आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, के ,मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "K", MUMBAI

श्री अमित शुक्ला, न्यायिक सदस्य **एवं**

श्री अश्वनी तनेजा, लेखा सदस्य**,** के समक्ष

Before Shri Amit Shukla, Judicial Member, and
Shri Ashwani Taneja, Accountant Member

ITA NO.8987/Mum/2010
Assessment Year: 2006-07
&
ITA NO.7822/Mum/2011
Assessment Year: 2007-08

J.P. Morgan Services P. Ltd., Technopolis Knowledge Park, 3rd Floor, Mahakali Caves Road, Chakala Junction, Andheri(E) Mumba-400093	**बनाम**/ Vs.	DCIT (OSD)-8(1) Mumbai-
(Assessee)		(Revenue)
P.A. No.AABCD0503B		

Appellant by	Shri Porus Kaka Shri Divesh Chawla (AR)
Respondent by	Shri N.K. Chand (CIT-DR)

सुनवाई की तारीख/**Date of Hearing:**	**05/10/2015**
आदेश की तारीख /**Date of Order:**	**30/11/2015**

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

These appeals are filed by the Assessee against the orders of Disputes Resolution Panel -I, Mumbai {in short, 'DRP'}, for the assessment years 2006-07 & 2007-08.

2. During the course of hearing, arguments were made by Shri Porus Kaka & Shri Divesh Chawla, Authorised Representative (Ld. Counsel) on behalf of the Assessee and by Shri N.K. Chand, Departmental Representative (Ld CIT DR) on behalf of the Revenue.

We first take up ITA No.8987/M/2010, for A.Y. 2006-07:

After hearing both the sides, the appeal is decided ground wise as under:

3. Ground No.1: In this ground, the assessee has challenged the decision of the DRP in confirming the action of AO in making the addition of Rs.39,30,43,000/- to the income of the assessee company by re-computing the arm's length price of the assessee's international transaction in respect of Information Technology Enables Services ('ITES') provided by it. It has been submitted by the Ld. Counsel at the outset that this is primarily a concluded issue. During the course of hearing, he submitted copy of petition dated 30th June 2015 seeking revision of grounds of appeal on conclusion of Mutual Agreement Procedure (MAP). It has been submitted that its

Associated Enterprise (i.e. AE), JP Morgan Chase & Co., US ('JPMC') had initiated MAP proceedings under Article 27 of the India-USA agreement for avoidance of double taxation of income under the transfer pricing regulations (towards US related international transactions) made during the subject assessment year. The Assessee has received a letter dated 29th April, 2015 (attached as **Annexure A**) from the Deputy Commissioner of Income-tax 10(2)(1) ('AU'), stating that the MAP has been concluded in case of the Assessee for the year under consideration. Consequently, in view of Rule 44H (4) of the Income-tax Rules 1962, the Assessee has accepted the MAP conclusion. Accordingly, the Assessee is withdrawing the grounds related to transfer pricing addition covered under MAP and thereby seeks to revise the grounds of appeal on the transfer pricing addition.

3.1. In pursuance to the above, the assessee company has submitted revised Ground No.1 in place of Ground no.1 of the grounds filed with the original appeal memo. The assessee has challenged the addition to reduce amount of addition for a sum of Rs.1,65,07,806/-.

3.2. During the course of hearing, it has been submitted that the assessee company is providing IT Enabled Services to its AE's. The assessee had shown a margin of 12.26%. The AO held and treated ITES business as 'one', and applied mark-up @ 21.58%. It is further submitted that out of the total transactions done by the AE's world over, around 96 transactions were done with the entities based in USA and

remaining 4% of the transactions done with other AE's located elsewhere. The lower authorities did not make any distinction while applying mark-up and the entire turnover was treated as 'one' and accordingly mark up was applied.

3.3. It has been further submitted that out of the original TP addition of Rs.39,30,43,000/- (based on the applied mark-up of 21.58%), MAP has been concluded for Rs.37,65,35,194/- (95.80% of the Total TP addition) at arm's length mark-up of 14.38%. Accordingly, the above ground has been revised to cover only the remaining addition of Rs.1,65,07,806/- i.e. 4.20% of the total addition.

3.4. Before us, the main argument of the Ld. Counsel was that since the mark-up MAP has concluded the Arm's Length mark-up at 14.38% for 96% of the total transactions done with the AE's, then without prejudice to the other submissions, for remaining transactions of 4% also same treatment should be given, same bench marking should be done, and ALP mark-up of 14.38% should be applied, more particularly, because of the fact that the AO or DRP have not made any distinction between the 'US' entities and 'non-US' entities. It was further submitted that although the assessee can very well contest these additions, but this concession has come from the assessee's side with a view to bury the litigation, notwithstanding the facts that no addition should have been made as the case of the assessee falls within +/- 5% range. It was also submitted that the assessee reserves its right to contest the levy of any kind of penalty, as and when initiated,

if any. Our attention has been drawn to the annual accounts of the company and orders of the lower authorities to show that no distinction has been made between the '96%' and '4%' transactions.

3.5. On the other hand, Ld. CIT-DR, vehemently opposing the arguments of the Ld. Counsel, submitted that there is no concept of determination of ALP under the Mutual Agreement Procedure. The rules and regulations of transfer pricing as prescribed u/s. 92C Chapter X of the Income Tax Act are not applicable under MAP, and therefore, no ALP was determined under MAP, and therefore, assessee cannot claim to take any benefit of the mark-up reached under MAP i.e. @ of 14.38%. Accordingly to him, the ALP should be computed freshly and independently for the remaining 4% transactions, and for this purpose this issue can be sent back to the lower authorities.

3.6 We have gone through the arguments made by both the sides and also the material placed before us for our consideration. It is noted that letter dated 9th April 2015 in F-no.480/13/2010-FTD-1 has been issued in the case of the assessee company under MAP proceedings for A.Y.2006-07 to 2010-111 by the DCIT(OSD), APA-I on behalf of the Foreign Tax and Tax Research Division -I, Central Board of Direct Taxes, New Delhi wherein it has been confirmed that for A.Y.2006-07, for US related transactions, the margin has been determined at 14.38% as against margin of 21.58%, as was determined by the Transfer pricing officer (TPO). It has been further clarified by way of note in the said letter that

apportionment between 'US' and 'non-US' ALP and TP adjustment had been margined out by the APA section (of FT and TR Division) on the basis of 'US' and 'non-US' revenue. It is further noted from the perusal of the annual accounts of the assessee company that aggregate turnover has been shown at Rs.47,30,521/-, and no distinction has been made between the 'US' and 'non-US' transactions. Similarly in the orders passed by the lower authorities also no such distinction as ever been made by any of the authorities. Under these circumstances, in our considered view, whatever margin has been determined for the 96% of the transactions, same margin should be determined for the remaining 4% transactions as well. It is worth noting that, even before us, no distinction in facts or nature of transactions has been brought out on record. Therefore, in our considerate view, mark-up of 14.38% should be determined for the remaining 4% transactions pertaining to 'non-US' entities as well. The assessee gets part relief accordingly.

4. Ground No.2: In this ground the assessee has challenged the action of lower authorities in holding that unabsorbed depreciation of Rs.2,29,59,653/- has emanated from exempt unit and accordingly exemption u/s 10A of the Act should be computed after setting off of the unabsorbed depreciation.

4.1. During the course of hearing, it was submitted at the very outset by the ld. Counsel of the assessee that this issue is covered by the order of the Tribunal in assessee's own case for

assessment year 2005-06. On the other hand, Ld. CIT-DR supported the order of the AO.

4.2. We have gone through, with the assistance of the parties, the order of Hon'ble Tribunal for A.Y.2005-06 in ITA No.5547/Mum/2009 dated 23.04.2013, in assessee's own case. The relevant Para's of the Tribunal's order are reproduced herein.

> *"12. The grievance relates to the setting off of the unabsorbed depreciation. It is the contention of the assessee that in computing income under the head "Profits & gains of business or profession" deduction u/s. 10A should be allowed before setting off of brought forward business loss and unabsorbed depreciation and the same should be set off of against the balance taxable income if any.*
>
> *13. The Ld. Counsel for the assessee submitted that these issues are now well settled in favour of the assessee by the decision of the Hon'ble Bombay High Court in the case of CIT VS Black And Veatch Consulting Pvt. Ltd. (2012) 348 ITR 72 (Bom).*
>
> *14. The Ld. Departmental Representative fairly conceded that the issue stands covered in favour of the assessee.*
>
> *15. We have carefully perused the facts of the vase vis-a-vis decision of the Hon'ble Jurisdictional High Court (supra). The question before the Hon'ble Jurisdictional High Court was –*

> *"whether on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal was correct in holding that the brought forward unabsorbed depreciation and losses of the unit the income which is not eligible for deduction u/s.10A of the Act cannot be set off against the current profit of the eligible unit for computing the deduction u/s. 10A of the I.T. Act."*

16. The Hon'ble High Court thus held as under:

> *"Section 10A is a provision which is in the nature of a deduction and not an exemption. This was emphasised in a judgment of a Division Bench of this court, while construing the provisions of section 10B, in Hindustan Unilever Ltd. v. Deputy CIT [2010] 325 ITR 102 (Bom) at paragraph 24. The submission of the Revenue placed its reliance on the literal reading of section 10A under which a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years is to be allowed from the total income of the assessee. The deduction under section 10A, in our view, has to be given effect to at the stage of computing the profits and gains of business. This is anterior to the application of the provisions of section 72 which deals with the carry forward and set off of business losses. A distinction has been made by the Legislature while incorporating the provisions of*

Chapter VI-A. Section 80A(1) stipulates that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of the Chapter, the deductions specified in sections 80C to 80U. Section 80B(5) defines for the purposes of Chapter VI-A "gross total income" to mean the total income computed in accordance with the provisions of the Act, before making any deduction under the Chapter. What the Revenue in essence seeks to attain is to telescope the provisions of Chapter VI-A in the context of the deduction which is allowable under section 10A, which would not be permissible unless a specific statutory provision to that effect were to be made. In the absence thereof, such an approach cannot be accepted. In the circumstances, the decision of the Tribunal would have to be affirmed since it is plain and evident that the deduction under section 10A has to be given at the stage when the profits and gains of business are computed in the first instance. So construed, the appeal by the Revenue would not give rise to any substantial question of law and shall accordingly stand dismissed. There shall be no order as to costs."

Respectfully following the decision of the Hon'ble Jurisdictional High Court, we direct the AO to allow deduction u/s. 10A before setting of the brought forward

unabsorbed depreciation and business loss. Ground No. 5 to 9 taken together is allowed."

4.3. It is noted that none of the parties have disputed that facts of both the years are similar. There is no change in the position of law. The Ld. CIT-DR has also not made any distinction in the facts or legal position of these two years. Therefore, respectfully following the judgment of coordinate Bench in assessee's own case and that of Hon'ble Jurisdictional High Court, as has been relied by the Coordinate Bench, we direct the AO to allow deduction u/s 10A before setting off of the brought forward unabsorbed depreciation. Thus, Ground no.2 is allowed in terms of the above directions.

5. Ground No.3: In this ground, the assessee has challenged the action of Ld. AO in treating the interest income on deposits with banks, amounting to Rs.2,05,03,390/-as chargeable to income tax under the head 'Income from other Sources' as against the assessee's claim that such interest income is chargeable to tax under the head "profit and gains of business of profession", and the assessee is further aggrieved with the action of lower authorities in holding that such interest income is not 'derived from' the eligible undertakings u/s 10A and thus, not eligible for deduction u/s 10A of the Act.

5.1. During the course of hearing, it has been submitted by the Ld. Counsel that this issue is covered by the orders of the Tribunal in assessee's own case for A.Ys. 2004-05 and 2005-

06. On the other hand, Ld. DR has submitted that the interest income cannot be said to be derived from exports. He has placed reliance upon the judgments of Hon'ble Supreme Court in the case of Liberty India Ltd. 317 ITR 218 and Pandian Chemicals Ltd. vs. CIT 262 ITR 278 (SC). He has also read before us provisions of section 10A(1)(iv) for the proposition that legislature has used the expression 'derive' and Supreme Court has carefully considered scope and meaning of this expression in the case of Liberty India Ltd., (supra). He further submitted that the object of this section is to give benefit of tax concession to those persons who are bringing foreign exchange into the country as stipulated u/s 10A(iii) of the Act. He also relied upon the judgment of Distributors (Baroda) Pvt. Ltd. v. Union of India wherein it was held that mistakes need not be perpetuated. Further reliance was placed on the judgment of 211 ITR 635 for the proposition that intelligent analysis can be made always.

5.2. In reply, Ld. Counsel vehemently opposed these arguments and contended that Ld. CIT-DR has not appreciated the position of law correctly. Reliance has been placed on sub-section (4) of section 10A of the Act contending that this sub-section provides the mechanism to work out amount of profit eligible for deduction u/s 10A, and that similar mechanism is not available in the section 80-IA and 80HHC etc., and therefore the position of section 10A is quite different from these two sections, and that Hon'ble Supreme Court has explained the meaning of the expression 'derive' in

context of section 80IA and 80HHC. He reiterated that computation of profits eligible for deduction u/s 10A has to be made strictly in terms of the mechanism provided by sub-section (4), laying down the manner of computing profit eligible for granting deduction u/s 10A. With regard to the contention of the Ld. CIT-DR on sub-section (3) of section 10A i.e. requirement of bringing sale proceeds into India, it was contended by the Ld. Counsel that requirement for bringing sale proceeds into country is only with respect to the amount of export sales, as would be clear from the claim reading of sub-section (3). There is no requirement, as stipulated under the section, to bring any other receipts in the form of foreign exchange to the country. Thus argument of Ld. CIT-DR was misplaced. Lastly, Ld. Counsel has relied upon the judgment of Hon'ble Karnataka High Court in the case of CIT vs. Motorola India Electronics (P) Ltd.(265 CTR 94), wherein Hon'ble High Court has considered the judgment of Hon'ble Supreme Court in the case of Liberty India Ltd. (supra) as well as Pandian Chemicals Ltd.(supra). After considering all these judgments it was held by the Hon'ble High Court that the assessee company was eligible for deduction u/s 10B in respect of interest income derived from inter-corporate loans and deposit in EEFC accounts. It was further submitted by the Ld. Counsel since this judgment has taken into account all the judgments of Hon'ble Supreme Court and all the arguments made by the revenue and after considering entire law available the deduction was allowed therefore, as on date the issue of the assessee is covered not only by the orders of

the Tribunal in assessee's own case on earlier years but also the judgment of Hon'ble Karnataka High Court.

5.3. We have gone through the submissions made by both the sides as well as the orders passed by the Tribunal in earlier years and judgments relied upon before us. It is noted that similar issue came up for adjudication before the Tribunal in assessee's own case in assessment year 2004-05. The Tribunal has decided this issue in ITA No.7351/M/2007 vide order dated 26th June 2009 relevant para of Tribunal order is reproduced below:

> *"Coming to the next grievance regarding interest income not being considered as income from business, Ld. Counsel for the assessee fairly admitted that sum of Rs.3,63,042/- being interest on income tax refund, relating to software technology Park Unit I would not be eligible for deduction u/s.10A of the act. Hence, we are required to decide on interest on fixed deposit Rs.7,96,223/- and interest on staff loan of Rs.1,377/-. There is no dispute that assessee was hundred per cent exporter. No doubt the ld. Departmental Representative has relied on the decision of the Kerala High Court in the case of CIT v. Jose Thomas (supra) for the proposition that interest from bank deposit could not be considered as income from business for claiming deduction u/s.80HHC of the Act. However, we find that the jurisdictional High Court in the case of CIT vs. Punit Commercial Ltd. (supra) has held that where an assessee was 100% exporter, deduction u/s.80HHC had*

to be given on the entire business income including interest on fixed deposit. According to the Hon'ble Jurisdictional High Court, entire profits of 100% exporter was entitled for deduction u/s.80HHC of the Act. Again the Hon'ble Delhi High Court in the case of CIT vs. Eltek S.G. (supra) has held that the term "derived by an undertaking from export of articles of things or computer software" used in section 10A was neither as broad as "attributable to' nor as narrow as "derived from". Though section 80HHC of the act used the term derived from, Hon'ble jurisdictions High Court in the case of Punit Commercial Ltd. (supra) held that the whole for the business income was eligible for deduction u/s.80HHC of the act. Further to this, we also find that Hon'ble Jurisdictional High Court in the case of CIT v. Lok Holding (supra) has clearly held that if surpluses were deposited by the assessee out of its business proceeds interest there from could only be considered as part of profits and gains of business of the assessee. Therefore, we are inclined to allow the claim of the assessee for treating the interest from fixed deposit of Rs.7,96,233/- and interest on staff loan Rs.1,377/- as income falling under the head 'profits and gains from business or profession' eligible for deduction u/s.10A of the Act. As far as the contention of the learned DR that section 10A was an exemption provision whereas section 80HHC is a deduction provision, we find that section 10A as substituted by Finance Act 2000, w.e.f 1.4.2000 clearly mentions it to be a deduction from profits and gains

derived by an undertaking from export of articles of things or computer software. Therefore, it cannot be deemed as an exemption provision for the impugned assessment year. Ground no.2 of the assessee is therefore, partly allowed.

5.4. Further this issue again came up for consideration before the Tribunal in assessment year 2005-06, wherein in ITA No.5547/M/2009 the Tribunal vide its order dated 23.4.2013 held that under:

The second issue relates to the interest on deposits which the lower authorities have taxed under the head "Income from other Sources" rejecting assessee's contention that interest on deposits is chargeable to tax under the head "Profits & gains of business or profession and therefore eligible for deduction u/s. 10A of the Act.

8. It is the submission of the Counsel that the issue is covered by the decision of the Tribunal in assessee's own case for A.Y. 2004-05 and to substantiate his claim, the assessee submitted the decision of the Tribunal in assessee's own case reported in 33 SOT 327. Drawing our attention to Para-11 of the said order of the Tribunal, the Ld. Counsel for the assessee submitted that the Tribunal has directed to tax the interest under the head "Profits & gains of business or profession".

9. The Ld. Departmental Representative relied upon the findings of the lower authorities.

10. We have carefully perused the orders of the lower authorities and also the decision of the Tribunal in

assessee's own case (supra). We find that the issue has been decided in favour of the assessee by the Tribunal allowing the claim of the assessee for treating the interest from fixed deposit as income falling under the head "Profits & gains of business or profession" eligible for deduction u/s. 10A of the Act. Facts being identical, respectfully following the decision of the Tribunal, we direct the AO to treat the interest from fixed deposits as income falling under the head "Profits & gains of business or profession" eligible for deduction u/s. 10A of the Act. Ground Nos. 3 & 4 are accordingly allowed.

5.5. The perusal of the order of the Tribunal shows that income of interest was assessed as income from business in earlier years. There is no change in facts in the impugned year as nothing could be brought on record by Ld. CIT-DR to show that there was change in facts in this year. Therefore, respectfully following orders of coordinate bench of earlier years in assesee's own case, we hold that interest income, would be assessable under the head income from business.

5.6. Having decided the interest income as income from business, the next step is to compute the amount of deduction available u/s 10A on the amount of aforesaid interest income. It is noted that this aspect has not been decided in earlier years. Therefore, this issue needs to be decided by us, as per provisions of section 10A. It is further noted that it is a case of 100% exporter. There are no other local sales done by the assessee. It has been rightly contended by the Ld. Counsel

that sub-section (4) has provided mechanism to compute the amount of profit eligible for deduction u/s 10A. For the sake of ready reference sub-section (4) is reproduced herein:

> *"(4) For the purpose of [sub-sections (1) and (1A)], the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking."*

5.7. In our considered view, since the income from interest has been treated as part of business income, it shall be included for determining the amount of total turnover of the business and accordingly the benefit of deduction u/s 10A shall be provided on the amount of interest income proportionately, in terms of mechanism provided in sub-section (4). In other words the amount of profit eligible for deduction u/s 10A shall be the amount which bears to the profits of the business of undertaking, the same proportion as export turnover bears to the total turnover the business of the undertaking of the assessee. The AO is directed to grant the benefit of deduction u/s 10A by re-computing the same in terms of our directions as given above.

5.8. Before we part with this issue, we shall like to clarify that we have meticulously pondered over this issue. In case, clear mandate of sub-section (4) is not followed and full deduction is

allowed u/s 10A on the interest income, then it may yield absurd results and also provide benefits to assessees which were not intended to have been provided by the legislature, keeping in view objective of enactment of section 10A. At times, there may be situations where interest income would be of sizeable amount, sometimes even more than amount of profits, and in such a situation, if 100% deduction is granted to the assessee, on the interest income or any other similar income, without following mandate of sub-section (4), it may frustrate the objective of section 10A. Therefore, to avoid any such situation, clear mechanism has been provided under sub-section (4) for computation purposes. Therefore, our decision is in line with express as well as implied provisions of section 10A.

6. Ground No.4: In this ground, the assessee has challenged the action of lower authorities in not accepting the assessee's claim that book profit u/s 115JB of the Act has to be computed *inter alia* by reducing the amount of interest income on deposits of Rs.2,05,03,390/- credited to profit and loss account, to which provisions of section 10A apply, in terms of clause (ii) to Explanation 1 to Section 11JB of the Act.

It was submitted by the Ld. Counsel that this issue is covered by the order of the Tribunal in assessee's own case for A.Y. 2005-06.

6.1. We have gone through the orders of the Tribunal of assessment year 2005-06. The relevant Para of the Tribunal in ITA No. 5547/M/2009 dated 23.4.2013 is reproduced below:

> *2. Ground No. 1 relates to computation of Book Profit u/s. 115JB of the Act.*
>
> *3.Facts giving rise to this grievance show that while computing the income for the year under consideration and also while computing Book Profit u/s. 115JB of the Act, the Assessing Officer has reduced the amount of deduction u/s. 10A as recomputed by him under the normal provisions of the Act whereas the assessee's contention is that Book Profit u/s. 115JB of the Act has to be computed , inter alia , by reducing the amount of income credited to profit and loss account to which Sec. 10A apply and by increasing the amounts of expenditure debited to Profit and loss account relatable to any income to which Sec. 10A apply in terms of Caluse (ii) and clause (f) to Explanation to Sec. 115JB of the Act.*
>
> *4. At the very outset, the Ld. Counsel for the assessee submitted that the issue now stands covered in favour of the assessee. To substantiate his claim, the Ld. Counsel drew our attention to 3 decisions namely (i)Moser Baer India Ltd. Vs DCIT (2007) 17 SOT 510(Del), (ii) DCIT Vs Roxy Investments (P) ltd (2008) 24 SOT 227 (Del) and (iii) the decision of the Hon'ble Supreme Court in the case of Ajanta Pharma Ltd Vs CIT (2010) 327 ITR 305.*

5. The Ld. Departmental Representative fairly conceded that the issue stands covered in favour of the assessee.

6. We have carefully perused the orders referred to by the Ld. Counsel for the assessee in the case of Moser Baer India Ltd (Supra) in which it has been held that for determining of Book Profit any mode and manner of computation of total income under Act has not to be applied and reference is to be made only to profit and loss account prepared in accordance with provisions of Parts II and III of Schedule VI of Companies Act therefore while computing Book Profit u/s. 115JB of the Act, amount to be reduced was the income which is eligible for exemption u/s. 10A/10B as computed on the basis of Book Profit as per Parts II and III of Schedule VI of Companies Act and not on basis of provisions of the I.T. Act. Similar view has been taken in the case of Roxy Investments (P) ltd (supra) wherein the co-ordinate Bench of Delhi has held that while computing Book Profit u/s. 115JB of the Act, amount of income which can be reduced by the AO for computing Book Profit under clause (ii) of Explanation to Section 115JB(2) will be amount which is credited to profit and loss account and not amount of income which is claimed by the assessee or determined by Assessing Officer while assessing income under regular provisions of Act. Hon'ble Supreme Court in the case of Ajanta Pharma Ltd (supra) has fortified the view taken by the Co-ordinate Benches. Considering the facts of the case, in the light of the above judicial pronouncement, we have no hesitation to hold that

for the purpose of computing Book Profit u/s.115JB of the Act, income has to be computed as per Parts of Schedule VI of Companies Act and not on basis of provisions of I.T. Act. Ground No. 1 & 2 are accordingly allowed.

6.2 Ld. CIT-DR has relied upon the order of the AO on this issue, and nothing has been brought on record to make any distinction on facts or law.

6.3. Therefore, respectfully following the judgment of Coordinate Bench in assessee's own case, we hold that for the purpose of computing to profit u/s 115JB of the Act, income has to be computed as per the schedule VI of the Companies Act and not on the basis of provisions of Income Tax Act. Accordingly, Ground no. 4 is allowed.

7. Ground No.5: In this ground, the assessee has contended that the AO has erred in not following the direction of DRP of allowing sufficient opportunity to the assessee to explain its case in respect of the deduction of business expenditure of Rs. 2,04,64,709/-, which was disallowed as prior period expenditure for A.Y.2007-08, "while computing income under the head 'profits and gains of business of profession' of impugned assessment year i.e. A.Y. 2006-07.

7.1. It was contended by the Ld. Counsel that, business expenditure of the aforesaid amount which was disallowed as prior period expenditure for assessment year 2007-08, should be allowed notionally, for the year under consideration. It was

further submitted that DRP has already given requisite directions to the AO in this regard, but the same has not been followed by the AO, and therefore, the Tribunal should reinforce the direction of the DRP.

7.2 We have gone through the orders of the DRP and submissions made by both the sides on this issue. For the sake of ready reference, the relevant Para of the DRP order on this issue is reproduced below:

> *"The ground of objection no.7 related to claim of expenditure disallowed in A.Y. 2007-08 as prior period expenditure. The prior period expenditure is disallowed on the basis of matching concept that it is to be allowed in the year to which it relates. No specific mention of the nature of expenditure or period of its accrual has been indicated. Therefore, the AO is directed to examine this issue and any expenditure which relates to the current assessment year and qualified to the allowed u/s.37 of the I.T. Act should be allowed in the current year. This ground of objection is disposed off accordingly."*

7.3. It is noted, from the above, that DRP has already issued requisite directions in this regard. Keeping in view request of the assessee, we direct the AO to look into this aspect, re-examine the issue and adjudicate the same after granting proper opportunity of hearing to the assessee. Thus, ground no. 5 is sent back to the file of the AO in terms of our directions as given above.

8. Grounds No.6 & 7 are consequential and dismissed.

Now we take up ITA No.7822/Mum/2011 for A.Y.2007-08.

9. Grounds No.1, 2 & 3: Deal with the transfer pricing adjustment of Rs.96,81,48,439/- made to the income of the assessee by the AO. These ground are similar to Ground no.1 of assessee's appeal for A.Y. 2006-07. The facts and legal position being the same we direct to follow our order of assessment year 2006-07. The only change would be that for A.Y. 2007-08, the ALP margin has been determined under MAP @ of 15.54% as against 14.38% for A.Y. 2006-07, and therefore everything else remaining the same the ALP margin shall be applied @ of 15.54%, as against 29.67% as was determined by the TPO. We order accordingly. The assessee gets part relief accordingly.

10. Ground No.4: In this ground, the assessee has challenged the action of AO in holding that unabsorbed depreciation of Rs.2,91,67,191/- has emanated from exempt unit and accordingly set off of the same against the taxable income computed after allowed exemption u/s 10A was denied. It is noted that this ground is similar to the Ground no. 2 of assessment year 2006-07. The factual and legal position remaining same in both the year, we direct the AO to follow our order for A.Y.2006-07, on this issue.

11. Ground No.5: In this ground the assessee has challenged the action for AO and denying the benefit of deduction u/s

10A on the amount of interest income in deposits with the bank, amounting to Rs.2,28,50,823/-. Facts and legal position being identical, we direct that our order for A.Y. 2006-07 should be followed on this issue.

12. Ground No.6: The assessee has challenged the action of AO in not accepting the assessee's claim that book profit u/s 115JB of the Act has to be computed, by reducing the amount of interest income on deposits to which provisions of section 10A applied.

12.1 It is noted that this ground is identical to Ground no.4 of assessment year 2006-07, accordingly, we direct that our order for A.Y. 2006-07 on this ground should be followed.

13. Grounds No.7, 8 & 9: are consequential, and therefore these are dismissed.

14. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 30th November, 2015.

Sd/-	Sd/-
(Amit Shukla)	(Ashwani Taneja)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य** / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 30/11/2015

Patel, P.S./नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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**