



IN THE INCOME TAX APPELLATE TRIBUNAL

"J" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND

SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER

ITA no.2924/Mum./2019
(Assessment Year : 2014-15)

Jt. Commissioner of Income Tax
Circle-8(1)(1), Mumbai

..... Appellant

v/s

Reliance Life Sciences Pvt. Ltd.
R-282, Dirubhai Ambani Life Science
Centre, Thane Belapur Road, Ravale
TTC Area of MIDC, Mumbai 400 701
PAN - AABCR7594L

..... Respondent

Revenue by : Shri Vatsalya Saxena
Assessee by : Shri Nimesh Vora

Date of Hearing – 26.07.2021

Date of Order – 8.9.2021

ORDER

PER S. RIFAUH RAHMAN, A.M.

The captioned appeal has been filed by the Revenue challenging the impugned order dated 27th February 2019, passed by the learned Commissioner (Appeals)-57, Mumbai, pertaining to the assessment year 2014-15.

2. In the present appeal, the Revenue has raised inasmuch as 33 grounds, however, only two issues arose out of these grounds viz., (i) disallowance of ₹ 95,19,605, under section 14A of the Act and (ii)

disallowance of transfer pricing adjustment of ₹ 4,18,52,115, as interest charged on the assessee's investment said to be capital surplus of \$ 1,21,21,437 (₹ 75.14 crore) in its A.E. – RSL Inc., USA. For better clarity, the grounds raised by the Revenue are reproduced below:–

"Ground no.1: Disallowance u/s 14A amounting to ₹ 95,19,605/-

- 1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in disallowing a sum of Rs. 95,19,605/- u/s. 14A of the IT Act read with rule 8D(2) of the Income Tax Rules 1962.*
- 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting interest charged on loan by considering it as share capital issued without appreciating that share capital was issued on last day of F.Y. 2013-14 and throughout the year it was outstanding as loan in the books of AE.*
- 3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the self-serving agreement between the related parties for not charging interest on optionally convertible loan is to be ignored in terms of section 92F(ii), as the assessee failed to show any comparable cases in which interest has not been charged under uncontrolled circumstances.*
- 4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the TPO has recharacterised the transaction, whereas the transaction remained as loan only throughout the year but for the last day and failed to note that the assessee only recharacterised the loan as share application money.*
- 5. On the facts and in the circumstances of the case and law, the Ld. CIT(A) failed to appreciate section 43 of the Companies Act 2013, wherein it is provided to charge interest at the rate of 12% per annum, even if it is treated as share application money, if shares are not allotted within 60 days of receipt of the money, to draw a reasonable parallel to charge interest at arm's length though the Act may not be applicable to the AE.*
- 6. On the facts and in the circumstances of the case and law, the*

Ld. CIT(A) erred in deviating from her predecessor's order for the A.Y. 2011-12 without citing any reasons.

7. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting interest charged on share application money by considering it as share capital issued without appreciating that share is capital was issued on last day of F.Y. 2013-14 and throughout the year it was outstanding as share application money in the books of AE.."

8. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the provisions of section 92F(ii) that no unrelated party at arm's length would keep such huge funds as share application money for such longer periods without any return and the whole transfer pricing study is to look in to the substance of the transaction removing the related-party-nature in controlled conditions.

9. On the facts and in the circumstances of the case and law, the Ld. CIT(A) failed to appreciate section 43 of the Companies Act 2013, wherein it is provided to charge interest at the rate of 12% per annum, if shares are not allotted within 60 days of receipt of the money, to draw a reasonable parallel to charge interest at arm's length though the Act may not be applicable to the AE.

10. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that conversion of share application money to share capital on last day of financial year does not provide immunity to assessee from charging interest for the whole year.

11. On the facts and in the circumstances of the case and law, the Ld. CIT(A) erred in deleting the TP adjustment by stating that recharacterisation of transaction is unjustified without appreciating that this case falls in exception as laid down by decision of Hon'ble Delhi High Court in case of CIT vs. EKL Appliances Ltd. as shares were issued on last day of financial year and till march it was in the name of share application money in the books of accounts of assessee."

Ground No. 2 Transfer Pricing Issue:-

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the TP adjustment of Rs.4,18,52,115/- as interest charged on the assessee's investment said to be capital surplus of \$1,21,21,437(Rs.75.14 crores) in its AE - RLS Inc, USA?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in not appreciating the cloudy nature of the transaction that the said capital surplus was claimed to have been paid to the AE as premium on shares when there is no fresh issue of shares to the assessee and that the said premium was claimed to be paid on the existing shares which the assessee already owns?

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in not appreciating the facts that the amount now claimed as capital surplus is originally loan of \$39,25,717 plus share application money pending allotment of shares for quite a long period paid over FYs 2007-08 to 2010-11 of \$39,25,717, both of which have now been claimed to have been converted into "Capital surplus" on 30.03.2011 as premium on the existing shares which the assessee already owns in the AE?

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in failing to recognize the fact that premium on shares could be paid only at the time of allotment of shares and cannot be paid on already existing shares owned by the assessee in AE and so the transaction is shady in nature?

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in not appreciating the fact that the nature of amount \$1,21,21,437 (Rs.75.14 crores) is originally and subsequently loan only and the claim of converting it into premium on already existing shares is only a 'colourable device' to avoid taxation on the accrued interest on the amount?

6. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the TP adjustment by stating that recharacterisation of transaction is unjustified without appreciating that this case falls in exception as laid down in the decision of Hon'ble Delhi High Court in case of CIT vs. EKL Appliances Ltd.?

7. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the TP adjustment of interest on deemed loan/capital surplus kept with AE by relying on the decision of Bombay High Court in case of Vodafone India Service P. Ltd vide Writ Petition No. 871 of 2014 without appreciating the differentiating facts of the case involved and the case law quoted?

8. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in failing to appreciate that the above Vodafone India Service P. Ltd decision is not applicable in the instant case, as the surplus capital which is capital in nature has

not been treated as income here and that it has been treated as loan retaining its capital nature as such and that only interest has been charged and suggested as income in this case?

9. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is right in ignoring the amendment by way of Explanation (i)(c) inserted by Finance Act 2012, with retrospective effect from 1.4.2002 whereby the capital investment could be covered as an international transaction under "capital financing" and such transaction would yield accrued interest which is 'income' for the purposes of section 92(1), so as to be dealt under Chapter X of the Income tax Act?

10. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in ignoring the fact that the assessee has not furnished any detailed valuation report for the said premium claimed to have been paid on the existing shares owned in the AE?

11. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in over-looking the fact that though the sated shares should carry a return of dividend, the assessee has not accounted any such return which casts cloud on the real nature of the excess investment being interest free loan?

12. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in not ascertaining the exact nature of the investment, as the assessee took different stands terming it as 'capital surplus' and 'premium', whereas there is no change in the number of shares which the assessee held in the AE?

13. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in ignoring the fact that an excess amount of Rs. 75 crores has flown out of India in the garb of 'capital surplus' in the AE without any increase in the number of shares owned and without any return leading to base erosion in India, which cannot be an arm's length situation in uncontrolled circumstances as in Section 92F(ii)?

14. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) is correct in ignoring the very essence of transfer pricing as to whether unrelated enterprises under uncontrolled conditions would enter into such transactions paying excess amount of Rs. 75 crores for no return within the meaning of Section 92F(ii)?

15. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in not perceiving the intention of the

assessee in providing loans to the AE in the garb of capital surplus thereby avoiding tax liability on the interest?

16. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is correct in ignoring the economic substance of the excess transaction which is essentially loan though its external form is stated to be investment in capital surplus, as the basic tenet of transfer pricing is that the transaction is to be seen in uncontrolled circumstances in third party situation as per Section 92F(ii)?

17. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is correct in ignoring the fact that the assessee has entered into an "arrangement, understanding or action in concert" with its AE within the meaning of section 92F(v) whereby huge funds have flown out of India for no return, which no unrelated independent party would have done within the meaning of section 92F(ii), which in turn became possible because of the special relationship existed between the assessee and its AE?

18. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct failing to "look through" the "substance" of the transaction and instead "looked at" the superficial "form" of nomenclature of the transaction to arrive at the decision that the investment is capital surplus in nature whereas in substance it is "loan" in nature and that the nomenclature of capital surplus was used to avoid taxation of interest leading to base erosion in India?

19. Whether on the facts and circumstances of the case and in law, the CIT(A) is correct in ignoring the essential character of the capital surplus transaction is "loan" in "substance" which the assessee camouflages as 'share premium' in order to avoid tax liability on the interest that accrues coupled with the base erosion in India by shifting of huge amount of Rs.75 crores out of India without any return?

20. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is correct in ignoring the BEPS (Base Erosion and Profit Shifting) Action Plan 9 of which India is a party which mandates that transactions can be disregarded for TP purposes where they lack commercial rationality, as far as proper return on investments is concerned?

21. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in ignoring the BEPS Action Plan which emphasizes substance over form, economic reality over legal form and conduct of parties over contracts for evaluating a

transaction from transfer pricing angle?”

22. Whether on the facts and circumstances of the case and in law, the CIT(A) is correct in not realizing the fact that if such practices are allowed under transfer pricing unchecked without setting it right for arm's length return, it would lead to base erosion to this country as huge excess funds as in this case could be siphoned out of this country in the garb of alleged capital surplus/premium in AE, even though the actual character is essentially loan which should be earning interest, which again would be yielding tax revenue to this country?”

3. The first issue which arose out of grounds no.1 to 11 is disallowance of ₹ 95,19,605, under section 14A of the Act.

4. In the present case, the assessee is a Private Limited Company and leading in all life science initiatives such as pharmaceuticals and is engaged in the business of Scientific R&D in Biotechnology, etc. The assessee filed its return of income on 29th November 2014, declaring total loss at ₹ 88,99,83,213. The Assessing Officer during the assessment proceedings observed that the assessee has made investment in equity shares, which might yield exempted dividend income in future. He noticed that certain expenses relatable to such investments made have not been voluntarily disallowed by the assessee in its computation of income. He further noticed that the assessee might earn substantial exempt income by way of long term capital gains on sale of shares and dividend income. Since the assessee might earn exempt income and has incurred expenditure that might be relatable to such exempt income, the assessee was asked as

to furnish clarification regarding disallowance u/s. 14A and was asked to furnish working in accordance with the manner laid down in Rule 8D. In response, the assessee vide submissions filed on 26th September 2017, has made the following submissions:–

"During the year under consideration we have not earned any exempt income. Our investments held during the year do not give rise to exempt income, any income if earned thereon will be taxable. Hence, provisions of section 14A are not applicable."

5. The Assessing Officer considering the submissions of the assessee and other provisions of the Act as well relying upon certain case laws computed the disallowance under section 14A of the Act in accordance with the provisions of rule 8D, held that the assessee has not claimed any expenditure of administrative nature and there is no expenditure directly relatable to earning of exempt income. He held that the entire expenditure claimed is on account of interest only and hence the disallowance is required to be made in accordance with rule 8D(2)(ii) being proportionate interest on average value of investments. Accordingly, an amount of ₹ 95,91,605, was added to the total income of the assessee.

6. The learned CIT(A) deleted the disallowance made by the Assessing Officer by observing as under:–

"Decision

I have gone through facts of the issue and perused the materials available on record. It is undisputed that the assessee has made an investment of Rs.16259.36 lakhs in unquoted equity shares of various companies as mentioned in schedule "10" of the audited financials as on 31/03/2014 but the assessee has not received any income on the said investments during the year.

I have also perused the decision in the following cases:

(i) Pr. Commissioner of Income Tax -3 vs. M/s Ballarpur Industries Limited (Bombay High Court Income Tax Appeal No. 51 of 2016)

(ii) Cheminvest Ltd. v. Commissioner of Income-tax-IV (61 taxmann.com 118) (Delhi HC) wherein it was held that "there should be an actual receipt of income which is not includible in total income; hence, section 14A will not apply where no exempt income is received or receivable during relevant previous year".*

(iii) In case of Commissioner of Income-tax, Central 1, Chennai vs Chettinad Logistics (P.) Ltd [2017] 80 taxmann.com 221 (Madras)/[2017] 248 Taxman 55 (Madras), it was held that where no exempt income is earned in the previous year, relevant to the assessment year in issue, provisions of Section 14 A of the Act, read with Rule 8 D could not be invoked

(iv) Delhi High Court decision in case of Principal Commissioner of Income tax-04 v/s IL & FS Energy Development Company Ltd ([2017] 84 taxmann.com 186(Delhi)),it has been held that no disallowance under section 14A of the Act is called for in the AY in question because no exempt income was earned in that year

(v) ITAT Delhi "H" Special Bench in case of ACIT, Circle 17(1) v/s Vireet Investment Pvt Ltd where it is held that only those investments are to be considered for computing average value of investments which yield exempt income during the year for calculation of disallowance u/s 14A r.w.r. 8D

(vi) Deputy Commissioner of Income Tax 8(2)(1) vs. Shree Vaishnav Ispat Private Limited (ITAT Mumbai, ITA no.6464/Mum/2016) - it was held "It is well settled legal proposition that no disallowance u/s 14A is warranted for in case no exempt income is earned by the assessee. The case laws relied upon by the Ld. CIT(A) in this regard fortifies the same and settles the legal position.

(vii) Kamat Hotels (India) Ltd vs. Dy. Commissioner of Income-tax (OSD)-8(2), Mumbai - [2018] 89 taxmann.com 225 (Mumbai

- Trib.) - It is held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

(viii) *The Commissioner of Income Tax vs. M/s Delite Enterprises (Bombay High Court Income Tax Appeal No.110 of 2009).*

On the other hand the decisions referred to by the AO in the assessment order while making disallowance u/s 14A r.w.r. 8D are not applicable to the facts of the assessee's case since the assessee has not earned any exempt income on the investments during the year.

In view of above discussion and the facts of the case, it is held that the AO was not justified in mechanically following section 14A r.w.r 8D. As no exempt income was earned in the year under appeal no disallowance u/s 14A of the Act is called for.

Also similar issue has been decided in Assessee's own case for AY 2011-12, 2012-13 & 2013-14. The facts and circumstances in the present assessment year remain the same and hence following the decision in assessee's own case for AY 2011-12, 2012-13 & 2013-14 the disallowance u/s 14A is hereby deleted.

Further based on the decision in the case of Vireet Investment Pvt. Ltd. supra addition made under section 14A r.w.r 8D to books profit as per section 115 J should be deleted. Accordingly Ground No. 1 raised in the appeal is ALLOWED."

7. The Revenue being aggrieved, is in appeal before the Tribunal.
8. Considered the rival submissions and perused the material on record in the light of the decisions relied upon. We find that the issue of disallowance under section 14A of the Act for our consideration has been decided by the Co-ordinate Bench of the Tribunal in assessee's own case for the preceding assessment years viz., Revenue's appeal being ITA no.4957/Mum./2018, etc., for A.Y. 2012-13 & 2013-14, order dated 16th February 2021, vide Para-5 and 6 of the order,

assessee's appeal being ITA no.2301/Mum./2015, etc., for A.Y. 2009–10 & 2010–11, order dated 30th September 2019, vide Para–9 to 11 and in Revenue's appeal being ITA no.2061/Mum./2013, etc., A.Y. 2007–08, order dated 9th October 2015, vide Para–4.2 and 4.3 of the order, wherein the issue has been decided in favour of the assessee and against the Revenue. As a matter of convenience, findings of the Co-ordinate Bench given in Revenue's appeal being ITA no.4957/Mum./2018, etc., for A.Y. 2012–13 & 2013–14, order dated 16th February 2021, vide Para–5 and 6 of the order are reproduced below:–

"5. Considered the rival submission and material placed on record. We notice from the records that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 2301/Mum/2010 & 3883/Mum/2016 for AY 2009-10 & 2010-11 in assessee's own case on merits. For the sake of clarity, which is reproduced below:-

"48. We have heard the rival submissions, perused the orders of the authorities below. We agree with the submissions of the Ld. Counsel for the assessee that since assessee has not earned any exempt income and therefore no disallowance is warranted u/s. 14A of the Act. In the case of Joint Investments Pvt. Ltd. v. CIT [372 ITR 694] the Hon'ble Delhi High Court held that the disallowance u/s. 14A of the Act should not exceed the exempt income. The Revenue filed SLP against this decision and the Hon'ble Supreme Court dismissed the SLP filed by the Revenue. Similar view has been taken by the Hon'ble Delhi High Court in the case of Cheminvest Limited v. CIT [378 ITR 33].

49. In the case of ACIT v. M/s. Ballarpur Industries Ltd., in ITA.No. 346 to 379/NAG/2014 dated 04.12.2015 the Nagpur Bench of the Tribunal following the decision of the Hon'ble Delhi High Court in the case of Cheminvest v. CIT (supra) held as under:

"6. We have heard both the sides at some length and carefully perused the orders of the authorities below in the light of the precedence cited. As far as the exemption for the years under consideration were

concerned, it was an admitted factual position that the AO has not mentioned any such amount. Meaning thereby, there was no exempt income earned by the assessee for the years under consideration. In reply to one of our questions, the learned AR, Mr. K. P. Dewani has also made a statement at Bar that no dividend was declared, hence, there was no earning of exempted dividend income. He has also clarified that for the purpose of invocation of the provisions of section 14A of the IT Act, the AO has applied the formula only in respect of disallowance of proportionate interest expenditure. There was no allegation of the AO that the exempt income was earned by the assessee. In the light of the undisputed finding on facts, we have perused the decision of the Hon'ble Courts. We may like to mention that a view has been expressed consistently that if there is no exempted profit then there is no question of invocation of the provisions of section 14A of the IT Act but, we have also carefully perused that very decision of the Tribunal namely Cheminvest Ltd. (supra) was reversed by the Hon'ble Delhi High Court, copy placed in the compilation. The Hon'ble Delhi High Court in ITA No.749/2014 vide order dated 02-09-2015 titled as "Cheminvest Ltd. Vs CIT" has decided the substantial question of law that whether disallowance u/s 14A of the Act can be made in a year in which no exempt income has been earned or received by the assessee. The Final verdict was as under: -

"23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression „does not form part of the total income“ in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year."

7. In short, in a situation when that very order of the Tribunal which was the basis for invocation of the provisions of Section 14A of the IT Act got reversed by the Hon'ble Delhi High Court, hence, the very said basis do not survive any more. As a result, we hereby confirm the findings of the learned CIT (A) on this issue. We hereby also hold that in view of the

numbers of decisions on this issue in favour of the tax payers, we find no force in this ground of appeal of the Revenue. The same is dismissed."

50. This decision of the Tribunal has been affirmed by the Hon'ble Bombay High Court in the case of Pr.CIT v. M/s. Ballarpur Industries Limited in ITA.No. 51 of 2016 dated 13.10.2016 by rejecting the appeal of the Revenue and held that no substantial question of law arises. While holding so the Hon'ble High Court observed as under: -

"On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that the expression "does not form part of the total income" in Section 14A of the Income Tax Act, 1961 envisages that there should be an actual receipt of the income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee in the sister concerns were not the actual income received by the assessee, they could not have been included in the total income.

The findings of facts recorded by both the Authorities do not give rise to any substantial question of law.

Since no substantial question of law arises in this income tax appeal, the income tax appeal is dismissed with no order as to costs."

51. The Hon'ble Jurisdictional High Court held that if there is no exempt income there cannot be any disallowance. Respectfully following the said decision, we direct the Assessing Officer to delete the disallowance made u/s. 14A of the Act. Ground raised by the assessee is allowed.

6. Therefore, respectfully following the above decision of Coordinate Bench in assessee's own case in turn relying on the

decision of Assessment Year 2009-10 & 2010-11. This issue is settled in favour of the assessee. Therefore, we are inclined to accept the submission of Ld. AR. Accordingly, this ground raised by the revenue is dismissed.”

9. Since the issue for our adjudication is covered by the decision of the Co-ordinate Bench cited supra, consistent with the view taken therein, we uphold the order of the learned CIT(A) on this issue by dismissing the grounds no.1 to 11 raised by the Revenue.

10. The next issue raised by the Revenue relates to transfer pricing adjustment vide grounds no.1 to 22.

11. The assessee had remitted funds to its A.E. namely RLS Inc. by way of share application money (aggregating to USD 39,25,717) and loan (aggregating to USD 81,95,720) during earlier years (F.Y. 2007-08 to F.Y. 2010-11). It was the submission of the assessee that the loan as well as share application money was converted into capital surplus/subsequent paid in capital of RLS Inc. as on 31st March 2011. the assessee also submitted CPA certificate dated 12th October 2011 which shows the capital surplus of USD 121,21,437. The Transfer Pricing Officer treated the aforesaid amount as interest free loan, on the ground that in a third party scenario, the assessee would not have invested in the shares of an unrelated party at such a huge premium and also no shares were allotted. The Transfer Pricing Officer

determined the arm's length price rate of interest by conducting search on Bloomberg. The Transfer Pricing Officer arrived at Libor based spreads and converted it into fixed rate by using float to the fixed swap converter in Bloomberg. The Transfer Pricing Officer determined arm's length price rate of interest year wise, from the initial year in which the amount was paid as share application/loan and determined the arm's length price of interest amount as USD 7,70,748. This was converted using exchange rate of ₹ 61.99 as on 23rd December 2013 (as per RBI publication) and arm's length price of interest amount in INIR was worked out at ₹ 4,18,52,115. The Assessing Officer accepted the adjustment made by the Transfer Pricing Officer while passing the assessment order. The assessee filed appeal against the adjustment made by the Assessing Officer/Transfer Pricing Officer.

12. The learned CIT(A) following the orders passed in assessee's own case for the assessment year 2012-13, 2013-14, decided the issue in favour of the assessee and against the Revenue. The relevant portion of the learned CIT(A)'s decision on the issue is reproduced below: –

"16. Decision

I have considered the facts of the case and submissions of the Appellant. The undersigned has gone through the order of the TPO/AO and has examined the contentions of the Appellant on this issue.

It is seen that for the period under the proceedings, the entire amount is standing as an Additional paid in capital (APIC). The facts of the case are identical to facts in AY 2012-13 and AY 2013-14. The issue is covered in favour of the Appellant by the order of the CIT(A) for AY 2012-13 and AY 2013-14. Therefore, respectfully following the order of the CIT(A) for AY 2012-13 and AY 2013-14 in the Appellant's case, the appeal of the Appellant is allowed."

13. The Revenue being aggrieved with the aforesaid order of the learned CIT(A), is in appeal before the Tribunal.

14. Considered the rival submissions and perused the material on record in the light of the decisions relied upon. We find that the issue of identical issue has been decided by the Co-ordinate Bench of the Tribunal in assessee's own case in M/s. Reliance Life Sciences Pvt. Ltd. v/s ACIT, ITA no.2301/Mum./ 2015, etc., for A.Y. 2009-10 & 2010-11, order dated 30th September 2019, vide Para-70, 71 and 72 of the order, wherein for the reasons stated therein the issue has been decided in favour of the assessee and against the Revenue. For better appreciation of facts, the relevant portion of the findings of the Co-ordinate Bench given in assessee's appeal cited supra, are reproduced below:—

"70. We have heard both the parties perused the orders of lower authorities and the case law relied on. We find that in the case of CIT v. Indo American Jewellery Ltd. in ITA.No. 1053 of 2012 dated 08.01.2013 the Hon'ble Bombay High Court held as under:

"3 As regards the second question is concerned, the Transfer Pricing Officer while determining the Arms Length Price of the international transactions, noticed that the outstanding balance

from Associated Enterprises was amounting to Rs.8.76 crores. As that amount was outstanding for more than year, taking the rate of interest at 10%, the Transfer Pricing Officer determined the interest receivable at Rs.87.66 lacs and added the same to the international transaction cost.

4 On appeal, the CIT(A) held that the total outstanding amount was Rs.8.73 Crores and out of which the amount outstanding from the Associated Enterprises was to the extent of Rs.5.11 Crores and the balance amount of Rs.3.62 Crores was outstanding from non Associated Enterprises. Relying on the Board Circular no. 12 of 2001, the CIT(A) further held that in the present case, the profit of one Associated Enterprise is negligible and the other Associated Enterprise has incurred losses and therefore it cannot be said that the assessee had transferred any profit to the Associated Enterprises outside India by not charging interest on the outstanding payment which has been realised after the due date and accordingly deleted the interest charged on late realisation of the export proceeds.

5. On appeal filed by the Revenue, the ITAT upheld the order of CIT (A). While, upholding the order of CIT (A), the ITAT held that interest income is associated only with the lending or borrowing of money and not in case of sale. We express no opinion on the above reasoning of the ITAT and keep that reasoning open for debate in an appropriate case. However, in the facts of the present case, the specific finding of the ITAT is that there is complete uniformity in the act of the assessee in not charging interest from both the Associated Enterprises and Non Associated Enterprises- debtors and the delay in realization of the export proceeds in both the cases is same. In these circumstances, the decision of the Tribunal in deleting the notional interest on outstanding amount of export proceeds realized belatedly cannot be faulted."

"71. Similarly, in the case of CIT v. M/s. Lingingstones in ITA.No. 887 of 2014 dated 28.11.2016 the Hon'ble Jurisdictional High Court held as under: -

"3. The grievance of the revenue is that the respondent- assessee granted longer period of credit to its Associated Enterprises on sale of goods as compared to the period of credit granted to Non Associated Enterprises. Consequently the notional interest on delayed collection of consideration on sale of goods to Associated Enterprises needs to be added to the declared consideration to arrive at an arms length price

4. The Tribunal by the impugned order rendered a finding of fact that the respondent- assessee has not charged any interest from third parties i.e. Non Associated Enterprises on delayed payments exceeding more than 300 to 400 days from the sale

of goods. Consequently, it holds that once such delayed payment in respect of sale of goods made to third parties carries no interest, then adding of notional interest to delayed payments made by the Associated Enterprises is not called for

5. Further, the impugned order places reliance upon the order of this Court in Income Tax Appeal (L) No. 1053 of 2012 (Commissioner of Income Tax-9 vs. M/s. Indo Amercian Jewellery Ltd.) rendered on 8 th January, 2013. In the above case a similar question was not entertained by this Court on the ground that there is complete uniformity in the act of the assessee therein in not charging interest from Associated Enterprises and Non Associated Enterprises for delay in recovery of its sale proceeds.

6. In the present case also the Tribunal has rendered a finding of fact that the interest is not being charged in case of sales made to Non-Associated Enterprises for delayed payment just as in the case of Associated Enterprises. These finding of fact rendered by the Tribunal is not shown to be perverse in any manner."

72. In the case before us also as a consistent policy, assessee has not charged any interest on its receivables from non-AE's i.e. third party business transactions. Assessee has not paid any interest on payables to non-AE's. Further, we observe during the year under consideration assessee has neither charged interest on its receivable nor has paid any interest on its payables to its AE RGMX. Therefore, we observe that there is complete uniformity in the act of the assessee in not charging interest from both AE's and non-AE'S for the outstanding receivables. In such circumstances the ratios of the above decisions relied on by the assessee are squarely applicable to the facts of assessee. Thus, respectfully following the said decisions we hold that no interest can be charged on amounts due from AE RGMX and consequently the adjustment made by the TPO is directed to be deleted. This ground of appeal is allowed."

15. Since the issue before us is mutatis mutandis identical to the issue decided by the Co-ordinate Bench of the Tribunal in assessee's own case cited supra, consistency being maintained by the Tribunal we respectfully following the aforesaid findings, uphold the order of the

learned CIT(A) on this issue by dismissing the grounds no.1 to 22 raised by the Revenue.

16. In the result, Revenue's appeal is dismissed.

Order pronounced in the open court on 8.9.2021

MUMBAI, DATED:

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai