IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 537/Mum/2013 (A.Y.2008-09)

Tata International Ltd.,
Block A, Shivsagar Estates
Dr. Annie Besant Road,
Worli, Mumbai- 400018,
PAN: AAACT3198F ..... Appellant

Vs.

ACIT – 7(3),
R. No. 675, 6th floor,
Aayakar Bhavan,
M. K. Marg
Mumbai- 400020 ..... Respondent

Appellant by	:	Shri Nitesh Joshi a/w Ninad Patade, Ms. Aastha Shah, Ld. ARs
Respondent by	:	Shri Anoop Hiwase, Ld. DR
Date of hearing	:	24/01/2024
Date of pronouncement	:	06/02/2024

O R D E R

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Dispute Resolution Panel – II, Mumbai dated 25.09.2011 u/s. 144C (5) of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2008-09.

1. The learned Assessing Officer and/or the learned Dispute Resolution Panel ["AO-DRP"] erred in disallowing expenditure aggregating 3, 74, 855 by way of payments made to clubs.

2. This ground raised by the assessee is covered by the decision of Coordinate Bench of ITAT Mumbai in assessee's own case for AY 2005-06 in ITA 4376/Mum/2010. The operative portion of the order of Coordinate Bench of ITAT is as under:-

"13. Ground no.2 relates to disallowance out of payment made to club. The ld. AR of the assessee submits that this ground of appeal is also covered by Hon'ble Bombay High Court and decision of various benches of Tribunal in Otis Elevator (195 ITR 682). The ld. AR of the assessee submits that the assessee claimed total expenses of Rs. 3,52,200/- out of which, the Assessing Officer allowed Rs. 52,000/- paid to Devas Office and rest of the amount of Rs. 2,99,500/- for subscription fees, annual contribution and membership of various club and other expenses paid on club were disallowed. The ld. CIT (A) granted part relief restricting the disallowance to Rs. 2,65,000/-. The ld. AR of the assessee submits that the issue is stand covered by the decision of jurisdictional High Court in Otis Elevator (supra).

14. On the other hand, the ld. DR for the revenue supported the order of lower authorities.

15. We have considered the submission of both the parties and perused the record and find that the Hon'ble Bombay High Court in Otis Elevator (supra) held that the payment made to clubs are revenue in nature and are allowable as such. We have further noted that in assessee's own case for Assessment Year 1996-97, 1997-98 & 1998-99, the co-ordinate bench of Tribunal in ITA No. 4976, 4977 & 4978/Mum/2005 vide order dated 26.03.2009 allowed similar claim in favour of assessee. Therefore, considering the decision of Tribunal in assessee's own case for Assessment Year 1996-97, 1997-98 & 1998-99 and decision of jurisdictional High Court, this ground of appeal is allowed in favour of assessee."

3. As the issue involved is identical in facts and law to those in A.Ys. 1996-97, 1997-98, 1998-99 and 2005-06 and issue decided in favour of assessee by the Coordinate Benches. We respectfully follow the ratio laid down by the Coordinate Benches and decision for earlier years will apply mutatis mutandis to this year also. **In view of this ground no. 1 raised by the assessee is allowed.**

2.1. The learned AO-DRP erred in disallowing a sum of Rs. 1,65,35,000/- out of the aggregate Interest of Rs. 11,44,02,081/- paid by the Appellant in respect of capital borrowed by the Appellant for the purposes of its business and hence claimed by the Appellant as deductible under Section 36(1)(iii).

2.2. Without prejudice to the generality of the foregoing ground, the Appellant submits that the learned AO-DRP, not having controverted the evidence on record to the effect that the Appellant's entire Borrowings had been utilised for the purposes of the Appellant's export business and that no part of such Borrowings had been utilised for making any of its investments, erred in disallowing the said sum of 1,65,35,000 out of the aggregate Interest expenditure of approx Rs. 11,44,02,081/- .

2.3. without prejudice to the foregoing grounds, the Appellant submits that the learned AO-DRP erred in not allowing the Appellant's claim that, having regard to -

(1) The fact that the Investments were made from a mixed fund comprising both the Appellant's Own Funds as well as its borrowed funds and

(ii) The fact that the Appellant's Own Funds (Rs. 294.23 Crores) were far in excess of the Appellant's total Investments in shares (₹ 133.67 Crores), the AO-DRP ought to have held -

(a) That such Investments had been made from the Appellant's Own Funds and not from any part of the Appellant's borrowed funds,

(b) that, therefore, the borrowed funds had been utilised, not for the purpose of making investment in shares, but for the other purposes of the Appellant's business and

(c) That, accordingly, the Interest of Rs. 1, 65, 35,000/- was allowable under Section 36(1) (iii) of the Act.

The Appellant submits that the learned AO-DRP erred in this respect in not following the binding order of this Hon'ble Tribunal in the Appellant's own case for the Assessment Years 2000-01 to 2002-03, viz., the Order dated 8th June, 2012 of the Hon'ble Mumbai Bench 'E', in I.T.A. Nos. 3957, 3958 & 3959 / M um / 2006

2.4. without prejudice to the foregoing grounds, the Appellant submits that, in making their determinations in respect of the disallowance under Section 14-A, the learned AO-DRP erred in the following respects:

(1) The learned AO-DRP erred in holding that the amount disallowed under Section 14-A was not allowable under Section 36(1) (iii) of the Act

(2) The learned AO-DRP erred in holding that a part of the Appellant's borrowed funds had been used for the purpose of making investments in shares, particularly in view of the fact that the Appellant's Own Funds (Rs. 294.23 Crores) were far in excess of the Appellant's Total Investments (Rs. 133.67 Crores).

(3) The learned AO-DRP erred in holding that a part of the Appellant's borrowed funds had been used for the purpose of making Investments in shares, for the reason also that the learned AO-DRP has not brought on record any material establishing any nexus between any part of the Appellant's borrowed funds and the funds utilized by the Appellant to make such investments.

(4) The learned AO-DRP erred in rejecting the Appellant's alternative claim to the effect that the amount disallowed under Section 14-A was allowable under Section 37(1).

(5) The learned AO-DRP erred in rejecting the Appellant's alternative claim to the effect that the amount disallowed under Section 14-A was allowable under Section 57(iii).

(6) The learned AO-DRP erred in holding that a part of the aggregate Interest of 11,44,02,081 paid by the Appellant in respect of capital borrowed by the Appellant for the purposes of its business was disallowable under Section 14-A.

(7) The learned Commissioner (Appeals) erred in rejecting the Appellant's alternative claim to the effect that, if at all any amount was disallowable under Section 14-A, an amount of 6,74,768, representing the interest apportionable to the exempt income in the same proportion that the gross exempt income by way of dividends received bore to the total gross revenue of the Appellant, ought to have been adopted, having regard to the fact that such manner of apportionment had received the seal of approval of the Supreme Court in Consolidated Coffee Ltd v State of Karnataka (2001) 9 SCC 720.

2.5. Without prejudice to the foregoing grounds, the Appellant submits that the learned AO-DRP erred in applying Rule 8-D to the Appellant's case, without having been dissatisfied with the correctness of the claim of the Appellant in respect of its expenditure by way of Interest in relation to income which did not form part of the total income under the Income-tax Act, 1961.

2.6. Without prejudice to the foregoing grounds, the Appellant submits that, assuming (whilst denying) that the provisions of Rule 8-D were properly applied to its case, the learned AO-DRP erred in the following respects in such application, viz.:

(1) The learned AO-DRP erred in rejecting the Appellant's alternative claim to the effect that the learned AO-DRP ought to have excluded the average cost of such of the Appellant's investments as were made on or before 31 March, 1999 ("Old Investments").

(2) The learned AO-DRP erred in rejecting the Appellant's further alternative claim to the effect that the learned AO-DRP ought to have excluded the average cost of such of the Appellant's investments as had not yielded any dividends during the year under consideration ("Non Dividend Yielding Investments").

(3) The findings of the learned DRP [in paragraph 19 (at page 6) and paragraph 20 (at page 7) of its Directions] to the effect that there is expenditure incurred in respect of the Appellant's investments by way of costs involving decision-making, direct supervision and funding, are based on conjectures and surmises and are unsupported by any evidence on record and, consequently, are perverse.

4. During the year under reference, the appellant has earned exempt income of Rs. 4, 52, 05,031/-. The appellant has not incurred any expenditure for earning the exempt income. The appellant's Owned Funds aggregated to Rs. 31,048.70 Lakhs which comprise of Share Capital amounting to Rs. 2,153.80 Lakhs and Reserves and Surplus amounting to Rs. 29,048.70 Lakhs. The Annual Accounts of the appellants are placed at Page 12 of the Paper Book (Corporate Grounds).

5 The value of total investments as on 31 March 2008 is Rs. 23,726.67 Lakhs. Attention is invited to page 56 of the Paper Book (Corporate Grounds), giving analysis of Investment of the appellant as at 31 March 2008 and 31 March 2007, specifically giving the details of actual cost of investments and such investments on which no exempt income is earned during the year under reference. It is submitted that only the actual cost (excluding revaluation thereof) of such investments which have yielded exempt income

should be taken into account. The appellant's funds are mixed funds. During the year under reference the company has incurred interest expenditure of Rs. 1144.02 Lakhs. The appellant submits that all the borrowed funds were utilized wholly for the purpose of its business and no part of such borrowings were utilized for acquisition of any shares yielding domestic dividends and consequently, no interest should be disallowed. Details of interest expenditure are mentioned at page 57 of the Paper Book (Corporate Ground).

6. It is submitted by the appellant that, for the purpose of section 14A, cost of only those investments have to be considered which have yielded exempt income during the year. (Working at Page 56 of Paper Book Corporate Grounds). The amount of investments on which exempt income is earned is as under:

Opening cost of investments (01/04/2007) - Rs. 2, 153.80 Lakhs

Closing cost of investment (31/03/2008) -Rs. 2,551.26 Lakhs

Average cost of investments - Rs. 2,352.53 Lakhs

7. The appellant's own funds aggregating to Rs. 31,048.70 Lakh are far in excess of amount of its cost of Investments which have yielded exempt income i.e Rs. 2352.53 Lakh (Average). Even otherwise, the total investments as at 31 Mach 2008 held by the appellant stand at Rs. 23,726.67 Lakhs, whereas own funds of the appellant as at 31.03.2008 stand at Rs. 31,048.70 Lakhs. Hence, it is submitted no disallowance should be made in respect of interest expenditure. The appellant places reliance on the following judicial

pronouncements, wherein it has been held that where the Appellant's own funds are in excess of investments then it should be presumed that the investments are made from the Own Funds and not from Borrowings, consequently disallowance u/s. 14A of the Act in respect of interest expenditure ought to be deleted.

(i) South Indian Bank Ltd vs. Commissioner of Income Tax 438 ITR 1 (SC) (09-09-2021) (Para 27 Page 51) (Page 45 to 51)

(ii) CIT vs. Reliance Utilities & Power Ltd [2009] 313 ITR 340 (Bom) (Page 52 to 55)

(iii) HDFC Bank Ltd vs. DCIT 383 ITR 529 (Bom. HC) (Page 56 to 68)

8. Alternatively and without prejudice to the above, it is submitted that interest expense of Rs. 1144.02 Lakhs includes interest aggregating to Rs. 1041.99 Lakhs which is in relation to (EPC) Export Packing Credit and Pre Shipment Credit in Foreign Currency incurred for the purpose of export/ import business of the appellant. The appellant is prohibited, under Reserve Bank of India's Regulations, from using any part of such credit for any purpose other than the appellant's export business. Hence, such interest has to be excluded while computing the amount of disallowance. The details of interest expenditure are submitted at Page 57 of Paper Book (Corporate Grounds).

9. The appellant submits that the disallowance under Rule 8D(2)(iii) may be restricted to 0.5% of only those investments which have yielded income i.e 0.5% of Rs. 2352.53 Lakhs which will come to Rs.11.76 Lakhs. The

appellant places reliance on decision of Special Bench in case of ACIT Vs. Vireet Investment Pvt. Ltd. (SB) (2017) 165 ITD 27 (Para 11.16 of the Order). (Page 69 to 99)

10. Considering the above facts, which are not under challenge, judicial pronouncements discussed and relied up-on (supra), it can be safely concluded relying on the decision of Hon'ble jurisdictional High Court in the case of *Reliance Utilities & Power Ltd. and HDFC Bank Ltd* wherein it has been held that where the Appellant's own funds are in excess of investments then it should be presumed that the investments are made from the Own Funds and not from Borrowings, consequently disallowance u/s. 14A of the Act cannot be made. Relying on *Reliance Utilities & Power Ltd. and HDFC Bank Ltd.,* there is no need to discuss alternative arguments raised by the assessee. As far as disallowance of 0.5% on average investment amounting to Rs. 11.76 lakhs is concerned, it is found there is no specific finding or working has been done by the AO and Ld. DRP, hence same need not be sustained here also. **In view of the above, ground no. 2 raised by the assessee is allowed and AO is directed to delete the same.**

> *3.1. The learned AO-DRP erred in making an addition of Rs. 9,29,30,250/- to the Total Income returned by the Appellant, as and by way of a Transfer Pricing Adjustment in respect of the non-recovery by the Appellant from its concerned Associated Enterprises ("AEs" or "AE"), of fees or commission allegedly payable by such AEs to the Appellant for the issue of Letters of Comfort by the Appellant to the Bankers of such AES.*
>
> *3.2. Without prejudice to the foregoing ground, and assuming whilst denying that any Transfer Pricing Adjustment was required to be made to the Total Income returned by the Appellant in respect of the Appellant's non-recovery of any fees or*

commission from its concerned AEs, the Appellant submits that the "commission" determined by the learned AO-DRP as recoverable by the Appellant from its concerned AEs ought to have been computed,

(1) not with reference to the value of the relevant LOC, but with reference to the sanctioned credit limit actually utilised by the concerned AE and, (iii) in any event, at least with reference to the sanctioned credit limit.

3.3. The Appellant submits, without prejudice to the foregoing ground, and assuming whilst denying that any Transfer Pricing Adjustment was required to be made to the Total Income returned by the Appellant in respect of the Appellant's non-recovery of any fees or commission from its concerned AEs, that bank guarantee commission is not the appropriate benchmarking tool for determining the arm's length price of the "Income" accruing to the Appellant from the issue of each of the LOCs aforesaid.

3.4. without, prejudice to the foregoing grounds, and assuming whilst denying

(1) that any Transfer Pricing Adjustment was required to be made to the Total Income returned by the Appellant in respect of the Appellant's non-recovery of any fees or commission from its concerned AEs and

(i) that the rates of bank guarantee commission charged to the Appellant by its Bankers are relevant for making any such Adjustment, the Appellant submits that, having regard to the fact that the rates of such bank guarantee commission ranged from 0.30% per annum to 2.0% per annum [Paragraph 57, at Page 19 of the learned DRP's Directions), it is the lowest of those rates, i.e., 0.30% per annum, which ought to have been applied in making any such Adjustment.

3.5. Without, prejudice to the foregoing grounds, and assuming whilst denying that any Transfer Pricing Adjustment was required to be made to the Total Income returned by the Appellant in respect of the Appellant's non-recovery of any fees or commission from its concerned AEs, the Appellant submits that,

(i) if the dividend paid to the Appellant by the concerned AE was equal to or in excess of the value of any benefit(s) allegedly enjoyed by such AE consequent to the issue by the Appellant to the Bankers of such AE of any LOCs, no such Transfer Pricing Adjustment ought to be made and,

(ii) If the dividend paid to the Appellant by the concerned AE was less than the value of any such alleged benefit(s), then it is only the excess of such alleged benefit(s) over such dividend which ought to be determined as the Transfer Pricing Adjustment.

11. This ground relates to the transfer pricing adjustment made with respect to the Letter of Comfort issued by the Appellant. As per TPO, the transaction of

providing Letter of Comfort would fall within the ambit of the term 'international transaction' u/s. 92B of the Act. The Letter of Comfort given by the Appellant is held to be guarantee. On the basis of information received from various banks, the TPO held that the fees receivable by the Appellant from its AEs for providing the Letter of Comfort ought to be 3% of the total funding facility covered by the Letters of Comfort.

12. As per Ld. DRP Letter of Comfort is similar to a letter of guarantee and it is an international transaction. The rate at which fees ought to be received by the Appellant from its AEs for providing the Letter of Comfort was reduced from 3% to 1.50%. As per assessee the Letter of Comfort given by the Appellant in the earlier years has continued during the year under consideration. No fresh Letter of Comfort has been issued for the current year. A summary of them including copies thereof are at Page 32 to 49 of Paper Book Volume -2.

13. This issue is covered in favour of the Appellant by the decision of the Hon'ble ITAT in its own case for the A.Y. 2005-06 (bearing ITA No. 4376/Mum/2010 dated 29 January 2020). A copy of the said decision was submitted before the Bench during the course of hearing on 24 January 2024 (refer para Nos. 19 to 24 on page nos. 31 to 36 of the order) and is enclosed herewith at page 21 to 38 for ease of reference. The relevant extracts of the said decision are reproduced hereunder:

> *"The Id. CIT()A) after considering the submission of assessee concluded that by issuing Letter of Comfort to the Bankers of AE, the assessee did not incurred any cost. The issuance of Letter of Comfort by assessee have no bearing on the profit, income or loss as the assessee did not incur any cost or expenditure for issuing such Letter of Comfort and it does not constitute international transaction under section 92B of the Act. The Id. CIT (A) concluded that there is a fundamental gap between guarantee and Letter of Comfort.*

Guarantee is a legally enforceable; however, Letter of Comfort is not. We have noted that Hon'ble Karnataka High Court in United Braveries (Holding) Ltd. vs. Karnataka State Industrial Investment and Development Corporation (supra) held that Letter of Comfort merely indicates the appellant's assurance that respondent would comply with the term of financial transaction without guaranteeing performance in the event of default. The co-ordinate bench of Tribunal in India Hotels Co. Ltd. (supra) on similar ground of appeal by following the decision of Hon'ble Karnataka High Court held that Letter of Comfort does not constitute international transaction. So far as contention of Id. DR for the revenue that after amendment in Explanation to section 92B is concerned, we have noted that co-ordinate bench in SIRO Clinpharm P. Ltd. (supra) held that amendment in Explanation to section 92B by Finance Act, effective from 01.04.2012 is to be treated as effective at the best from A.Y. 2013-14. Thus, in view of the aforesaid discussion, we do not find any illegality or infirmity in the order passed by Id. CIT (A). In the result, Ground No. 6 to 9 (additional ground) of assessee's appeals are allowed and consequently the grounds of appeal raised by revenue are dismissed."

14. Similar view has been taken by the coordinate bench again in the Appellant's own case for the A.Y. 2007- 08 vide Order dated 30 November 2023 (bearing ITA No. 6753/Mum/2012). A copy of the said decision was also handed over to the Bench during the course of hearing on 24 January 2024 (refer para Nos. 11 to 13 on page nos. 07 to 11 of the order) reproduced herein below as under:

"11. The brief facts are that the Assessing Officer has made addition of Rs.5,75,38,800/- on account of transfer pricing adjustment in respect of non-recovery by the assessee from its AE and the issue of letter of credit holding that assessee has not charged any commission from the AE. The ld. CIT (A) has deleted the said adjustment after observing and holding as under:-

9.4 I have considered the facts of the case and written submissions and oral arguments of the appellant advanced during the course of the appeal as against the observations/findings of the TPO/AO in their orders. The contention of the appellant are being discussed and decided as under:

i. The international transactions of the appellant were analyzed by the TPO during proceedings. The TPO examined in detail the international transactions of the appellant referred to by the AO and proposed no further adjustment to the value of arm's length price of international transactions benchmarked by the appellant in its TP documentation. In respect of the LOCs issued by the appellant to its AEs, the TPO

selected Comparable Uncontrolled Price method ("CUP") as the most appropriate method for determining the arm's length price of this transaction and in determining the price, the TPO mentioned that Indian bank charged a fee ranging from 0.25% to 15% of the value of guarantee given to its customers depending upon the risk involved.

The TPO proceeded to determine the arm's length commission to be 50% of 1.5% at 0.75%. Based on this the TPO proposed an adjustment of Rs. 5, 75, 38,800/- be made to the total income of the appellant. The adjustment was computed on the value of the LOCs issued by the appellant to its AE's as against the actual draw down of funds from the bank by the AE's.

ii. The AO under Section 143(3) of the Act passed the assessment order in conformity with the addition proposed by the TPO incorporating the proposed addition of Rs. 5,75,38,800/- to the returned income of the appellant.

iii. The appellant has filed detailed submissions distinguishing a letter of comfort with intra-group credit guarantees together with other related issues.

iv. In view of the facts of the case and position of letter of comfort 1 am not inclined to treat letter of comfort (LOC) at par with intra-group credit guarantees or equivalent to guarantees as averred by the TPO. The reasons for this are summarized as under

a) the LOC is a unilateral letter issued by the appellant and does not constitute an agreement or contract It is not accepted by the Banker to whom it has been issued,

b) it is not enforceable by law as in an event where the AE were to default in respect of the loan given to it by its Banker, the Banker has no legal recourse to the appellant in respect of the LOC issued;

c) again if the appellant were to dispose of its shares in the AE(s) without first obtaining the consent of the Banker or having ensured that the AE's liability to the bank is discharged in full no legal recourse is available to the banker against such dilution or disposal; and

d) as the very title of the LOC suggests, the LOC merely provides comfort to the Bank as to the AE's ability / willingness to perform its obligations and neither creates nor is intended to create any kind of binding recourse which the Banker may have on the appellant.

v. Moreover, it is an incidental benefit arising merely from passive association with the group and are therefore not regarded as giving rise to arrangements subject to

remuneration. Para 7.13 of OECD Guidelines, July 2011 deal with the issue which is reproduced hereunder:

> *"Similarly, an associated enterprise should not be considered to receive an intra-group service when it obtains incidental benefits attributable solely to its being part of a larger concern, and not to any specific activity being performed. For example no service would be received where an associated enterprise by reason of its affiliation alone has a credit-rating higher than it would if it were unaffiliated, but an intra-group service would usually exist where the higher credit rating were due to guarantee by another group member, or where the enterprise benefited from the group's reputation deriving from global marketing and public relations campaigns. In this respect, passive association should be distinguished from active promotion of the MNE group's attributes that positively enhances the profit-making potential of particular members of the group. Each case must be determined according to its own facts and circumstances."*

vi. Appellant vide its letter dated 23.08.2012 has submitted that it does not press ground No. 6C(ii) which is in respect of comparable data for benchmarking and accordingly the appellant would not like to press ground No. 6C(ii) of appeal However in view of the position above such letter filed by the appellant becomes in consequential

vii. In view of the facts of the case, discussion herein above and consistent with the decision taken by my predecessor for A.Y. 2005-06 and by me for A.Y 2006-07 in the appellant's case, the adjustment of Rs. 5,75,38,800/- is therefore deleted.

viii Thus, this ground of appeal is allowed.

12. We find that the Tribunal in A.Y.2005-06 has decided this issue in favour of the assessee after observing as under:-

> *Ground No.6 to 9 relates to Transfer Pricing Adjustment with respect to issuance of "Letter of Comfort". This issue is interconnected with the grounds of appeal raised by revenue in its cross appeal. The Id. AR of the assessee submits that Id. CIT (A) deleted the adjustment against which the revenue has filed its cross appeal. The Id. AR of the assessee submits that the assessee issued Letter of Comfort to Bankers of Associated Enterprises (AE) of assessee. The assessee not reported this transaction (issuance of Letter of Comfort) in its Transfer Pricing Study Report (TPSR). The Assessing Officer made reference to Transfer Pricing Officer (TPO) for computation of Arms Length Price (ALP) of transaction reported by assessee with its AE in its report furnished under Form 3CEB. The TPO noted that the assessee has not reported about issuance of Letter of Comfort to the Banker of AE. The TPO issued show cause notice for determination of ALP with regard to issuance of Letter of Comfort. The assessee filed its reply vide reply dated 07.01.2008 & 18.01.2008. In*

reply to the show-cause, the assessee submitted that no adjustment is ought to be made as Letter of Comfort would not represent international transaction within the meaning of section 92B (1). It was further stated that merely an unequivocal statement of intention expressed by assessee not being bilateral, is not a transaction and letter is a private affair between the assessee and the lender/banker (non associate and is not a transaction between two associate). The contention of assessee was not accepted by TPO by taking view that transaction relating to provision for Letter of Comfort and payment of commission for the services by AE to the assessee would fall within the definition in term of international transaction 92B of the Act. The TPO made adjustment of Rs. 8.70 crore on account of issuance of Letter of Comfort. The Id. CIT (A) after appreciating the contention of assessee concluded that issuance of Letter of Comfort does not constitute an international transaction. The Id. CIT (A) appreciated the difference between corporate guarantee and Letter of Comfort. The Ld. AR further submits that there is a basic difference between corporate guarantee and Letter of Comfort. In a Letter of Comfort, the party issues only a letter that a subsidiary or group company would comply term of financial transaction and have no obligation to indemnify, however, in case of corporate guarantee, the party issuing guarantee is under obligation to the lender. The Ld. AR further submits that in fact this ground of appeal is also covered by the decision of Tribunal in case of The India Hotel Company Ltd. vs. DCIT in ITA No. 9087/Mum/2010 dated 06.09.2019, wherein similar ground of appeal was considered and by following the decision of earlier years in that assessee and decision of Hon'ble Karnataka High Court in United Braveries Holding Ltd. Karnataka State Industrial Investment and Development Corporation Ltd. (M.F.A. No. 4234 of 2007 (SFC), wherein it was held that Letter of Comfort merely indicates the parties assurance that respondent would comply with the term of financial transaction without guaranteeing performance in the event of default.

13. since in the earlier year this precise issue has been decided in favour of the assessee, therefore, as precedence, following the aforesaid decision, we uphold the order of the ld. CIT (A) and consequently grounds raised by the Revenue are dismissed.

15. Since in the earlier assessment years namely 2005-06, 2006-07 and 2007-08 issue has been discussed and examined by the Coordinate Benches and revenue is not able to bring anything adverse on record to deviate from the earlier views, we respectfully follow the decisions of Coordinate Benches in earlier years and allow the ground taken by the assessee. **In the result, AO is directed to delete the addition made on this count.**

4.1. The learned AO-DRP erred in making an addition of Rs. 20, 79,633/- to the Total Income returned by the Appellant, as and by way of a Transfer Pricing Adjustment in respect of the rate of interest charged by the Appellant from some of its AEs for the extended period agreed to between the Appellant and such AEs for remittance by such AEs to the Appellant, of the sale proceeds of exports made by the Appellant to such AEs.

4.2. without prejudice to the foregoing ground, and assuming whilst denying that any Transfer Pricing Adjustment was required to be made to the Total Income returned by the Appellant in respect of the rate of interest charged by the Appellant from its said AEs, the Appellant submits that such rate –

(1) Ought to be charged from the perspective of the persons availing the credit (viz., the said AEs) and

(ii) Ought to be based on rates applicable to the currency in which the credit was extended [e.g. the London Inter-Bank Offered Rate (LIBOR) and not on the Indian Prime Lending Rate (Indian PLR)

16. Ground No. 4, Transfer Pricing adjustments in respect of interest of Rs. 20, 70,633/- on delayed realisation of sales proceeds from its AEs. This ground relates to the transfer pricing adjustment vis-à-vis imputing interest on delayed realisation of sale proceeds from its AEs. The Appellant charged interest at the rate of 6% on the realisation of sale proceeds from its AEs for the entire credit period extended to the AEs of 150/180 days. The TPO held that interest chargeable by the Appellant on the outstanding balances should be at par with the Prime Lending Rate ('PLR') in India which according to him was 12.25% prevalent in the month of March 2008. The Ld. DRP confirms the view of TPO on the ground that the transaction originates in India and therefore the TPO has correctly applied the PLR of SBI.

17. As per assessee, Interest rate should be computed based on the interest rate applicable to the currency in which loan has to be repaid. Reliance in this regard is placed on the decision of the Delhi High Court in the case of CIT v/s.

Cotton Naturals India Pvt. Ltd. (2015) 231 Taxman 401 (Delhi), a copy whereof is enclosed herewith at Page 100 to 117. The PLR considered by the TPO primarily relates to lending in Indian currency and cannot be applied to amounts outstanding in foreign currency. The average LIBOR rate for the captioned year considered by the Appellant works out to 4.74% (refer page Nos. 18 to 31 of the paperbook-volume 2 filed on 15 November 2023) and the rate of interest charged by the Appellant is 6%, which is higher than the said LIBOR rate.

18. The dispute here is applicability of interest rate on amounts due from AEs is to be calculated based on PLR rate declared by RBI (being Central Bank of India where assessee is based) or LIBOR rate (as AE is based outside India). It's a legal issue and precisely the same issue has been dealt in by the Hon'ble Delhi High Court in the case of CIT-I vs. Cotton Naturals (I) (P) Ltd. [2015] 231 Taxmann 401 (Del.) and held as under:

> *"The question whether the interest rate prevailing in India should be applied, for the lender was an Indian company/assessee, or the lending rate prevalent in the United States should be applied, for the borrower was a resident and an assessee of the said country, must be answered by adopting and applying a commonsensical and pragmatic reasoning. The interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid. Interest rates should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. Interest rates applicable to loans and deposits in the national currency of the borrower or the lender would vary and are dependent upon the fiscal policy of the Central bank, mandate of the Government and several other parameters. Interest rates payable on currency specific loans/ deposits are significantly universal and globally applicable. The currency in which the loan is to be re-paid normally determines the rate of return on the money lent, i.e. the rate of interest. [Para 39]*
>
> *The methodology recommended by Klaus Vogel appears to be the reasonable and proper parameter to decide upon the question of applicability of interest rate. The loan in question was given in foreign currency i.e. US $ and was also to be repaid in the same currency i.e. US $. Interest rate applicable to loans granted and to be returned in Indian rupees would not be the relevant comparable. Even in India, interest rates on FCNR*

accounts maintained in foreign currency are different and dependent upon the currency in question. They are not dependent upon the PLR rate, which is applicable to loans in Indian rupee. The PLR rate, therefore, would not be applicable and should not be applied for determining the interest rate in the extant case. PLR rates are not applicable to loans to be re-paid in foreign currency. The interest rates vary and are thus dependent on the foreign currency in which the repayment is to be made. The same principle should apply. [Para 40]

The Chapter 10 of UN Transfer Pricing rightly stipulates that inter-company loans would require examination of the loan agreement, comparison of the terms and conditions of loan agreements, the determination of credit rating of the lender and the borrower, identification of comparable third party loan agreements and suitable adjustments should be made. In addition to the aforesaid factors, the comparability analysis should also take into account the business relationship and the functions performed by the subsidiary AE for the parent company. Normally there would be a difference between the lending rate and borrowing rate in each country. Some authors and writers suggest that the average or mid-point between the two should be taken. However, others like Klaus Vogel have suggested that economic purpose and substance of the debt-claim or debt for which granting of credit calls for the lending rate would be determinative. Thus, in case of a capital investment, the borrowing rate will apply, whereas in case of credit allowed to a customer on sale of goods, the lending rate would apply. We do not deem it necessary to enter into this controversy and express our view as regards the same. [Para 43]"

19. As the identical situation was there and analysed by the Hon'ble High Court (supra) and there is no argument advanced by the revenue to counter the same, we respectfully follow the same and confirmed the treatment on this issue given by the assessee. **In view of above, ground raised by the assessee is allowed and AO is directed to delete the addition made on this count.**

5. the Learned AO-DRP in disallowing expenditure aggregating Rs. 1, 74,544/-, by way of payments made to the Tata Public School, Devas Madhya Pradesh.

20. This ground of appeal is not pressed by the AR of the assessee, **hence the same is dismissed**.

6. the learned AO-DRP erred in disallowing expenditure aggregating 17, 76,270/-, by way of Additional Sales Tax paid.

21. This ground relates to disallowance of expenditure incurred by way of "Additional Sales Tax" amounting to Rs. 17,76,270/-. During the assessment proceedings, the appellant was asked to produce the orders passed by the concerned revenue authorities in respect of following amounts debited as Additional Sales Tax-Leather Division.

Nature or Purpose for which Expenditure incurred	Amount - Rs
ENTRY TAX PAID AFTER APPEAL ORDER 1999-2000	13, 97, 240
DEMAND AFTER ASSESSMENT ORDER 1999-2000 SALES TAX	2,40,000
APPEAL AGAINST ASSESSMENT ORDER 99-00 CENTRAL	1,39,030
Total	17,76,270

22. The appellant could not furnish the relevant orders and challans during the assessment proceedings and DRP Proceedings and hence the said Additional Sales Tax was disallowed by the Ld. AO. Since then, the appellant has been able to gather certain Orders/Challans and has filed the same before us as additional evidence vide letter dated 17th November 2023 with a request to admit the same. The appellant for admission of the above additional evidence and requests to give direction to the AO to grant relief after verifying that the said payment does not relate to any penalty but represents payment of demands raised in terms of the said Orders.

23. We have gone through the application for admission of additional evidence under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963. Assessee submitted appeal orders and challan in relation to additional sales tax liability (not

submitted earlier before the authorities below). We find the same is in order and complying with Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963. In view of above, this matter is restored to the file of the jurisdictional AO for verification and to examine the nature of payment made i.e. payment is not in the nature of penalty and the same is allowable as per law. In the result, this ground of assessee is allowed for statistical purposes.

> *7. the learned AO-DRP erred in disallowing expenditure amounting to Rs. 36, 32,040/-, by way of professional charges paid.*

24. This ground of appeal related to disallowance of amount of Rs. 36, 32,000/- paid by the appellant to M/s. Vaishnavi Corporate Communications Pvt. Ltd. During the year under reference the appellant made payment to M/s. Vaishnavi Corporate Communications Pvt. Ltd. in terms of agreement entered into by and between the appellant and M/s. Vaishnavi Corporate Communications Pvt. Ltd. for rendering Public Relations and Media related services. The appellant also submitted the invoices raised by the said party. However, the AO disallowed said expenditure for want of proof of services rendered.

25. The appellant had entered into an agreement with M/s Vaishnavi Corporate Communications Pvt Ltd. A copy of said agreement is placed at Page 73 to 83 of the Paper Book (Corporate Ground). Annexure A attached to said agreement (Page 83) describes the scope of work. In terms of the said agreement following services have been rendered to the appellant:

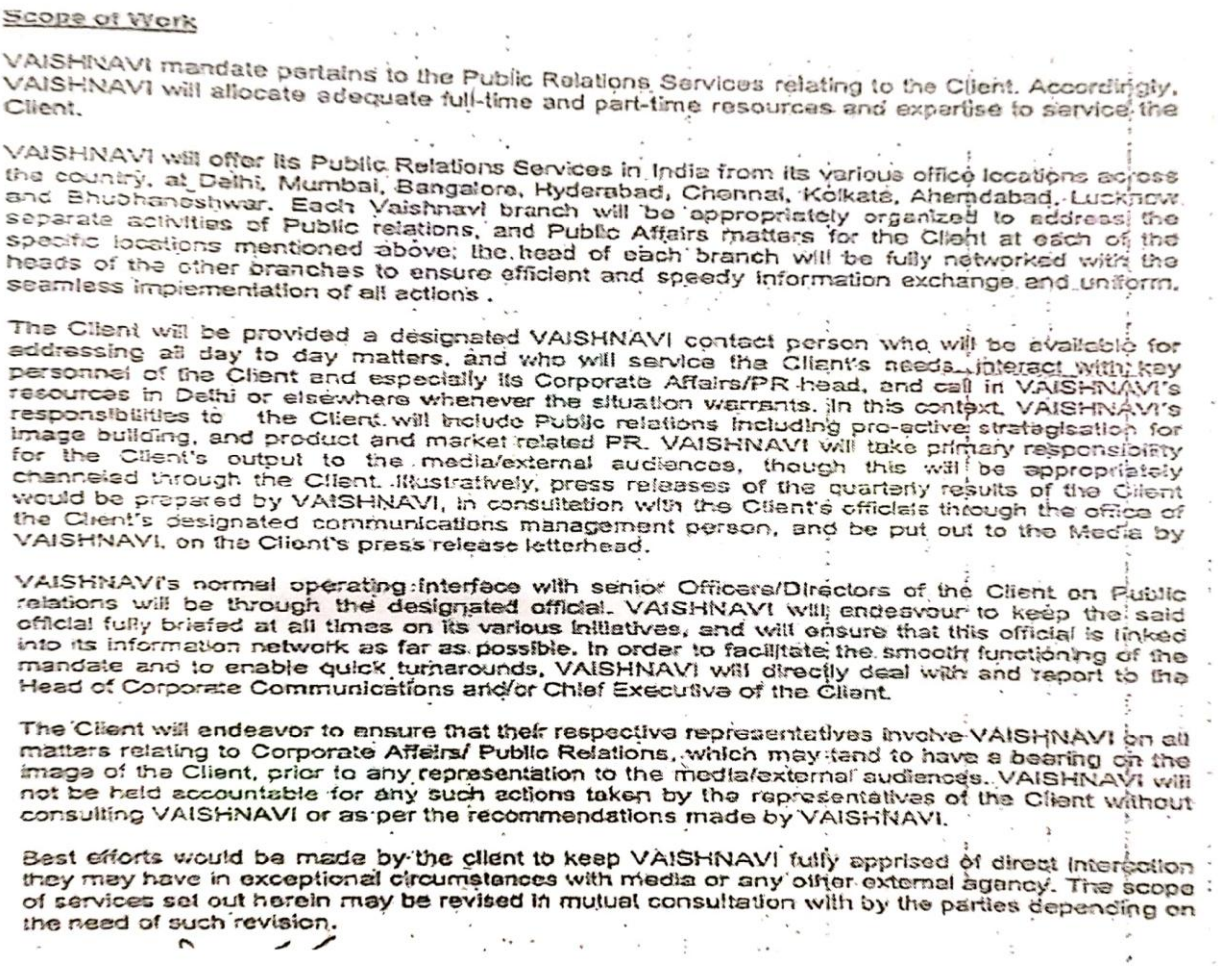
(i) Public Relation services in India from its various office locations across the country like Delhi, Mumbai, Chennai & Kolkata.

(ii) A contact person was made available to address all day-to-day matters and serve appellant's needs, interact with the Company's key personnel.

(iii) Responsibilities for public relations including proactive strategy sessions for image building and product & market related public relations.

(iv) Responsibilities for the appellant's output to the media/external audiences.

The Scope of work is reproduced hereunder:



Scope of Work

VAISHNAVI mandate pertains to the Public Relations Services relating to the Client. Accordingly, VAISHNAVI will allocate adequate full-time and part-time resources and expertise to service the Client.

VAISHNAVI will offer its Public Relations Services in India from its various office locations across the country, at Delhi, Mumbai, Bangalore, Hyderabad, Chennai, Kolkata, Ahemdabad, Lucknow and Bhubhaneshwar. Each Vaishnavi branch will be appropriately organized to address the separate activities of Public relations, and Public Affairs matters for the Client at each of the specific locations mentioned above; the head of each branch will be fully networked with the heads of the other branches to ensure efficient and speedy information exchange and uniform, seamless implementation of all actions .

The Client will be provided a designated VAISHNAVI contact person who will be available for addressing all day to day matters, and who will service the Client's needs, interact with key personnel of the Client and especially its Corporate Affairs/PR head, and call in VAISHNAVI's resources in Delhi or elsewhere whenever the situation warrants. In this context, VAISHNAVI's responsibilities to the Client will include Public relations including pro-active strategisation for image building, and product and market related PR. VAISHNAVI will take primary responsibility for the Client's output to the media/external audiences, though this will be appropriately channeled through the Client. Illustratively, press releases of the quarterly results of the Client would be prepared by VAISHNAVI, in consultation with the Client's officials through the office of the Client's designated communications management person, and be put out to the Media by VAISHNAVI, on the Client's press release letterhead.

VAISHNAVI's normal operating interface with senior Officers/Directors of the Client on Public relations will be through the designated official. VAISHNAVI will endeavour to keep the said official fully briefed at all times on its various initiatives, and will ensure that this official is linked into its information network as far as possible. In order to facilitate the smooth functioning of the mandate and to enable quick turnarounds, VAISHNAVI will directly deal with and report to the Head of Corporate Communications and/or Chief Executive of the Client.

The Client will endeavor to ensure that their respective representatives involve VAISHNAVI on all matters relating to Corporate Affairs/ Public Relations, which may tend to have a bearing on the image of the Client, prior to any representation to the media/external audiences. VAISHNAVI will not be held accountable for any such actions taken by the representatives of the Client without consulting VAISHNAVI or as per the recommendations made by VAISHNAVI.

Best efforts would be made by the client to keep VAISHNAVI fully apprised of direct interaction they may have in exceptional circumstances with media or any other external agency. The scope of services set out herein may be revised in mutual consultation with by the parties depending on the need of such revision.

26. The appellant has explained the nature of services rendered and has submitted the agreement alongwith copies of invoices raised by the said party for monthly retainer ship fees. Alternatively, and without prejudice to the above, the

arrangement was for rendering of services as "Retainer" and therefore, it is submitted that it is not necessary for the appellant to show that commensurate services had been rendered. A similar issue had been considered by Hon'ble ITAT Mumbai in case of appellant's group company viz. M/s Tata Sons Pvt Ltd for Assessment Year 2009-10 in ITA No. 4637/Mum/2016. A copy of said order was handed over at the time of hearing and is enclosed herewith at Page 118 to 142 for ease of reference. The relevant para and observation of the said order is reproduced hereunder:

> *"The Id. AO further concluded that both these transactions are not meant for the purpose of assessee's business and since, assessee had not produced the details of specific services rendered by VCCPL for which the alleged media relation fees was paid, he proceeded to disallow this sum of Rs. 12, 66, 38,000/- as expenditure incurred not for the purpose of business of the assessee in the assessment"*

27. Para 7.6 on Page 19 where in name of appellant is also appearing:

> *"We have already gone through the agreement entered by the assessee company with VCCPL dated 21/11/2006 referred to supra wherein in Annexure-A, the following are the list of companies that are listed out as belonging to Tata Group of companies which are covered within the ambit of this agreement:-*

- *Tata companies*
- *The Tata companies are substantively those that have signed the TATA Brand Equity and Business promotion agreement with TSL.*
- *Key companies (including their operating divisions and subsidiaries) are:*
- *Tata Sons Limited and the Tata Trusts*
- *Tata Industries Limited*
- *The Tata iron and Steel Co. Ltd.*
- *Tata Motors Ltd.*
- *The Tata Power Co. Ltd.*
- *Tata Chemicals Ltd.*
- *The Indian Hotels Co. Ltd.*
- *Tata Tea Limited*
- *Tata Consultancy Services Ltd.*
- *Tata Teleservices Limited including Tata Teleservices (Maharashtra) Ltd.,*
- *Videsh Sanchar Nigam Limited*

- *Rallis India Limited*
- *Tata Elxsi Limited.*
- *Voltas Ltd.*
- *Tata Coffee Ltd.*
- *Trent Ltd.*
- *Titan Industries Ltd.*
- *CMC Limited*
- *Tata International Limited*
- *Tata Autocomp Systems Ltd."*

Page 21 of the order:

"Since, the assessee having made investments in various group companies would certainly like to have a unified media focus for the entire Tata group and since VCCPL is a company which has got the necessary expertise of providing such services, the assessee had entered into the agreement dated 21/11 / 2006 with them and has made payments of Rs. 12.66 Cores towards media relation agency fees. We also find that similar services were rendered by VCCPL to the assessee in earlier years as well as in subsequent years which were duly allowed as deduction by the Revenue as under:"

Para 7.8 of the order:

"Hence, in view of the aforesaid observations and applying the principle of consistency as has been held by the Hon'ble Supreme Court in the case of Radhasoami Satsang reported in 193 ITR 321 (SC), in allowing such claim to the assessee in earlier as well as in subsequent years, we hold that there is absolutely no case made out by the revenue for disallowing this sum of Rs. 12.66 Crores during the year under appeal. Hence, the ground No.5 raised by the assessee is allowed and ground No.3 raised by the revenue is dismissed."

28. The appellant has also incurred similar expenses in earlier years wherein no disallowances were made. We also give here below the year wise amounts paid to M/s Vaishnavi Corporate Communications Pvt. Ltd. and whether allowed/disallowed by AO in the Assessment Order.

Sr. No.	Assessment Year	Amount	Remarks
1	2006-07	23,72, 232	No Disallowance
2	2007-08	27, 67, 812	No Disallowance
3	2008-09	36, 32000	Disallowed
4	2009-10	29,88,367	Disallowed
5	2010-11	38,76,282	Disallowed
6	2011-12	21, 6000	No Disallowance

Considering the above decision where the facts remained the same, it is submitted that the disallowance made by the AO in respect of payment made to M/s Vaishnavi Corporate Communications Pvt Ltd of Rs. 36, 32,000/- may be deleted.

29. It will be appropriate at this juncture to reproduce the findings of AO and Ld. DRP on the issue as under:-

"Para 5.7, page 11 (assessment order)
5.7 Legal and Professional charges: - Statement No.8:

A) Mumbai Office

During the course of assessment proceedings, the assessee was required to furnish details of the legal and professional charges. On perusal of statement of Mumbai office, it was observed that Assessee Company had made payment of Rs. 36, 32,040/- to M/s. Vaishanvi Corporate Communication Pvt Ltd. (VCCPL). The assessee was required to explain the business requirement of the above amount of Rs.36, 32,040/- paid to VCCPL. The assessee submitted following details vide letter dated 12th December 2011 in respect of services rendered by M/s. Vaishnavi Corporate Communication to assessee.

(i) Public Relation services in India from its various office locations across the country like Delhi, Mumbai, and Chennai & Kolkata.
(ii) A contact person was made available for addressing all the day to day matters and serves our needs; interact with the Company's key personnel.
(iii) Responsibilities for public relations including proactive strategy session for image building and product & market related public relations.
(iv) Responsibilities for our output to the media / external audiences.

The submissions of the assessee were considered. On perusal thereof, it was seen that the assessee has failed to establish rendering of service to VCCPL for which the amount in question was paid to it. In spite of repeated reminders, Assessee Company did not produce any supporting papers of evidencing the rendering of the service by them to the assessee. M/s. VCCPL In view of this, it was held that the assessee has failed to establish the business connection of the service involved and rendering of the service itself so as to claim the same by way of expenditure in the books of accounts maintained for the year.

DRP's Directions Pages 10 to 12, Paras 30 to 33

The DRP has rejected the assessee's ground of objection on this issue (Pages 11 to 12, Para 33). In view of this, the amount of Rs. 36, 32,040/- paid to M/s VCCPL is disallowed and added to the income of the assessee.

Objection 8

Proposed Disallowance out of Expenditure by way of Professional Charges Paid

30. During the year under consideration, the Assessee had incurred expenditure in a sum of Rs 36,32,040/-, representing fees paid to Vaishnavi Corporate Communications Pvt. Ltd. ("VCCPL"), for Media and Public Relations Services. Upon being required by the Id AO to furnish details of the said sum, the Assessee submitted to the Id AO that VCCPL had provided to it, the following services:

(i) Public Relations services in India from its various office locations across the country like Delhi, Mumbai, Chennai & Kolkata.

(ii) A contact person was made available for addressing all the day to day matters and serves the Assessee's needs; interact with its key personnel.

(iii) Responsibilities for public relations including proactive strategy sessions for image building and product and market related public relations.

(iv) Responsibilities for the Assessee's output to the media/external audiences.

31. The Assessee also furnished to the Id AO, a copy of its Media and Public Relations Services Agreement with VCCPL, which was valid for the period 1st November, 2006 to 31st October, 2011 The Assessee submitted to the Id AO that the details given in the foregoing and the copy of the Agreement aforesaid evidenced that VCCPL had provided services to the Assessee for the running and enhancement of its business, and therefore, the sum of Rs 36,32,040/- ought to be allowed as business expenditure.

32. The Assessee submits that the Id AO's aforesaid findings are incorrect, for the following reasons:

(1) The Assessee submits that its Agreement with VCCPL establishes cogently that the fees paid by it to VCCPL were for valuable media and public relations services which aided and enhanced the Assessee's business and is, therefore, allowable as business expenditure.

(ii) The Assessee submits that it has cogently established the rendering of valuable services by VCCL to the Assessee, as would be manifest from its submissions to the Id AO reproduced above, as also from the terms of the Assessee's Media & Public Relations Services Agreement with VCCPL.

(iii) The Assessee submits that it has furnished to the Id AO, supporting documents by way of its Media & Public Relations Services Agreement with VCCPL and its submissions extracted above.

(iv) The Assessee submits that the documents and particulars furnished by it to the Id AO as aforesaid, cogently establish both the business connection of the service involved, as well as the rendering of the service itself.

Directions:

33. We have considered the submissions of the assessee, views of the AO and the material on record. The assessee has not submitted any substantial evidence regarding the services rendered. The only evidence is some reports which have been periodically received from the assessee. Simply because there is a contract does not mean that services have been rendered proportionate to the payment that has been made. Further, the assessee is a star trading house whose activity is mainly from exports. It is neither a consumer company, nor a hotel where public relation services are of significant importance, like the other group companies, viz. Indian Hotels etc. Similar agreements have been made with other companies also. In the case of Indian Hotels, the DRP in the earlier year had occasion to examine the expenditure on the same issue. It came to the definite conclusion that the assessee had not provided evidence regarding services rendered top justify the payments made. The DRP disallowed the payments in that case. We find that the facts & circumstances with regard t the payment made to the assessee company is similar. The evidence does not substantiate the payments made. In view of the above, we decline to interfere with the disallowance of payments made in Vaishnavi Communication. The ground is rejected."

30. We have gone through the submissions of the assessee alongwith the findings of AO and Ld. DRP. It is found that assessee is substantially failed to adduce any evidence of services rendered in the category of professional fee. We have gone through the contents of agreement also reproduced (supra), nowhere it looks like an agreement for rendering professional services. Assessee's argument that for earlier 2 years, the same expense was allowed and they are relying on the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang (supra) is not applicable here based on the facts of the case. Principle of consistency should have been followed as far as possible and permitted by the

facts of the case, but as the concept of res-judicata is also there, to be considered before any adjudication. Hence, in the present situation we also asked the AR of the assessee to substantiate the claim by placing on record any cogent evidence which confirms delivery of service by M/s. VCCPL. But at this stage also, assessee is substantially failed to substantiate its claim.

31. **In view of the above, we agreed with the directions of Ld. DRP discussed (supra) and ground raised by the assessee in the light of above discussion is dismissed.**

> *8. The learned AO-DRP erred in enhancing the "book profit" under Section 115-JB returned by the Appellant, by an amount of over line Rs. 1,65,35,000/- representing the disallowance under Section 14-A read with Rule 8-D made by them.*

32. Ground No. 8 Enhancing "book profit" under section 115JB of the Act by Rs. 1,65,35,000/- This ground relates to enhancing book profit" under Section 115-JB by the amount of the disallowance under Section 14-A read with Rule 8-D of Rs. 1, 65,35,000/-. The appellant's case is covered by the decision of Hon'ble Special Bench in case of ACIT vs. Vireet Investment Pvt. Ltd. (SB) (2017) 165 ITD 27 wherein, it has been held that the computation under clause (f) of Explanation 1 to section 115JB (2) of the Act is to be made without resorting to the computation as contemplated u/s. 14A of the Act read with Rule 8D of the Rules.

33. In view of the above, it is hold that no addition under clause (f) of Explanation 1 to section 115JB (2) of the Act is warranted and as hold (supra) that the appellant has not incurred any expenditure towards earning exempt income addition otherwise also cannot be made. In view of this AO is directed to delete

the addition of Rs. 1, 65, 35,000/- made u/s. 115JB of the Act. **Ground raised by the assessee is allowed.**

> *9. The learned AO erred in charging from the Appellant, an amount of 2,77,01,822/-, as "Amount already refunded", having regard to the fact that no amount whatsoever has ever been refunded to the Appellant in respect of the year under consideration.*
>
> *10. The learned AO erred in charging from the Appellant, an amount of 67,32,000, as "Additional Income Tax and Interest Payable on Distributed Profits", having regard to the fact that the Tax on Distributed Profits payable under Section 115-0 during the year under consideration, viz., 67,98,000 (representing 16.995% of the Dividend of 4,00,00,000 paid by the Appellant for the year ended on 31st March, 2007) had been paid by the Appellant on 19th September, 2007.*
>
> *11. The learned AO erred in charging from the Appellant, an amount of 29,08,689, as "Interest U/s 244A", having regard to the fact that no amount under Section 244-A whatsoever has ever been paid to the Appellant in respect of the year under consideration.*

34. Ground 9 mentioning amount of Rs. 2, 77, 01,822/- as amount already refunded. In the computation sheet attached to the Assessment Order, the AO has mentioned that amount of Rs. 2, 77, 01,822/- has been refunded to the appellant. The appellant has not received any refund for the Assessment Year under reference. A copy of Indemnity Bond filed with the Ld. AO is enclosed herewith. (Pages 143 & 147). In view of the above, the appellant requests to give necessary direction to grant relief after verification.

35. Ground 10, charging an amount of Rs. 67, 32,000/- as additional tax payable on account of dividend distribution tax. The AO in the computation sheet attached with the Assessment Order has computed an amount of Rs. 67, 32,000/- as payable by the appellant as additional tax on account of distribution of the dividend. The appellant during the year under reference distributed dividend of

Rs. 4,00,00,000/- and has paid dividend distribution tax of Rs. 67,98,000/- on the same on 19th September 2007. The said details are duly reflected in the Income Tax Return filed by the appellant and Tax Audit Report for the year under reference. Relevant extract of Income Tax Return and Tax Audit Report are enclosed herewith. (Page 148 to 147). In view of the above, the appellant requests to give necessary direction to grant relief after verification.

36. Ground 11, Recovering interest u/s. 244A of the Act of Rs. 29, 08,689/-, though the same was not received by the appellant. As mentioned above in Ground No 9, the appellant has not received any refund for the year under reference and accordingly have not received interest u/s. 244A of the Act. In view of the same the appellant requests to give necessary direction to grant relief after verification.

37. We have gone through the grounds raised by the assessee i.e. ground no. 9, 10 & 11. As the issues are not require any adjudication from our side, but as the same has to be disposed of by the revenue thorough Field Officer as amount involved are substantial and non-receiving of the same or wrong charging in computation sheet is certainly prejudicial to the interest of assessee. Issues involved in grounds nos. 9, 10 & 11 are restored to the file of jurisdictional AO and direct the AO to verify the relevant documents to be submitted by the assessee and resolve the matter as per law within 3 months from the end of the month in which our order is being received. **In view of above, ground nos. 9, 10 & 11 are allowed for statistical purposes.**

38. with above directions, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 6th of February 2024.

Sd/-	Sd/-
(AMIT SHUKLA)	(GAGAN GOYAL)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 06/02/2024

Sr. PS (Dhananjay)

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai