution Panel (DRP).Before it,the assessee contended that the assessee had filed segmental accounts before the TPO though same were not audited. On 29/0/2011,the assessee filed audited statement. The DRP directed the TPO to file a remand report in that regard. In response to the remand report,the assessee argued that the TP provisions were anti-avoidance legislation,that the TPO had to prove the tax avoidance had in fact taken place before making any TP adjustment, that it had not shifted profit outside India,that the assessee was eligible to claim hundred percent deduction of its profits under section 10 A of the Act.

After considering the available material,the DRP held that during the TP proceedings it had to be seen that whether the charges paid by the assessee for

intra-group services were at arm's-length under comparable circumstances, that it had to be seen whether the assessee would get any economic or commercial value, that the expected benefit had to be sufficiently direct and substantial, that the taxpayer had to prove that the services were rendered, that one important aspect of intra group services was the quantification of such services in terms of actual expenditure incurred and commensurate benefits derived therefrom to conform to the arm's length principle, that the arm's length charge was not only a function of the price at which a supplier was prepared to perform the service (or the cost of providing the service) but was also a function of the value the recipient of the service, that the determination of an arm's length charge must take into consideration the amount that an arm's length entity would be prepared to pay for such a service in comparable circumstances, that if the services had actually been rendered the level of documentation and the evidence would have shown that a tangible and direct benefit was derived by the assessee in paying the above amounts to the AEs, that just by describing various services, it would not suffice to justify the price charged in intra group services, that the assessee had to prove with proper documentation and evidence that the services were actually rendered and payment commensurate with the benefit derived therefrom, that when expenditure was incurred for the benefit of the group as a whole no charging of such expenditure was required at individual level, that in such a situation the benefit of incurring of expenditure would be available to all the members of the group, that if the benefit was remote or for the benefit of entire group the same should not be charged, that unless it was shown that tangible and direct benefit was derived by such payment or that the payment made was commensurate with the benefit that was derived or expected to be derived when parties would deal with each other at arm's length the APL of such payment for intra group services would be treated as either Nil or to the extent it was shown that the benefit actually derived from such payment, that the assessee did not prove before the TPO or before the DRP that the payment, for the so called

services rendered by the AEs,would be at arm's length,that the TPO was liberal and had allowed 50% as ALP in respect of regional cost allocation,that no services were rendered during the FY.2006-07,that the ALP should have been Rs.Nil,that the assessee had its own client service team and,that no details of specific allocation had been provided,that the allocation of cost could not be accepted to be India specific.With regard to Regional Client Service team,the DRP observed that India had its own client service team,that there was no rationale for making the payment.Finally,the DRP held that no administrative services were rendered by the AE.s to the assessee and therefore the ALP would be zero.

The DRP further held that the TPO was justified in rejecting the segmental results,that he had correctly applied TNMM and had considered Indian comparables which were functionally similar and working under comparable economic circumstances,that the assessee did not show as to how the earlier year data had an influence on the price for margin in the current year,that the TPO was correct in using the data pertaining to FY.2006-07, that he had correctly applied threshold limit of 25% in applying related party transactions filter.Finally, the DRP upheld the order of the TPO/AO.With regard to BPO services the DRP held that the cost allocation was not correctly placed before him, that the segmental accounts furnished by the assessee were not reconciled, that he proceeded to determine the ALP for the BPO segment on the basis of TNMM, that as compared to 25 comparables he determined the average PLI of 33.09%, that upward adjustment of Rs. 4.87 crores,made with regard to BPO services payment received,was justifiable.

**2.5.**Before us,the AR argued that the AO had failed to appreciate that the existence of a inter-group agreement,cost-allocation report and maintenance of a contemporaneous documentation provided good supporting to demonstrate arm's length nature of the service charges,that the assessee had maintained all

relevant documents, correspondence, back-up calculations including invoices / debit notes, reconciliation statement for India, that the ratio analysis of region wise cost vis-a-vis revenue, confirmation letter from the AE on GSA Fees, details of employees rendering centralized services and other details demonstrated that services were actually received and scientific allocation keys were used, that the assessee had applied TNMM at the entity level, that there was no need to benchmark the transaction separately, that cost allocation method was furnished during TP proceedings, that the TPO/AO had failed to appreciate the emails and other documents submitted by assessee evidencing the rendering of services by AE, that the TPO /AO ought to have appreciated the Benchmarking exercise of the appellant and should have considered the same. With regard to BPO services the AR argued that that the TPO/AO had failed to appreciate the supporting and reconciliation provided by the assessee and that he rejected the audited segmental accounts, that the TPO's approach of allocating cost based on revenue is not justified, that he erred in applying the search filters and hence the comparable companies proposed by him were not acceptable, that the BPO Services rendered by assessee were adequately remunerated.. He referred to the Pg.207-214,471-484,488-89,493,684-1012 of the PB. The DR supported the order of the DRP and contended that IT.s were to be analysed separately.

**2.6.** We have heard the rival submissions and perused the material before us. We find that the assessee had filed, before the TPO, details of GSA fees, debit-notes based on projected revenue and true calculation based on actual revenue and the invoices copies raised by the AE.s, vide its letter dated 24/09/2010 (Pg. 363-65 of the PB), that the cost allocation report (Pg.373-470 of the PB) was also furnished, that the detailed breakup of GSA charges, service-wise, was also made available to the TPO, that the cost allocation methodology was explained in details. With regard to Pass-through-cost (PTC) it is found that no markup was charged, that markup was charged for non-pass-through-costs at the rate of 10%

cost plus markup and 5% cost-plus markup for the period up to December 2006 and from January,2007 respectively,that the AE had adopted same allocation methodology for the assessee as it would adopt for its other group companies (Pg.500-507 of the PB).We find that the assessee had received services under the heads i).information-technology,ii).finance, iii).communica-tion,iv).human-resources,v).client service and vi).legal from the AE,that it had submitted evidence in connection with the various services received and key benefits derived from the email correspondence(Pg. 684-1012 of the PB),that it had made detailed presentation before the DRP(Pg.583-600 of the PB).After mentioning the facts about BPO,we would further deliberate upon the issue of filing of evidences by the assessee during the TP and DRP-hearing.

Coming back to facts of the case we want to mention that the TPO disallowed 50% of the region allocation expenses amounting to Rs. 4.50 crores on the ground that there was no proper basis of allocation and backup calculations were not shared,that the DRP had increased the disallowance to hundred percent of the regional allocation expenses.

**2.7.**With regard to BPO services,we find that the assessee had set up an In-House Regional Resource Centre(RCC) division in Mumbai to standardise the office processes,that one more division i.e.EUREKA was set up in Baroda in year 2005,that it became operational from the year 2006,that the RCC division would provide services to its AE.s such as data-processing, data charting,report writing services,special order quantitative analysis and analysis of past data as part of knowledge management activities of various countries.The EUREKA division provided services such as data coding for customised research studies etc.,that the assessee undertook low-end BPO services and divided work as per the requirements and specifications of the AE.s.,that the assessee had selected TNMM as most appropriate method and its markup(OP/OC)was 64.39% as compared to markup of 28.05% of the comparables,that it claimed that IT was

at arm's length, that the TPO ignored the benchmarking study of the assessee and proposed new comparable search and determined the markup of 33.09%, that he held that the assessee had not provided segmental data and supporting evidences.

As stated in earlier paragraph, now would like to discuss the details that were furnished in addition to the documents mentioned at paragraph no.2.6. We find that details of influencer survey carried out by the AE in case of Wipro Infotech was shared with the assessee along with the details of other projects undertaken by the it for companies like P&G Cadbury (Regional AAC). Details of service provided under the head finance included Installation of Hyperion Smartview for HFM training, Discussions regarding HFM training and account mapping, Discussions regarding budgeting, Communications regarding HFM Migration and elimination of month lag and HFM training materials, Communication of updated AP user list for HFM/CCU3 application and discussion on client concerns, design recommendations/changes, technology constraints, financials for the staffing approvals for GBS India. In the field of Legal services the AE provided services including advice for query relating to database building, Reviewing and suggesting changes for Coke(India) Tradesampling agreement, Reviewing and suggesting changes for a draft MOU between India plaza (earlier Fabmall) and ACNOM, Review of draft ACN-Eikona Contract for monthly media monitoring services and Assistance in Integration of ACNOM's data into the Business intelligence model developed by Britannia Industries. In the fields of HR and information technology also services were provided by the AE and documentary evidences were produced by the assessee for availing such services. Pg.624 of the PB gives details of top 5 clients served by assessee with the support of Regional client service team and thus proves as to how the services received from the regional center benefitted the assessee. We find that while making submissions before the DRP on 29.06.2011, the assessee had filed Annexure 1 and it had furnished the details of rendering of services. Therefore,

we do not agree with the TPO/DRP that details of 'actual services rendered' were not made available. In the submission made on 12.10.2010 and 29.06.2011 details of actual expenditure incurred by AC Nielsen Corp under Regional Area GSA charges were furnished to the Departmental authorities.

**2.8.** It is not denied by the TPO/DRP that expenses incurred by AC Nielsen Corporation were not allocated to all the group entities on the basis of revenue. The assessee had made a claim that AC Nielsen Asia Pacific has prepared a master file to determine an arm's length mark-up to be charged for the intra-group services. Both the authorities have not commented upon the said evidence and alleged errors, if any, of the method approved by the Group. In short, the assessee had proved with documentary evidences that charges paid by the assessee were at arm's length and that other arm's length entity was prepared to pay for such services in comparable circumstances.

**2.9.** We are not agreeable to the proposition, advanced by the TPO/DRP, that when expenditure is incurred for the benefit of the group as a whole no charge of such expenditure is required. Services rendered by AE help not only the group as a whole, but also helps others. Therefore, there is nothing wrong in charging cost for such services. As the cost incurred by the AE had been allocated to all the group companies on the basis of the revenue and detailed workings was shared with the TPO and DRP, so, it cannot be held that requisite information was not made available. It is other thing that both of them did not take notice of the details filed, as discussed earlier. We are unable to understand the logic behind the argument of both the authorities that if the assessee had its own client service team then why costs of client service teams was included. According to us, it is gross violation of the 'Laman-Rekha' drawn by the basic and fundamental taxation jurisprudence. No authority is required to hold that the jurisdiction of the AO u/s.37 of the Act and that of the TPO u/s.92CA are

distinct. The authority of the TPO is to conduct a TP analysis to determine the ALP and not to determine whether or not there is a service from which the assessee benefits. So, when the TPO holds that the assessee did not benefit from these services it amounts to disallowing expenditure. Such a decision is outside the authority of the TPO. The decision as to whether the expenditure was “laid out or expended wholly and exclusively for the purposes of the business” is a fact determination or verification and that exercise is to be undertaken by the AO. That determination is not and cannot be made by the TPO. The Hon’ble Delhi High Court in the case of Ekl Appliances Ltd. (345 ITR 241) has held as under:

*“It is not open to the Transfer Pricing Officer to question the judgment of the assessee as to how it should conduct its business and regarding the necessity or otherwise of incurring the expenditure in the interest of its business. It is entirely the choice of the assessee as to from whom it contemplates to source its technology or technical know-how and as to what steps should be taken to meet the competition prevalent in the market and to stave off the competitors. This is the domain of the businessman and the Transfer Pricing Officer has no say in the matter. As held by the Supreme Court in S. A. Builders Ltd. v. CIT (Appeals) [2007] 289 ITR 26 (SC) the Revenue cannot justifiably claim to place itself in the arm chair of businessman or in the position of the board of directors and assume the role to decide how much is the reasonable expenditure having regard to the circumstances of the case.*

*22. Even rule 10B(1)(a) does not authorise disallowance of any expenditure on the ground that it was not necessary or prudent for the assessee to have incurred the same or that in the view of the Revenue the expenditure was unremunerative or that in view of the continued losses suffered by the assessee in his business, he could have fared better had he not incurred such expenditure. These are irrelevant considerations for the purpose of rule 10B. Whether or not to enter into the transaction is for the assessee to decide..... So long as the expenditure or payment has been demonstrated to have been incurred or laid out for the purposes of business, it is no concern of the Transfer Pricing Officer to disallow the same on any extraneous reasoning. As provided in the OECD guidelines, he is expected to examine the international transaction as he actually finds the same and then make suitable adjustment but a wholesale disallowance of the expenditure, particularly on the grounds which have been given by the Transfer Pricing Officer is not contemplated or authorised.”*

In the case under consideration actually the TPO had DRP have completely taken over the role of the AO. Instead of deciding the ALP of the IT.s reported by the assessee, they have decided the issue of allowability of expenditure

incurred by it. Therefore, in our opinion, their order are not in accordance with the provisions of the Act. As far as comparables of BPO services are concerned it is enough to say that the TPO and the DRP had not dealt with the objections raised by the assessee about the comparables selected by the TPO (Pg. 601-10 of the PB). We do not find even a single word about the objection of the assessee with regard to the comparables. The TPO is authorized to select the comparables, but it is his duty not only to mention the methodology of selection process and to meet the objections raised by the assessee about the selection process or the selected comparables.

Considering the above, we hold that the assessee had produced all the necessary documents and that the TPO and the DRP did not consider the same while passing/issuing the order/Directions. Therefore, in the interest of justice, we are of the opinion that the matter should be restored back to the file of the DRP who would decide the both the issues afresh after affording a reasonable opportunity of hearing to the assessee. Objections raised by the assessee, with regard to comparables have to be dealt case by case. Effective ground dealing with TP adjustments (GOA 1&2) are decided in favour of the assessee, in part.

**3.** The next ground of appeal is about disallowance made u/s. 14A of the Act. During the assessment proceedings, the AO found that the assessee had shown investment in shares of Rs. 5.55 crores in its Balance Sheet, that it had shown dividend income of Rs. 1.89 crores and that the same was claimed to be exempt, that it had not disallowed any expenditure against the exempt income. Referring to provisions of section 14A of the Act, he held that all the expenses connected with the exempt income had to be disallowed regardless of whether they were direct or indirect fixed or variable, managerial or financial, that the disallowance was to be made as per provisions of Sec. 14A r.w.r 8D of the Income tax Rules (Rules). He made disallowance of Rs. 2.78 lakhs towards

expenditure in relation to income not includible in the total income, in the draft order.

**3.1.** Aggrieved by the order of the AO the assessee filed objections before the DRP. Before it, the assessee argued that it had not invested borrowed funds for making investments, that disallowance made by the AO was not as per the provisions of law. Without prejudice, it was contended that disallowance under Rule 8D should be restricted to Rs.28,880/- and not to 0.5% of the entire investment. The DRP held that the AO had duly followed the procedure laid down under Rule 8D, that no interference was required in the matter.

**3.2.** Before us, the AR stated that provisions of Rule 8D were not applicable in the year under consideration, that investment was made in the four AE.s, that the strategic investment made by the assessee was not considered by the AO. He referred to the matter of Strides Arcoled Ltd. (138ITD323). The DR left the issue to the discretion of the Bench.

**3.3.** We have considered the rival submissions. In our opinion provision of Rule 8D cannot be applied for the year under appeal, as held by the Hon'ble Bombay High Court as in the case of Godrej Boyce Mfg Ltd. (328ITR81). However, a reasonable disallowance could be made. It is a fact that the assessee had made investment in the AE.s., that the AO had not proved that interest free funds were used by the assessee to make the investments. Considering these facts we are of the opinion that the matter needs further verification. Therefore, in the interest of justice, we are restoring back the issue to the file of the AO for fresh adjudication. He is directed to afford a reasonable opportunity to the assessee of being heard.

**4.** Fourth Ground of appeal pertains to addition made on account of mis-match of AIR data amounting to Rs.17.30lakhs. During the assessment proceedings,

the AO handed over a copy of AIR information, as generated from the system and asked it to reconcile the account. As per the AO the assessee was able to reconcile all the items except one item of Rs.17,32,053/- received under the head rent. The AO added the amount in question to the total income of the assessee while preparing the draft order. The assessee filed objections before the DRP in that regard. The DRP upheld the order of the AO.

**4.1.** Before us, the AR stated that assessee had not made any transaction with the parties in the AIR. He relied upon the cases of ANS Law Associates (ITA/5181/M/2012 dt.5.12.14), S.Ganesh (ITA527/Mum/10 AY06-07), Thread Needle Investment Fund ICVC Asia Fund (27 taxmann321). The DR stated that the issue could be decided on merits.

**4.2.** We have heard the rival submissions and perused the material before us. We find that in this case the addition was made only on the basis of AIR report, that the assessee had specifically mentioned that the entries did not pertain to it. In our opinion, the AO should have made further investigation before making the addition. If the disputed amount pertained to receipt of rent it was not difficult for the AO to find out the facts. But, he chose not to make any enquiry and made the addition. We are of the opinion that only on the basis of AIR information no addition should be made—specially when there is no other material with the AO to demonstrate that the assessee had received income more than what was declared by it. In the case under consideration, it is found that except for the information available in the form of AIR the AO had nothing in his possession to prove that the assessee had received the amount in question. The cases cited by the AO support the view taken by us. Ground No.4 is decided in favour of the assessee.

5.Last Ground of appeal is about disallowing the deduction of Rs.18.41 lakhs u/s.10A of the Act.Before us, it was stated that the assessee suo-motu had excluded the disputed amount from the turn over while computing the deduction u/s. 10A of the Act, that the AO/DRP erred in disallowing the same amount,that the assessee suffered double disallowance. We are of the opinion that the matter should be reexamined by the AO and the amount in question should not be disallowed twice.Ground,raised by the assessee stands partly allowed.

As a result,appeal filed by the assessee stands partly allowed.  
फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 27<sup>th</sup> May, 2016.  
आदेश की घोषणा खुले न्यायालय में दिनांक 27 मई, 2016 को की गई ।

Sd/-

(सी. एन. प्रसाद / C.N. Prasad )

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 27.05.2016.

Jv.Sr.PS.

**आदेश की प्रतिलिपि प्रेषित/Copy of the Order forwarded to :**

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "K " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

Sd/-

(राजेंद्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार Dy./Asst. Registrar  
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.