

**IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1926/Mum/2022
(A.Y. 2014-15)**

Bank of Nova Scotia Ground Floor, B Wing, Mittal Tower, Nariman Point, Mumbai - 400021	Vs.	Deputy Commissioner of Income Tax (IT)-1(2)(1) Room No. 1811, 18 th Floor, Air India Building, Nariman Point, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAACB1536H		
Appellant	..	Respondent

**ITA No.2248/Mum/2022
(A.Y. 2014-15)**

Deputy Commissioner of Income Tax (IT)-1(2)(1) Room No. 1811, 18 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s Bank of Nova Scotia C/o Mittal Towers, B Wing, Nariman Point, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAACB1536H		
Appellant	..	Respondent

Appellant by :	Nishant Thakkar & Ms. Jasmin Amalsadwala
Respondent by :	Anil Sant

Date of Hearing	07.02.2024
Date of Pronouncement	28.02.2024

आदेश / ORDER

Per Amarjit Singh (AM):

Both these cross appeals filed by the assessee and revenue are pertained to assessment year 2014-15 arised from the order of ld.CIT(A)-55, Mumbai passed u/s 250 of the Income Tax Act 1961 dt.

17.06.2022. Since, common issue on identical facts are involved in these appeals, therefore, for the sake of convenience both these appeals are adjudicated together.

ITA No. 1926/Mum/2022 (Assessee's appeal) AY: 2014-15:

Ground 1: In partly confirming the transfer pricing adjustment amounting to INR 26,90,384 in respect of the international transaction of provision of correspondent banking services:

- 1.1 *Basis the facts and circumstances of the case and in law, the learned CIT(A) erred in partly confirming the transfer pricing adjustment in respect of the international transaction of provision of correspondent banking services*
- 1.2 *In rejecting the search process and transfer pricing documentation submitted by the Appellant and in not appreciating that the arm's length price of the international transaction of provision of correspondent banking services was appropriately determined in the transfer pricing documentation by applying Transactional Net Margin Method (TNMM).*
- 1.3 *In rejecting the comparable companies (ICRA Management Consulting Services Ltd. and Mecklai Financial Services Limited) selected by the Appellant in its transfer pricing documentation*
- 1.4 *In upholding the learned TPO's action of selecting Sumedha Fiscal Services Limited as a comparable which is not functionally comparable to the correspondent banking services provided by the Appellant*
- 1.5 *In not taking cognizance of the functions and risks undertaken by the Appellant and by considering company which is in engaged in investment/ merchant banking activities as compared to the correspondent banking services provided by the Appellant*
- 1.6 *In not using multiple year data for calculating the operating margin for companies rendering comparable services ie data for Financial Year (FY) 2011-12, FY 2012-13 and FY 2013-14*
- 1.7 *In upholding the use of data pertaining only to FY 2013-14 in determining the arm's length price, which was not available in the public domain at the time when the Appellant was required to comply with the requirements under the Act and the relevant Rules.*
- 1.8 *In upholding the taxation by the learned AO/ learned TPO of the mark up in respect of provision of services rendered by the Appellant to its head office (HO)/ overseas branches in contradiction of Article 7(3) of the Double Taxation Avoidance Agreement between India and Canada.*

Ground 2: In confirming the transfer pricing adjustment amounting to INR 2,66,61,243 in respect of the international transaction of

administrative support services in relation to Inter Bank Indemnities (IBI):

- 2.1 *Basis the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the transfer pricing adjustment in respect of the international transaction of provision of administrative support services in relation to IBI.*
- 2.2 *In rejecting the transfer pricing documentation submitted by the Appellant and in not appreciating that the arm's length price of the international transaction of provision of administrative support services in relation to IBI was appropriately determined in the transfer pricing documentation by applying TNMM.*
- 2.3 *In upholding the learned TPO's action of selecting Comparable Uncontrolled Price (CUP) Method as the most appropriate method to benchmark the international transaction of provision of administrative support services in relation to IBI.*
- 2.4 *In upholding the learned TPO's action of determining that the functions performed and the risks assumed by the Appellant in respect of guarantee services provided to domestic third parties is comparable to administrative support services provided by the Appellant to its overseas branches and in upholding that the rates charged to domestic third parties in respect of guarantee services should be considered as the benchmark rates for benchmarking the transaction of provision of administrative support services in relation to IBI services*
- 2.5 *Without prejudice to the above, in disregarding the requirement for risk adjustment, where transactions entered into by the Appellant with domestic third parties are treated as comparable to the international transaction entered into with the HO/overseas branches*

Ground 3. In confirming the transfer pricing adjustment amounting to INR 6,79,927 in respect of the international transaction of provision of Information Technology Enabled Services (ITCS):

- 3.1 *Basis the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the transfer pricing adjustment in respect of the international transaction relating to provision of ITeS.*
- 3.2 *In not using multiple year data for calculating the operating margin for companies rendering comparable services ie data for Financial Year (FY) 2011 12, FY 2012-13 and FY 2013-14.*
- 3.3 *In upholding the use of data pertaining only to FY 2013-14 in determining the arm's length price, which was not available in the public domain at the time when the Appellant was required to comply with the requirements under the Act and the relevant Rules*
- 3.4 *In rejecting the contention of the Appellant that due to suo-moto adjustment in its computation of income in respect of the aforementioned transaction, it falls within the range of +/-3% margin as per the proviso to Section 92C(3) of the Act.*

Each of the grounds of appeal referred above is separate and may kindly be considered independent of each other

The Appellant craves leave to add to, alter, amend or withdraw all or any of the Grounds of appeal herein above and to submit such statements, documents and papers as may be considered necessary either at or before the hearing of this appeal as per law.”

2. Fact in brief is that return of income was filed on 28.11.2014 which was revised on 29.03.2016 showing total income to the amount of Rs.539,12,06,100/-. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 01.09.2015. The assessee is a banking company incorporated in Canada it had obtained a license from the RBI to carry out banking activities in India. The assessee (Bank of Nova Scotia 'BNS') has been operating in India through branches in Mumbai, Delhi, Bangalore, Coimbtore & Hyderabad. The assessment u/s 143(3) r.w.s 144C(3) of the Act was finalised on 01.02.2018 determining the total income of Rs.600,27,74,084/-. The further facts of the case are discussed while adjudicating the various grounds of appeal filed by the assessee.

Ground No.1: Transfer Pricing adjustment in respect of correspondent banking services:

3. This ground of appeal is not pressed therefore the same stand dismissed.

Ground No.2: Transfer Pricing adjustment for administrative support services in relation to interbank indemnities:

4. During the course of appellate proceedings before us at the outset the ld. Counsel submitted that similar issue on identical facts has been adjudicated by the ITAT, Mumbai vide ITA No. 3862/Mum/2013 for A.Y. 2008-09 in favour of the assessee recently passed on 29.01.2024.

5. Heard both the sides and perused the material on record. With the assistance of the ld. representative we have perused the above

referred decision of ITAT in the case of the assessee itself wherein ground no.9 to 13 of that appeal pertaining to transfer pricing adjustment for administrative support services in relation to the interbank indemnities was decided in favour of the assessee. The relevant extract of the operating part of the decision is reproduced as under:

“34. Heard both the sides and perused the material on record. During the year BNS Overseas Branches executed interbank indemnities against which the BNS India issued guarantee on behalf of the clients of the overseas branches and vice-versa. BNS India received a commission of USD 125 per transactions for guarantee issued by it on behalf of its overseas branches and paid commission of USD 100 for the guarantees issued by the overseas branches on its behalf. Before us the ld. Counsel referred the various submission made before the lower authorities and stating that the assessee bank has not faced any risk as the guarantees issued was fully secured by back to back interbank indemnity issued by overseas branches. The assessee has benchmarked this transaction after following the TNMM and comparability analysis showed an arithmetic mean margin (operating profit to operating cost) of 15.28%. However, the TPO has applied internal CUP method and computed an upward adjustment of Rs.40,58,558/-. In the TP study report the assessee has given the analysis of the aforesaid transactions that Inter-Bank indemnity is a financial arrangement wherein a bank branch will be compensated for any financial liability that it incur on behalf of its co-branch. The issuance of these arrangement is standard practice in international banking service. The assessee explained that by issuing a guarantee on behalf of the clients of BNS overseas branches, the assessee did not fall under any default/credit risk as it is secured by a back to back inter-bank indemnity issued by overseas BNS branches to the assessee. In a reverse scenario where the associated enterprises of the assessee issues guarantees on behalf of the assessee, the remuneration charges by them to the assessee was only the administrative services provided by them and not based on the rates that would have been charged to third parties.

After perusing the material placed on record we find in the case of BNS India no public information on third party to third party transaction of similar or identical services was found that reflects the characteristics of the services provided by BNS India. Further as per provision of Rule 10B of the I.T Rules comparables for provision of interbank indemnity services would have to be companies which provide same or similar services as BNS India, and are comparable in terms of function performed, risk assumed and asset utilized. As per the information provided by BNS India it had earned operating margin of 25.41% on operating cost which was higher than the arm's length margin of 15.28% on operating cost. The lower authority has not brought on record any relevant material to contrary to the material facts as discussed supra in this order.

We have gone through the decision of ITAT in the case of Australia & New Zealand Banking Group Ltd. Vs. DCIT (2022) 140 taxmann.com 574 (Mum Trib) wherein it is held that where TPO observed that assessee had earned processing fees for issuing guarantees on behalf of its associated enterprises and rejected TNMM adopted by the assessee and proceeded to benchmark

guarantee transaction using external CUP method, since data under CUP method was not available and data margins under TNMM was readily available and held that it would be appropriate to apply TNMM as most appropriate method. In the aforesaid decision it is held that TNMM method would be the most appropriate method in the facts and circumstances of the case and CUP could not be applied because of non-availability of data. The relevant operating part of the decision is reproduced as under:

“3.6 Hence, from the aforesaid modus operandi, it could be concluded that assessee acts as a beneficiary bank Je issue guarantee in India on behalf of clients of overseas branches of ANZ based on the counter guarantee issued by such overseas ANZ branches. Since assessee is acting as the beneficiary, the entire risk of discharging the bank guarantees is borne by overseas ANZ branch issuing the counter guarantee. The assessee merely provides support service in connection with processing of the guarantees, typing out the guarantee agreement based on swift message received and issuing the said agreement to the beneficiary The aforesaid functions performed by the assessee are not disputed by the lower authorities. When assessee is fully protected by overseas counter guarantee, we are unable to comprehend ourselves as to how CUP method could be applied therein as it would be impossible to make adjustment for the differences as per rule 10B(1)(a) of the Income- tax Rules In effect, we find that assessee is merely providing secretarial services or which can be loosely called as carrying out administrative functions. It is not in dispute that the assessee does not bear any risk in its books as it is fully protected by overseas counter guarantee/indemnity In fact even assessee would not have to face the foreign exchange risk in view of the fact that whenever assessee is called upon to discharge the guarantee on behalf of the overseas branches, the assessee would first receive the monies from overseas branch because of the existing counter guarantee, and then discharge the same. The assessee is receiving processing fees from its AEs in foreign currency and the said fee is received immediately after the invoice is raised for the same, thereby the risk of exchange fluctuation would be very very negligible due to reduced time span involved therein. Given these undisputed facts, it would be appropriate to consider assessee as the tested party as it would be the least complex entity and its profitability could be reliably ascertained Admittedly, the transaction which requires to be benchmarked is the receipt of processing fees by the assessee for the guarantees issued by rendering the aforesaid secretarial services Hence, what is to be looked into is under similar terms and conditions and under similar circumstances what is the guarantee fee charged by the third party comparables from the AEs. This is what precisely assessee has done in the instant case. The assessee had taken into account the third party comparable margins and compared the same with its margins using Transactional Net Margin Method. For this purpose, the assessee had taken the third party comparables which are engaged in providing liasoning services, managerial services, marketing services, administrative services and information services. Effectively all these services could be loosely termed as business support services. Hence, when the data under CUP method is not available and data of margins under TNMM is readily available, then it would be appropriate to apply TNMM method as the Most Appropriate Method (MAM) in the facts and circumstances of the instant case.

3.7 We find that assessee had explained the entire transactions and the modus operandi applied by it in respect of the guarantee transactions before the Id TPO which are evident vide letter dated 9-10-2015 together with the fee charged for each type of services tendered by it. These details are enclosed in pages 316 to 322 of the paper book filed before us. We also find the assessee vide its letter dated 28-10-2015 had filed a detailed annexure enclosed in pages 328-331 of the paper book listing the guarantees issued by it based on

counter guarantee received from overseas branches of ANZ The assessee also furnished the sample documents enclosing the copy of swift message received from ANZ New York advising the assessee to issue guarantee to Indian beneficiaries like Reliance Infrastructure Ltd., and providing counter guarantee.

3.8 The assessee also placed on record the copy of the swift message from assessee to ANZ New York confirming that guarantee has been issued to Reliance Infrastructure Ltd, confirming that guarantee has been Issued by ANZ Mumbai. By all these documents, the Id. AR was vociferous in driving home the point that the entire risk of discharging the bank guarantees is borne by the overseas ANZ branch issuing the counter guarantees wherein the assessee merely provides support services in connection with processing of the guarantees The Id AR also referred to page 380 of the paper book containing various swift messages received The assessee also placed on record the reply letter dated 18-12-2015 filed before the Id TPO in response to show-cause notice as to why 1% guarantee fee charged by thud party Indian banks should not be considered as the arm's length price, placed reliance on the decision of the Mumbai Tribunal in the case of Addl. CIT V. Asian Paints Ltd [2014] 44 taxmann com 422 wherein specifically in the context of guarantee fees, this Tribunal had deleted the adjustment made as the said judgement was rendered simply relying on certain data from the market. The facts of the case before us squarely fit into the facts prevailing in the case of Asian Paints Ltd (supra).

3.9 The assessee before the Id. DRP made an alternative submission that the fee of 1% proposed by the Id TPO may be applied in respect of fresh guarantees issued during the year. The details of fresh guarantees issued during the year were also furnished before the Id. DRP in pages 577-579 of the paper book vide letter dated 27- 4-2016 But we find that the Id DRP had merely brushed aside the same and grossly erred in stating that no details were filed by the assessee.

3.10 In view of the aforesaid observations, we hold that INMM method would be the Most Appropriate Method in the facts and circumstances of the instant case and CUP could not be applied herein because of non availability of data. In any case in respect of adjustment made simply relying on 133(6) information from the market had been deleted by this Tribunal in the case of Asian Paints Ltd, referred to supra. It is also prudent to note that the same transactions were accepted by the Id. TPO upto A Y2012-13 in the case of the assessee Hence, even going by the rule of consistency as has been held by the Hon'ble Supreme Court in the case of RadhasoamiSatsang v. CIT [1992] 60 Taxman 248/ 193 ITR 321, there is no need for the Id. TPO to take a divergent stand when there is no change in the facts and circumstances during the year with that of earlier years Hence, we direct the Id TPO to delete the adjustment made in respect of guarantee fees in the sum of Rs. 10,94,55,035/. Accordingly, the ground Nos 1 & 2 raised by the assessee are allowed.”

We have also perused the decision of ITAT Delhi in the case of Bank of Tokyo Mitsubishi UFJ Ltd. Vs. The DDIT (IT), Circle 1(1) vide ITA No.1162/Del/2014 wherein identical issue on similar fact was decided in favour of the assessee. Considering the facts and judicial pronouncements as discussed supra in this order the issue in the appeal is squarely covered by the decision of the ITAT Mumbai therefore, the decision of Id. CIT(A) in sustaining the arm's length price addition made by the assessing officer is not justified. Accordingly, ground nos. 9 to 13 are allowed.”

6. Since, issue in the instant appeal is squarely covered by the decision of the ITAT in the case of the assessee itself as referred above, therefore, following the decision of ITAT the ground of appeal 2 of the assessee is allowed.

Ground No. 3: Transfer Pricing adjustment in respect of Provision of Information Technology enabled services (ITeS):

7. During the year the assessee has provided certain IT Enabled Services to its Associate Enterprises. The assessee has benchmarked the transactions by using TNMM. The assessee's margin was -7.75% (OP/OC) on provisions of IT enabled services. However, the assessee had suo moto offered an amount of Rs.45,90,505/- to tax by re-computing the ALP margin at 15%. The single year margin based on ten comparables selected by the assessee for FY2012-13 was 18.37%. Therefore, the TPO made further adjustment of Rs.6,97,927/-. The TPO has also rejected the contention of the assessee that due to suo moto adjustment the transaction falls within the range of $\pm 3\%$ margin. The Id. CIT(A) has also dismissed the appeal of the assessee.

8. Heard both the sides and perused the material on record. We find that similar issue on identical fact has been adjudicated by the ITAT Hyderabad against the assessee vide (2014) taxman.com 285 (HydTrib) in the case of Tecumesh Products India (P) Ltd. Vs. ACIT, Circle 2(3) Hyderabad. With the assistance of Id. representative we have gone through the above referred decision of ITAT Hyderabad. The relevant extract of the decision is reproduced as under:

“(vi) There is one more aspect to the contention made As briefly stated, Assessee incurred loss in International transaction and suo-moto adjustment of Rs.2,82,69,298 on the basis of transfer pricing documentation This indicates that the Assessee exercised option provided u/s 92C particularly of proviso of (+) or (-) 5% threshold and did not treat the actual sale transaction as ALP Having exercised the option and treating the different (enhanced) amount as ALP, in our view, Assessee cannot contend that the threshold of (-) or (+) 5% is available again, if TPO action results in further addition On this reason also the claim fails. This contention of Assessee is considered as rejected.”

9. Following the decision of ITAT as referred supra we don't find any merit in this ground of appeal of the assessee, therefore, the same stand dismissed.

ITA No.2248/Mum/2022 (Revenue's Appeal) AY: 2014-15:

Ground No. 1 & 2: The ld. CIT(A) has erred in directing the inclusion of certain BNS comparable and excluding a few comparable selected by the TPO:

10. During the course of appellate proceeding before us at the outset the ld. Counsel submitted that this ground of appeal is conceded on account of smallness of amount therefore this ground of appeal is allowed.

Ground 3 &4: The ld. CIT(A) has erred in deleting the adjustment on purchase of precious metals by relying on KITCO/Reuters database and not using LBMA rates which are primary source of estimating the price of trading of bullion:

The ld. CIT(A) has erred in holding that the LBMA database doesn't capture volatility in the market:

11. During the year Scotia Mocatta (SM) India a division of BNS India was engaged in trading and finance of precious metals (gold, silver) SM India purchase precious metals from overseas branches of BNS for making supply to India traders, manufacturers and jewellers based on open market disclosure rates quoted on the Reuters dealing system. The bullion that was sold through various product offerings was imported on a consignment basis from its London branch. The BNS India applied comparable Uncontrolled price method (CUP) as the most appropriate method u/s 92C of the Income Tax Act for benchmarking these transactions. The benchmarking has been made after taking into consideration the daily average price at which bullion

was treated. The transfer pricing officer observed that certain transaction of the assessee were not coming within the 3% \pm range.

12. On query the assessee has justified the prices at which transactions were made by making reference to KITCO and then to Reuters database. However, the TPO was of the view that LBMA(London Bullion Market Association) was the primary source for estimating the price of trading in bullion and when these rates were not available on the LBMA then the assessee may consider alternate database for verification of the prices at which it had undertaken the transactions. Therefore, the TPO has compared the day to day transactions carried out by the assessee and observed that there was wide variance from the support rates prevailing in the market at the time of trade as per the detail mentioned at page no. 17 to 20 of the order of the TPO. Therefore, the TPO had made adjustment in respect of 24 transactions of gold and 12 transaction of silver trading entered into by the assessee and made further adjustment to the amount of Rs.10,21,35,970/-.

13. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee. The relevant extract of the decision of CIT(A) is as under:

8.3 Decision: *The TPO noticed that certain transaction of Scotia Mocatta (SM India), a division of the appellant company which is engaged in the trading of gold and silver were not within \pm 3% range from the London Bullion Market Association (LBMA) rates. The transactions were benchmarked using CUP as most appropriate method. The assessee explained before the TPO that due to extreme market volatility, there was huge fluctuation in the gold price for few trades on 15.04.2013 and 26.06.2013. In this regard, the appellant made references to data published by KITCO on daily high low rates in respect of Bullion commodities. As corroborative evidence, the appellant submitted before the TPO articles available in the public domain indicating extreme market volatility and also submitted that contract rate at which BNS India had transacted with its AEs in respect of trades on these dates is within Reuters high and low rates published on such dates. The TPO did not accept these contentions. The reasons for the same are already reproduced in para 8.1 above. The TPO noted that the prices at which transactions have been entered into by the assessee are at wide variance from the spot rates prevailing in the market at the time of trade.*

In its submission, the appellant has made similar arguments as before the TPO. Main contention is that LBMA prices are based on the auctions at 10 30 am and 03:00 pm GMT for gold and at 12:0 pm noon GMT for silver. It, thus, publishes the prices at fix time and doesn't the effect of high volatility in the market on certain dates

It has also furnished chart indicating high low rates on particular dates i.e. 15.04.2013 and 20.06.2013 for gold and 15.04.2013, 20.05.2013, 20.06.2013, 28.06.2013, 26.08.2013 and 15.10 2013 for purchase for silver and claimed that the import rate of the assessee was less than high rate and more than the low rate of the respective dates. For example, appellant's purchases of gold on 15.04.2013 are at rates between \$1450.00 per ounce and \$1455.75 per ounce as against Reuters high rate and low rate for the day of \$1336.04 per ounce.

8.3.1 *I find that the claim of the appellant to be correct. The LBMA database doesn't capture volatility in the market. Since, rates at two particular times of the day are published, the same may not represent highest and lowest rate on particular dates. On a particularly volatile day, the LBMA rates may not be a correct comparable. In the alternative, the appellant has given details of the rates of Reuters which indicate low and high rate of the day. On volatile days, the high and low rate may be most appropriate for comparison. If the purchase rate of the appellant falls within the same, the transactions could be said to be at arm's length. In view of this and other corroborative evidence, I find that the assessee has been able to demonstrate that its transactions of purchase of precious metals was at arm's length. Moreover, the learned TPO has accepted the corroborative analysis of the appellant using KITCO/Reuters databases in the past le AY 2011-12,2012-13 and 2013-14. Considering the above, I find that the adjustment made is not correct and direct the AO/TPO to delete the same."*

14. During the course of appellate proceedings before us the ld. counsel has compared the nature of LBMA rates with KITCO rates in respect of bullion commodities as per annexure of such charts of rates filed before the revenue authorities. He submitted that KITCO publish daily high and low data of rates prevailing in the market in respect of bullion commodities whereas the LBMA rates are based on daily opening and closing rate. The ld. Counsel has analysed the prices at which the transaction were undertaken by the assessee after making reference to KITCO and Reuters database.

On the other hand, the ld. D.R supported the order of TPO.

15. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above the TPO has observed

that certain transaction of the assessee in respect of bullion and silver were not fitting with the $\pm 3\%$ range. Therefore, after applying LBMA to the transaction made adjustment of Rs.10,21,35,970/-. We have perused the submission of the assessee demonstrating that LBMA publish the price at a fixed time period at the opening stage and at the closing stage which will not capture market volatility whereas KITCO and Reuters rates cover the high and low rates on daily basis which also capture the market volatility. After considering the above facts we find that Id. CIT(A) has rightly held that LBMA database does not capture volatility in the market because these rates are publish at two time of the date therefore high and low rate published by KITCO & Reuters may be the most appropriate for comparison. Considering the submission of the assessee and facts discussed in the finding of the Id. CIT(A) as supra we don't find any reason to interfere in the decision of Id. CIT(A). Accordingly, this ground of appeal of the revenue stand dismissed.

Ground No.5: Interest amount of Rs.23,72,43,147/- towards earning income on Foreign Currency Loan:

16. At the outset the Id. Counsel brought to our notice that similar issued on identical fact has been adjudicated by the ITAT in the earlier years as below in the case of the assessee itself in favour of the assessee.

- “1. *ITAT Order in the Appellants own case for AY 04-05 [ITA No 3530/MUM/2009 (Mum)]*
2. *ITAT Order in the Appellants own case for AY 02-03 [ITA No 6818/MUM/2006(Mum.)]*
3. *ITAT Order in the Appellants own Case for AY 1998-99 [ITA 5351/M/2001 (Mum.)]*
4. *ITAT Order in the Appellants own Case for AY 1997-98 [ITA No 306/Mum/2001(Mum.)]”*

17. The Id. D.R could not controvert this undisputed fact that this issue has been adjudicated in favour of the assessee in the earlier

years by the ITAT as referred above, therefore, we don't find any merit in the appeal of the revenue therefore the same stand dismissed.

Ground No. 6 to 10: Interest received by HO/Overseas branch from BNS India:

18. At the outset the ld. Counsel submitted that identical issue on similar facts has been adjudicated in favour of the assessee by the ITAT in the earlier years and also by the special bench Mumbai in the following cases:

- “1. ITAT Order in the Appellants own case for AY 04-05 [ITA No 3530/MUM/2009 (Mum)]
2. ITAT Order in the Appellants own case for AY 02-03 [ITA No 6818/MUM/2006(Mum)]
3. Sumitomo Mitsui Banking Corp vs DDIT [19 taxmann.com 364 (Mum)(SB)]
4. DCIT vs. BNP Paribas S.A. [ITA no. 1689/Mum/2018]
5. JP Morgan Chase Bank N.A. vs. DCIT [ITA no. 3747/Mum/2018 and 363/Mum/2019]”

19. The ld. D.R could not controvert the undisputed facts that the issue is squarely covered by the decisions of the ITAT as referred above. Following the decision of the ITAT of the earlier years as referred above we don't find any merit in the decision of ld. CIT(A), therefore ,the appeal of the revenue stand dismissed.

20. In the result, the appeal of the assessee is partly allowed and the appeal of the revenue is also partly allowed.

Order pronounced in the open court on 28.02.2024

Sd/-
(VikasAwasthy)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date: 28.02.2024

Rohit: PS

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

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

सत्यापित प्रति //True Copy//
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आयकर अपीलीय अधिकरण/ ITAT, Bench,
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