

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
BENCH 'I-2', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.6620/Del/2018  
(Assessment Year : 2014-15)

SRF Limited The Galleria, DLF Mayur Vihar, Unit No.236 & 237, 2 <sup>nd</sup> Floor, Mayur Place, Noida Link Road, Mayur Vihar, Phase-I, Extension, Delhi-110 091  PAN : AAACS 0206 P <b>(APPELLANT)</b>	Vs.	ACIT Circle – 1, LTU New Delhi  <b>(RESPONDENT)</b>
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Assessee by	Shri Pradeep Dinodia, C.A.
Revenue by	Ms. Meera Srivastava, CIT-D.R.

Date of hearing:	16.09.2021
Date of Pronouncement:	13.12.2021

**ORDER**

**PER ANIL CHATURVEDI, AM :**

This appeal filed by the assessee is directed against the order dated 13.07.2018 of the Asstt. Commissioner of Income Tax, Circle-1, LTU, New Delhi passed under section 144C(5) of the Act pursuant to the directions of Dispute Resolution Panel (DRP) – 2, for Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company which is stated to be engaged in the business of manufacturing of nylon tyre cord fabrics, packaging film, chemicals, engineering plastics and refrigerant gases. Assessee electronically filed its return of income for A.Y. 2014-15 on 30.11.2014 declaring total income of Rs.61,16,90,230/- and book profit of Rs.2,61,52,19,636/-. Thereafter, assessee revised its total income to Rs.35,14,66,440/- and book profit of Rs.261,11,26,258/- by filing revised return of income on 31.03.2016. The case was selected for scrutiny and notice u/s 143(2) & 142(1) of the Act was issued and served on the assessee. AO noticed that during the year under consideration, assessee had entered into international transactions with its Associate Enterprises (AEs) and the aggregate value of such transactions exceeded Rs.15 crore. He therefore, after taking approval of the component authorities, made reference to TPO for determination of Arm's Length Price (ALP) of international transactions. TPO vide order passed u/s 92CA(3) of the Act on 31.10.2017 suggested enhancement of the income of the assessee by Rs.216,468,063/- on account of Transfer Pricing Adjustment. AO thereafter passed draft assessment order u/s 143(3) r.w.s 144C(1) of the Act vide order dated 27.12.2017 whereby he computed the total income at Rs.82,07,64,487/- and book profit at Rs.2,61,38,57,201/-. Aggrieved by the draft assessment order passed by AO, assessee carried the matter before the DRP. DRP

vide direction passed u/s 144C(5) of the Act dated 13.07.2018 directed the AO to incorporate its finding in respect of various objections in the final assessment order. AO thereafter passed an order u/s 143(3) r.w.s 144C of the Act vide order dated 30.08.2018 and determined the total taxable income at Rs.63,11,74,934/- and book profit u/s 115JB at Rs.305,66,62,092/-. Aggrieved by the order of AO passed pursuant to the direction of DRP, assessee is now in appeal before us and has raised the following grounds:

1. *The Ld DRP/AO have erred in law and on facts, and in the circumstances of the appellant's case in making an addition/adjustment of Rs.2,87,06,299/- on account of the order of the Transfer Pricing Officer (TPO) u/s 92CA(3) and making an addition/denying deductions of Rs.25,10,02,195/- on account various non-transfer pricing addition/disallowance.*
2. *That the final assessment order u/s 143(3) r.w.s 144C of the Act dated 30<sup>th</sup> August 2018 is bad in law. The additions/disallowances made by Ld. AO are wholly illegal untenable and on erroneous grounds.*

**GROUND OF OBJECTIONS IN RESPECT OF TRANSFER PRICING ADJUSTMENTS**

**Corporate Guarantee Fee- Rs.2,28,67,811/-**

3. *That the Ld. DRP/TPO and consequently the Ld. AO have grossly erred in law and on facts and in the circumstances of the appellant's case in making an upward adjustment of Rs.2,28,67,811/- by imputing the arm's length corporate guarantee fee rate @0.5% instead of 0.25% actually charged by appellant from its AEs [wholly owned subsidiaries] based on the specific quotations obtained from HDFC Bank and ICICI Bank under the other method.*

4. *The Ld. DRP/TPO and consequently the Ld. AO have grossly erred on facts in not considering that the AEs have furnished counter guarantees of equal amounts on back to back terms to the appellant, therefore appellant is completely indemnified against any risk of default on the part of its AEs.*
5. *The Ld. DRP/TPO and consequently the Ld. AO have grossly erred in not appreciating the fact that corporate guarantee has been extended by the appellant, being the parent company on behalf of its wholly owned subsidiary, as a matter of business prudence and to protect its own commercial interest. The appellant does not incur any cost by extending such corporate guarantee to its AEs nor assumes any risk any cost by capital/assets of its AEs are held directly or indirectly by the appellant.*
6. *The Hon'ble ITAT may be pleased to hold:-*
  - 6.1 *That extension of corporate guarantee by the appellant on behalf of its AEs [wholly owned subsidiaries] is not an international transaction and, therefore, not amendable to any adjustment under Chapter X of the Income Tax Act.*
  - 6.2 *In the alternative and without prejudice to the above, the Hon'ble ITAT may be pleased to hold that no adjustment is required as 0.25% charged by the appellant as corporate guarantee fee from its AEs [wholly owned subsidiaries] is at arm's length and thus upward adjustment of Rs.2,28,67,811/- be directed to be deleted.*
  - 6.3 *That the corporate guarantee fee benchmarked by the appellant under other method based on specific quotations obtained from HDFC Bank and ICICI Bank be held at arm's length.*

**Interest on foreign currency loans – Rs.12,98,917/-**

7. *The Ld. DRP/TPO and consequently Ld. AO have grossly erred in law and on facts and in the circumstances of the appellant's case in proposing an upward adjustment of Rs.12,98,917/- (using LIBOR + 250 basis points i.e. 4.024%(1.524% + 2.5%) as ALP) on the ground that interest charged by the appellant on foreign currency loan granted to its AE @6M LIBOR + 225 basis points does not meet the arm's length principle.*

8. *The Ld. DRP/TPO and consequently Ld AO have grossly erred in taking 6 months LIBOR rate of 1.524%, while the 6M LIBOR rate is in the range of 0.329% to 0.413%.*
9. *Without prejudice, the Ld. AO in the final order failed to consider the actual LIBOR rate and adjustment made on this account is grossly excessive.*
10. *The Ld. DRP/TPO and consequently the Ld. AO have grossly erred on facts in :*
  - 10.1 *disregarding the comparability analysis of 6 companies carried out by the appellant in its TP study which determined the comparable uncontrolled transactions at LIBOR + 218 basis points as a benchmark, without affording any cogent reason.*
  - 10.2 *ignoring the fact that appellant's average cost of foreign borrowing is LIBOR + 87 basis points, whereas it has charged 6M LIBOR + 225 basis points, which is 138 basis points higher from its AE.*
11. *The Hon'ble ITAT may be pleased to hold that the interest charged by the appellant from its overseas wholly owned subsidiary at 6M LIBOR plus 225 basis points is at arm's length and no adjustment is required therein and thus delete the aforesaid adjustment of Rs.12,98,917/-.*

**Adjustments proposed on account ALP of reimbursement received from AEs – Rs.45,39,571/-**

12. *The Ld. TPO and consequently Ld. AO have erred in law and in facts and in the circumstances of the assessee in re-characterize the transition of reimbursement received from AEs in the nature of travelling, lodging, boarding etc. as intra-group services and consequently proposing a mark-up of 12.79% on cost on ad-hoc basis.*
13. *That the TPO/DRP and consequently Ld. AO failed to appreciate that no mark-up was required on reimbursement of actual cost received from the AE.*
14. *Without prejudice, the mark-up proposed by Ld. TPO/AO @12.79% based on the search conducted on manufacturing companies is*

unjustified and is very high in respect of reimbursement transactions.

15. The Ld. DRP may be pleased to direct the Ld. TPO/AO to delete such adjustment of Rs.45,39,571/- in respect of reimbursement received.

**GROUND OF OBJECTIONS IN RESPECT OF CORPORATE TAX ISSUES**

**Disallowance of Brought forward Business losses – Rs.24,84,48,618/-**

16. The Ld. AO has grossly erred in law and facts of the case by not granting the allowance of brought forward losses of Rs.24,84,48,618/- which was claimed by assessee while filing the tax return.

**Disallowance of depreciation of Goodwill – Rs.25,53,577/-**

17. The Ld. DRP/AO have erred in law and in facts and in the circumstances of the appellant by not granting the allowance of depreciation of Rs.25,53,577/- on goodwill arising on account of excess payment by the appellant for purchase of business units from SRF Polymers.
18. The Hon'ble ITAT may be pleased to grant the allowance of depreciation on Goodwill of Rs.25,57,577/-.

**Computation of Book Profit under MAT**

19. The Ld. AO has grossly erred in inadvertently taking the amount of book profit as per P&L Account at Rs.2,61,11,26,258/- as against the correct amount of Rs.2,16,54,54,365/- which was although correctly reflected in the draft assessment order dated 27<sup>th</sup> December, 2017. The Ld. AO has therefore, inadvertently enhanced the book profit u/s 115JB of the Act by Rs.44,56,71,893/- [Rs.2,61,11,26,258/- (-) Rs.2,16,54,54,365/-].
20. making an addition of Rs.54,31,53,772/- on account of current tax /MAT/deferred tax while computing the book profits u/s 115JB of the Act, ignoring the fact that book profits as computed by the assessee is based on profits before tax. Therefore, Ld. AO has

erred in making an addition on account of current tax/MAT/deffered tax which has resulted in double addition of same amount.

21. The Ld. DRP/AO has grossly erred in making addition of Rs.25,53,577/- on account of depreciation of goodwill claimed under IT Act while computing the book profits u/s 115JB of the Act, while MAT provisions do not provide for such disallowance.

**Other Claims made during the assessment proceedings**

22. The Ld. DRP/AO has erred in law and on the facts of the assessee's case in not allowing the following additional allowances/claims made by the assessee, during the course of assessment proceedings, relying upon the judgment of CIT vs. Sam Global Securities [(2014) 360 ITR 682(Delhi)].

22.1 claim of profit based deduction under section 80-IA amounting to Rs.11,12,42,521/- in respect of its Wind Power Plant (WPP) and Captive Power Plant (CPP) which was inadvertently left to be claimed while filing the return of income.

22.2 allowance of remaining additional depreciation @10% u/s 32(1)(ia) amounting to Rs.58,14,99,012/-.

22.3 claim of TDS deducted on sale of immovable property amounting to Rs.2,70,000/- which was inadvertently left to be claimed while filing of the return of income and self assessment tax amounting to Rs.47,61,334/- which was inadvertently paid as TDS.

23. The Ld. AO has erred in law and circumstances of the case by initiating penalty proceedings u/s 271(1)(c) of the Act.

24. The above grounds are without prejudice to each other.

25. The appellate craves the leave to add, amend or alter all or any of the grounds of appeal.”

4. Assessee thereafter has raised an additional ground which reads as under:

*“26. The Hon’ble ITAT may be pleased to grant the claim of Education Cess”(@3%) amounting to Rs 34,79,518 u/s 37 of the Act paid/payable by the assessee under the normal provisions of the Act.*

5. With respect to the additional ground now raised under Rule 11 of the Income Tax Appellate Tribunal Rules, 1963 for its admission, it is the submission of Ld AR that the additional ground now raised had been inadvertently omitted to be raised due to oversight. He further submitted that the additional ground now raised is a legal ground which can be raised at any time by the assessee and it does not require any investigation of fresh facts. He further submitted that in the interest of justice, the additional ground be admitted and the same be adjudicated along with the other grounds. For the admission of additional ground, he relied upon the decision of Hon’ble Apex Court in the case of National Thermal Power Company Ltd vs CIT reported in (1998) 229 ITR 383.

6. Ld DR however objected to the application for admission of additional ground stating that the claim was never made before the lower authorities.

7. On the issue of admission of additional grounds, we have heard the rival submissions and perused the material on record. We find force in the argument of the Ld. AR that the ground raised is legal in nature. Hon’ble Apex Court in the case of National Thermal Power Company Ltd (supra) has held that the

purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. It has further held that if as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the item. In view of the aforesaid, we admit the additional ground of appeal.

8. Before us, at the outset, Learned AR submitted that **Ground No.1 & 2** being general in nature requires no adjudication and that assessee does not wish to press **Ground No.19 & 20**. In view of the aforesaid submissions **these grounds are dismissed as not pressed.**

9. He thereafter submitted that **Ground No.3 to 6** are on an issue relate to Corporate Guarantee Fee.

10. TPO noticed that assessee had given Corporate Guarantee to the lenders of the beneficiaries who are AEs of the assessee and for giving the corporate guarantee, assessee had charged guarantee fee of 0.25% aggregating to Rs 2,28,54,407/-. The AEs to whom Corporate Guarantee were issued are listed at Page 5 of the TPO order. It was submitted by the assessee that it has not incurred any cost for provision of the guarantees and that during

F.Y. 2013-14, it had obtained a quotation from a Bank whereby the Bank had agreed to provide corporate guarantee to the AEs of the assessee at a service fee of 0.25%. Assessee considered the quotation from the Bank of similar arrangement to be an appropriate CUP to determine the Arm's Length nature of similar arrangement between the assessee and its AEs. It was therefore the submission of the assessee that the Corporate Guarantee fee charged by the assessee from its AEs could be considered to be at Arm's Length Price. The submissions of the assessee were not found acceptable to TPO. TPO was of the view that in an uncontrolled transaction like the present one, guarantee fee would have been charged taking into account the credit worthiness of the AE, margins, security or any other consideration relevant for deciding the financial solvency of the AE. He was therefore of the view that the assessee should have been compensated for the guarantee given by it in an arm's length situation. With respect to the assessee's contention of the benchmarking of the transaction with the offer received from bank, TPO was of the view that the offer from bank was a mere offer which was not converted into a transaction and therefore it cannot be considered to be a valid CUP. TPO thereafter by applying the interest saved approach and using the data from Bloomberg database, computed the external comparable interest rate range to be 4.45% and the rate at which the AEs obtained funds with corporate guarantee of the assessee at 3.01% and thus computed the interest saved to be at 1.44%. He thereafter worked out the total guarantee fee that should have been charged

by using the interest saved rate of 1.44% at Rs.172,00,08,122/-. He noted that since the assessee has already received Rs 22,854,407/-recommended the enhancement of income by AO to the extent of Rs 14,91,53,715/-. AO thereafter in the draft assessment order enhanced the income as suggested by the TPO. Aggrieved by the order of TPO, assessee carried the matter before the DRP. DRP noted that various jurisdictional decisions have held the guarantee fee rate to be near about 0.5% and TPO had not given any reason for applying a higher rate of 1.3% based on SBI general Bank guarantee fee. DRP also noted that in assessee's own case for A.Y. 2011-12, 2012-13 & 2013-14, DRP has held that the guarantee fee of 0.5% to be fair and just. It further noted that since the facts of the case in the year under consideration being similar to that of A.Y. 2013-14, it accordingly held the guarantee fee to be at 0.5% and accordingly directed AO/TPO to re-compute the adjustment accordingly. AO thereafter made adjustment of Rs 2,28,67,811/-.

11. Aggrieved by the order of DRP, assessee is now before us.

12. Before us, Learned AR reiterated the submissions made before the lower authorities. He thereafter submitted that identical issue arose in assessee's own case in A.Y. 2010-11, 2012-13 wherein the Co-ordinate Bench of Tribunal has upheld the corporate guarantee rate @ 0.25%. He further submitted that the Hon'ble ITAT had reversed the order of DRP for A.Y. 2012-13 & 2010-11 in assessee's own case. He pointed to the relevant

orders of the Tribunal placed in the paper book. He therefore submitted that since assessee had charged 0.25% as corporate guarantee fee to its AEs, no adjustment is required and therefore the adjustment proposed by the AO be deleted.

13. Learned DR on the other hand took us to the finding of the DRP and supported the order of DRP.

14. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the adjustment made to corporate guarantee fee charged by the assessee from its AEs. We find that identical issue arose in assessee's own case in A.Y. 2010-11 and the Co-ordinate Bench of Tribunal in ITA No.356/Del/2015 order dated 24.02.2020 decided the issue in favour of the assessee by observing as under:

*“12. We have heard the rival contentions, perused the relevant findings and as well as material referred to before us at the time of hearing. The TPO and DRP has rejected the assessee's CUP based on the ICICI Bank specific to facts of the assessee and has applied the Indian banks u/s 133(6) of the Act. First of all TPO'S rejection of assessee's CUP merely on the ground that such quotation are merely offers and hence does not qualify as CUP is not appropriate. The assessee has obtained specific quotation for ICICI bank. The ICICI Bank after due consideration of profile of assessee and its AEs, risk involved and other market factors, issued letter of to extend guarantee to AEs of the assessee. In our view such offer from ICICI Bank does constitutes valid CUP. Further as pointed out ld Counsel, such offer from ICICI Bank is an appropriate comparable data in terms of Rule 10D (3) of the Rules. Therefore, rejection of assessee's CUP in form of ICICI Bank quotation in not valid.*

13. *It is pertinent to note that even TPO has used general bank rates obtained from various Indian banks.*

*These bank guarantee rates are also in the nature of offers which are general rates and not specific to the assessee. Therefore, the approach of TPO itself is contradictory, when on the one hand he rejects the assessee's specific quotation saying the same as offers while on the other hand he himself uses the general bank guarantee rates which are again the offers and that too far from being comparable to the case.*

14. *Further the issue of using bank guarantee rates for benchmarking corporate guarantee transaction has been put to rest by the Hon'ble Supreme Court in case of **Glenmark Pharmaceuticals Ltd. [2019] 107 taxmann.com 445 (SC)**, where in the judgment of Hon'ble Bombay High Court was upheld. Further, DRP in assessee's own case in subsequent years rejected the TPO's approach of using India bank guarantee rates for benchmarking corporate guarantee. Therefore, bank guarantee rates as applied by the TPO is not an appropriate comparable while benchmarking the said transaction and hence approach of TPO is rejected.*
15. *In the instant case, the AEs to whom corporate guarantees have been extended are wholly owned subsidiaries of the assessee. The existence of special relationship between holding and its subsidiary cannot be ignored. The assessee being a parent entity is responsible for survival and growth of its subsidiary and hence extended corporate guarantees to secure funds needed for survival and growth of its subsidiaries. Further as submitted by AR, by extending corporate guarantees to secure funds needed for survival and growth of its subsidiaries.*
16. *Therefore in view of the above discussions, the corporate guarantee fee at the rate of 0.25% voluntary offered to tax by the assessee is upheld as the arm length price and the addition over and above this of Rs.56,17,984/- is hereby deleted."*

15. We further find that in assessee's own case for A.Y. 2012-13 in ITA No.5784/Del/2016 order dated 24.02.2020, the Co-ordinate Bench of Tribunal by relying on the order in assessee's

own case for A.Y. 2010-11 had held that the transaction of corporate guarantee fee charged at 0.25% by the assessee from its AEs to be at Arm's Length rate and accordingly deleted the addition made by TPO. Before us, Revenue has not pointed to any distinguishing feature in the facts of the case in the year under consideration and that of the earlier years. Revenue has also not placed any material on record to demonstrate that the aforesaid decision of the Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2010-11 & 2012-13 has been stayed/ set aside/ overruled by higher judicial forum. In view of the aforesaid facts, on relying on the decision of the Co-ordinate Bench of Tribunal for A.Y. 2010-11 in assessee's own case, we hold that the AO was not justified in making adjustment of Rs.2,28,67,811/-. We therefore, set aside the addition made by TPO. **Thus the ground of assessee is allowed.**

16. **Ground Nos.7 to 11** are with respect to the adjustment on account of interest on foreign currency loan amounting to Rs.12,98,917/- u/s 92CA(3) of the Act.

17. TPO noticed that assessee had advanced loan to its AEs and had charged interest @LIBOR + 224 bps on the advance provided to the AEs. TPO show-caused the assessee as to why the bench marking of interest on foreign currency loan to foreign subsidiaries not be done at 7.33 % (i.e. 6 months LIBOR rate of 1.524 % + 5.81%) for loan granted to AEs. Assessee *inter alia* submitted that it has charged interest from its AEs on foreign

currency loan granted on quarterly basis and the average of all four quarters works out to 0.3647% instead of 1.524% worked out by the TPO. It was further submitted that assessee was not into the business of lending, but while lending foreign currency money to its AEs it had charged interest @ LIBOR + 224 BPS which are higher than its borrowing costs. It was further submitted that the comparable determined on the basis of TP documentation is LIBOR + 218 BPS as against the interest charged by the assessee @ LIBOR + 224 BPS which are therefore as Arm's Length and no further adjustment is therefore required. The submissions of the assessee were not found acceptable to TPO. TPO thereafter bench marked the interest receipt from the AE @ 7.33% (by considering the average 6 months LIBOR rate @ 1.524% + 581%) and accordingly worked out the adjustment at Rs.24,340,908/-.

18. Aggrieved by the order of TPO, assessee carried the matter before the DRP. DRP noted that in A.Y. 2012-13 and 2013-14 in assessee's own case, the DRP had upheld the interest rate @ LIBOR + 250 basis points and the facts being similar to that of A.Y. 2013-14 had held that the interest rate on the amount advanced by the assessee the interest should be charged @ LIBOR + 250 basis points. The AO thereafter in the final assessment order worked out the adjustment of Rs.12,98,917/-. Aggrieved by the order of AO, assessee is now in appeal before us.

19. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that identical issue arose in assessee's own case in A.Y. 2010-11. The Co-ordinate Bench of Tribunal by following the decision of Hon'ble Delhi High Court in the case of Cotton Natural (I) Pvt. Ltd. reported in TS-117-HC-2015(DEL)-TP held that Indian lending rates cannot be applied in case of foreign currency lending. The appropriate rate for benchmarking is rate prevailing in the country where the loan has been utilized. It thereafter held that LIBOR rate should be used while undertaking the benchmarking analysis in respect of foreign currency loans extended to AEs and since assessee had charged 250 basis points over and above the LIBOR rates, no addition was called for. The Learned AR thereafter submitted that in A.Y. 2012-13 no adjustment has been made on account of interest on foreign currency loan. He therefore submitted that no adjustment is called for in present case.

20. Learned DR on the other hand supported the order of DRP.

21. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to interest for Foreign Currency Loan granted by the assessee to its AEs. We find that identical issue arose in assessee's own case in A.Y. 2010-11 and the Co-ordinate Bench of Tribunal in assessee's own case decided the issue observing as under:

*“22. We have heard the rival contentions, perused the relevant findings and as well as material referred to before us at the time of hearing. There is no dispute that assessee has granted loan to its AE in foreign currency, i.e. USD. The Ld TPO applied the imputed interest rate @ 6.89% obtained from various Indian Banks u/s 133(6). It is now well settled in view of Jurisdictional High Court judgment in case of Cotton Naturals (I) Pvt. Ltd. (supra) that Indian lending rates cannot be applied in case of foreign currency lending. The appropriate rate for benchmarking is rate prevailing in the country where the loan has been utilized. Correctly stated by Ld. AR is that LIBOR is an international benchmark used globally as interest benchmark. Various courts have held that LIBOR is an appropriate benchmark for foreign currency loan granted to overseas AE(s). The AE has also availed loan in its home country rate of which is also denominated in LIBOR. In our view LIBOR rate should be used while undertaking the benchmarking analysis in respect of foreign currency loans extended to AE. Well the assessee has charged 250 basis points over an above such benchmark viz. LIBOR. Therefore, no addition is justified and the entire addition of Rs.2,18,98,274/- is hereby deleted.”*

22. Before us, Revenue has not pointed to any distinguishing feature in the facts of the case in the year under consideration and that of the earlier years. Revenue has also not placed any material on record to demonstrate that the aforesaid decision of the Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2010-11 has been stayed/ set aside/ overruled by higher judicial forum. In view of the aforesaid facts and relying on the decision of the Co-ordinate Bench of Tribunal for A.Y. 2010-11 and for similar reasons, we hold that no adjustment is called for. **Thus the ground of assessee is allowed.**

23. **Ground No.12 to 15** are with respect to adjustment on account of reimbursement received by the assessee from its AEs amounting to Rs.45,39,571/-.

24. TPO on perusing the TP documentation noticed that assessee had incurred certain expenses which were in the nature of travelling lodging and boarding charges, courier etc. Assessee was asked to show-cause as to why reimbursement of the expenses not be treated as expenses and why a markup should be charged to which assessee *inter alia* submitted that the reimbursement should not be treated as intra group services as these were third party costs which were reimbursed by AEs on a cost to cost basis. The submission of the assessee was not found acceptable to TPO. TPO noted that assessee had incurred expenses and also employed manpower, assets and had rendered travel related services to its AEs. He was of the view that had these resources been utilized by the assessee for its own business activities, the assessee would have benefitted and by utilizing those resources for benefit of its AEs, the assessee is losing out on benefits. He therefore held that assessee should have earned a markup on such expenses. The TPO thereafter by considering the comparables, as listed at Page 40 & 41 of his order, proposed an adjustment of Rs.58,13,774/-.

25. Aggrieved by the proposed adjustment, assessee carried the matter before the DRP. DRP upheld the action of adjustment proposed by the TPO but however directed to compute the

adjustment by taking the nine comparables as listed on Page 11 of its directions. Consequent to the direction of DRP, AO made final upward adjustment of Rs.45,39,571/-. Aggrieved by the order of AO, assessee is now before us.

26. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that on identical facts, no adjustment on account of reimbursement of expenses was made in earlier years. He further submitted that transactions entered into with the AEs are of the pure reimbursement received from the AEs which are in the nature of expenses incurred for travelling, lodging, boarding, courier etc. of employees of the AEs which are charged on cost to cost basis. It was further submitted that similar reimbursement are made by the assessee to its AEs also at cost to cost basis. It was further submitted that assessee had entered various business transactions with its AEs which are in the nature of export of goods, import of goods, corporate guarantee fee, interest on loan, management support services etc. the volume of which is Rs.126.93 crore as against which the nature of reimbursement received and paid from and to the AEs are Rs.3.86 crore which is normal considering the volume of business transactions entered into with the AEs. He further submitted that no adjustment is required when it is reimbursement of expenses. He further submitted that transactions were undertaken from commercial expediency point of view and were not intended for the exploitation of return. He thereafter submitted that Co-ordinate

Bench of Tribunal in the case of **Vedanta Ltd. vs. ACIT in ITA No.12/Del/2010 order dated 21.09.2020 for A.Y. 2014-15** has held that no mark up was warranted on the reimbursement of primary third party expenses for which no value addition was done by the assessee and which are subsequently reimbursed by the AEs on cost to cost basis. He pointed to the relevant findings of the Tribunal order placed at Page 236 of the paper book. He therefore submitted no addition is called for.

27. Learned DR on the other hand pointed to the observations made by DRP. She also placed reliance on the decision rendered by Hon'ble Delhi High Court in case of CIT vs. Cushman And Wakefield (India) Pvt. Ltd. reported in 367 ITR 730 and decision rendered by Hon'ble Delhi High Court in the case of Centrica India Offshore Pvt. Ltd. (WP-6807 of 2012 order dated 25.04.2014).

28. Learned AR in the rejoinder submitted that the expenses were in the nature of reimbursement and there is no whisper in the order of TPO of the assessee having rendered any services and that assessee collects the expenses incurred on behalf of AEs from the AEs and passes it on to the third parties. He further submitted that it is not an international transactions as per Clause 92D(1) of the Act.

29. We have heard the rival submissions and perused the materials on record. The issue in the present ground is with

respect to the adjustment made on account of reimbursement of cost. Before us, it is an assessee's submissions that the expenses which were reimbursement of all expenditure which were *inter alia* incurred by the assessee on behalf of the AEs and the same have been reimbursed to the third parties and for which no value addition has been done by the assessee. It is further assessee's submissions that the reimbursement are on cost to cost basis and transactions were undertaken for commercial expediency and not intended with the expectation of return. The aforesaid contentions of the AR have not found to be false. We find that the Co-ordinate Bench of Tribunal in the case of Vedanta Ltd. (supra) has held that no mark up is warranted on pass through costs which are *inter alia* incurred by the assessee and are reimbursement of primary third party expenses initially incurred by the assessee for which no value addition is done by the assessee and which are subsequently reimbursed by the AEs on cost to cost basis. Before us no material has been placed by Revenue to demonstrate that value addition has been done by the assessee and is not in the nature of reimbursement of primary third party expenses which were initially incurred by the assessee. Considering the totality of the aforesaid facts and relying on the aforesaid decisions rendered by the Co-ordinate Bench in the case of Vedanta Ltd. (supra), we are of the view that no addition is called for in the present case. **Thus the grounds of assessee is allowed.**

30. **Ground No.16** is with respect to disallowance on brought forward Business Losses.

31. AO noticed that at the time of revising its return of income for A.Y. 2014-15 that was filed on 31.03.2016, assessee had set off the brought forward business loss of Rs.24,84,48,618/- of A.Y. 2013-14 against the business income of Rs 60,15,52,573/- for A.Y. 2014-15. The claim of the assessee was disallowed by the AO for the reason that the brought forward loss was primarily because of receipt from transfer Carbon Emission Reduction (CER) which was claimed as exempt income and since the claim of exempt income has not been accepted by the AO in the order passed for A.Y. 2013-14 therefore the loss has been converted into income and therefore no carry forward business loss for A.Y. 2013-14 was available for set off in A.Y. 2014-15. Aggrieved by the order of AO, Assessee carried the matter before DRP. DRP directed the AO to verify the claim and allow the same as per law. Aggrieved by the order of AO, assessee is now before us.

32. Before us, Learned A.R. submitted that the claim of assessee of set off of brought forward business loss arises on account of receipt of Carbon Emission Reduction (CER's) certificates treated as revenue receipt. He submitted that the aforesaid issue has been decided in assessee's favour by the Hon'ble Tribunal in assessee's own case for A.Y. 2012-13, 2010-11, 2008-09 & 2006-07. He submitted that AO had disallowed the claim by following the action of the AO in A.Y. 2013-14. Learned AR submitted that

the hearing of appeal for A.Y. 2013-14 is scheduled on 07.10.2021. He therefore in such a situation submitted that the necessary directions be given to AO to allow the claim of loss when it is finally determined.

33. Learned DR on the other hand did not controvert the submissions made by AR.

34. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to disallowance of brought forward business losses amounting to Rs 24,84,48,618/- of A.Y. 2013-14. Before us, Learned AR has submitted that the appeal for A.Y. 2013-14 is listed before the Tribunal and the decision of the Tribunal is thus awaited. Considering the aforesaid facts, we direct the AO to allow the claim of the losses when the same is finally determined and in accordance with law. **Thus the Ground of the assessee is allowed.**

35. **Ground No.17 and 18** are with respect to disallowance of depreciation on Goodwill amounting to Rs.25,53,577/- .

36. During the course of assessment proceedings, it was noticed that assessee had claimed depreciation on goodwill amounting to Rs 25,53,577/-. It was submitted that assessee had purchased three business namely Industrial Yarn Business at Manali (Tamilnadu), Engineering Plastic business at Manali (Tamilnadu)

and Engineering Plastic business at Pantnagar (Uttarakhand) for a consideration of Rs.150,31,26,228/- as slump sale on 31<sup>st</sup> December 2008. It was submitted that the businesses was purchased from M/s SRF Polymers Limited on lump sum basis and the amount of goodwill appearing in the Balance Sheet as at 31.03.2009 represents the total consideration paid for acquiring business which exceeds the value of assets taken over by the assessee. Assessee also relied on various decisions in respect of its claim for depreciation. The submissions of the assessee were not found acceptable to AO. AO noted that the assessee had purchased three business for a consideration of Rs.150,31,26,228/- as slump sale without making its valuation. He noted that assessee, after the purchase had made valuation of the assets and liabilities which was determined at Rs.146,62,32,222/- and the balancing amount of Rs.3,68,94,006/- was treated as Goodwill. AO was of the view that the aforesaid amount of Goodwill was a balancing figure and was not Goodwill for which assessee had paid in excess of its valuation to its group companies. He was of the view that since the assets and liabilities has not been valued; no Goodwill can be purchased by the assessee. He accordingly disallowed the claim of depreciation on Goodwill amounting to Rs.25,53,577/-.

37. When the matter was carried before the DRP, DRP noted that in assessee's own case in earlier year, DRP vide order dated 13.07.2018 had upheld the action of AO with respect of disallowance. DRP therefore, following the order of its

predecessor, upheld the action of AO. Pursuant to the action of DRP, AO in the final assessment order disallowed the claim of depreciation. Aggrieved by the order of AO, assessee is now before us.

38. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that the issue of depreciation on goodwill is covered in favour of the assessee by the decision of Hon'ble Apex Court in the case of **CIT vs. Smifs Securities Ltd. [2012] 24 taxmann.com 222 (SC)** wherein the Hon'ble Apex Court has held that goodwill amounts to intangible assets which are eligible for depreciation. He further submitted that identical issue arose in assessee's own case in A.Y. 2012-13 wherein the Hon'ble Tribunal has held the goodwill to be intangible assets and eligible for depreciation. He pointed to the copy of the relevant portion of the order which is at Page 117 of the Paper Book. He submitted that the Hon'ble Tribunal had allowed the claim of depreciation on goodwill but since it was an additional claim made before the Tribunal, the matter was set aside to AO for examination. In the year under consideration, he submitted that it is not a case wherein an additional claim has been made and therefore following the decision of Hon'ble Apex Court in the case of Smifs Securities Ltd. (supra), the claim of the assessee be allowed.

39. Learned DR on the other hand took us to the findings of the AO and DRP and pointing to their findings submitted that the AO was fully justified in denying the claim of depreciation.

40. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the claim of depreciation on goodwill. We find that issue of depreciation on goodwill also arose in assessee's own case in A.Y. 2012-13 and the Co-ordinate Bench of Tribunal in ITA No.5784/Del/2016 order dated 24.04.2020 by relying on the decision of Hon'ble Apex Court in the case of Smifs Securities Ltd. (supra), held that assessee is eligible to claim depreciation on goodwill. However in that order since the claim of depreciation was made as an additional claim before the Tribunal, the matter was remitted to the AO for examination. In the year under consideration, we are of the view that since the claim was already made in the return of income and was denied by AO and DRP, we are of the view that ratio of the decision rendered by Hon'ble Apex Court in the case of Smifs Securities is squarely applicable to the facts of the case. We are therefore direct the AO to grant the depreciation of such goodwill. **Thus the ground of assessee is allowed.**

41. **Ground No. 21** is with respect to incorrect computation of Book Profit under MAT.

42. AO while computing the Book Profit u/s 115JB of the Act added the disallowance of depreciation on goodwill amounting to Rs.25,53,577/- to work out the adjusted Book Profit. When assessee carried the matter before the DRP, DRP upheld the order of AO in view of Clause (g) of Explanation (1) of Section 115JB(2) of the Act. Aggrieved by the consequential order passed by AO, assessee is now before us.

43. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that as per Explanation to Section 115JB, only amount of depreciation which is debited to the P & L account attributable to revaluation of assets is to be added back and not the normal depreciation on goodwill. He further submitted that depreciation which has been added back is as per the book of account and not as per the I.T. Act. He thereafter submitted the claim of depreciation on goodwill has been held to be allowable in A.Y. 2012-13 and following the same decision, if it is held to be allowable then the same cannot be added to the book profits. He therefore submitted that addition made to book profit to be deleted.

44. Learned DR on the other hand supported the order of lower authorities.

45. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the computation of book profit under MAT wherein

the addition of Rs.25,53,577/- on account of depreciation on goodwill has been added back while calculating the book profit u/s 115JB of the Act. We have herein while deciding the Ground No.17 & 18 have held the depreciation on goodwill as an allowable expenditure. Therefore in such a situation, we are of the view that once the depreciation is held to be an allowable expenditure, same cannot be added to the book profit more so as u/s 115JB the depreciation which is required to be added back to compute book profits is the depreciation as per the books of account and not as per the Income Tax Act. Considering the aforesaid, we are of the view that AO was not justified in making addition of depreciation on goodwill to compute the book profits. We accordingly direct the AO to delete the addition made to book profit u/s 115JB of the Act. **Thus the ground of assessee is allowed.**

46. **Ground No.22.1** is with respect to the claim of deduction u/s 80-IA of the Act amounting to Rs.11,12,42,521/- in respect to Wind Power Plant (WPP) and Captive Power Plant (CPP).

47. Before us, Learned AR submitted that assessee had made an additional claim with respect to the deduction u/s 80-IA of the Act amounting to Rs.10,93,38,575/- in respect of Wind Power Plant (WPP) and Rs.19,03,946/- in respect of Captive Power Plant (CPP) thus claiming an aggregate deduction of Rs.11,12,42,521/-

before the AO which was inadvertently left to be claimed while filing the return of income. He submitted that assessee had submitted the complete details with respect to the deductions like Form No.10CCB, audited financial statement, certificates of chartered accountant and other required documentary evidences vide submission made on 26.12.2017. He submitted that the AO has not discussed about the claim in the assessment proceedings and passed order u/s 143(3) r.w.s 144C (13) of the Act without allowing the claim of deduction. He submitted that when assessee had carried the matter before the DRP, the Hon'ble DRP did not consider the additional claim by relying on the decision of Hon'ble Apex Court in the case of **Goetze (India) Ltd. vs. CIT reported in 284 ITR 323**. Aggrieved by the directions of DRP, assessee is now before us.

48. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that AO has failed to appreciate that claim of assessee was a *bonafide* claim and was supported by necessary documentary evidences. Learned AR thereafter submitted that identical issue of additional claim which was made during the course of assessment proceedings but was not allowed came from consideration before the Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2010-11 in ITA No.356/Del/2015 and the Co-ordinate Bench of Tribunal vide order dated 24.02.2020 vide para 40 of the order has inter alia observed that the Revenue authorities cannot simply turn down the genuine and bonafide claims of the

assessee on some technicalities and that instead of rejecting the additional claims of the assessee outrightly, authorities should endeavor to examine the bonafide claims of the assessee on its merit which would also avoid further litigation at higher forums. He therefore submitted that the issue may be set aside for examination by the AO and allow it on merits. He submitted that identical issue arose in assessee's own case in A.Y. 2006-07, 2007-08, 2008-09, 2010-11 & 2012-13 and in all those years Hon'ble ITAT admitted the additional claim made by the assessee and remitted back the issues to the file of AO. To support his aforesaid contention, he pointed to the copy of the aforesaid orders which are placed in the paper book. Before us, Learned AR also placed reliance on the decision rendered in the case of **CIT vs. Ramco International 221 CTR 491 (P & H)**, **CIT vs. Natraj Stationery Products (P.) Ltd., (2009) 312 ITR 222** and other decisions which are cited in the synopsis.

49. Learned DR on the other hand supported the order of lower authorities.

50. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the additional claim of deduction made u/s 80IA of the Act. It is an undisputed fact that assessee did not claim the deduction in the return of income but was claimed during the course of assessment proceedings before the AO but the same was denied by the AO as it was not claimed in the return of

income. It is also a fact that when the matter was carried before the DRP, the claim of deduction was also denied by DRP by relying on the decision of Hon'ble Apex Court in the case of Goetze (India) Ltd. (supra). We find that identical issue of additional claim of deduction arose in assessee's own case in A.Y. 2010-11 and the Co-ordinate Bench relying on the various decisions cited therein had held that instead of rejecting the additional claim of the assessee authority should make endeavor to examine the bonafide claim of the assessee on merits. We are also find that Hon'ble Gujarat High Court in the case of Mitesh Impex [2014] 367 ITR 85 (Guj) has held that if a claim though available in law is not made either inadvertently or on account of erroneous belief of complex legal position, such claim cannot be shut out for all times to come, merely because it is raised for the first time before the appellate authority without resorting to revising the return before the Assessing Officer. It has further held that any ground, legal contention or even a claim would be permissible to be raised for the first time before the appellate authority or the Tribunal when facts necessary to examine such ground, contention or claim are already on record.

51. In view of the aforesaid facts, we are of the view that the claim of the assessee of the deduction u/s 80IA of the Act merits consideration and adjudication by the AO. We therefore set aside the issue back to the file of AO to consider the same on merits after considering the submissions made by assessee and in accordance with law. The AO shall be free to call for such

information and explanations as he deems fit to adjudicate the claim of the assessee. Needless to state that AO shall grant adequate opportunity of hearing to the assessee and the assessee shall also be at liberty of file such documents, explanations and submissions as deemed fit in respect of its claim. **Thus the ground of assessee is allowed for statistical purposes.**

52. **Ground No.22.2** is with respect to claim of additional depreciation u/s 32(1)(iia) of the Act.

53. Before us, Learned AR submitted that assessee had not claimed 50% additional depreciation amounting to Rs.58,14,99,012/- u/s 32(1)(iia) of the Act inadvertently on the assets put to use for less than 180 days in the immediately preceding assessment year while filing the return of income but same was claimed as an additional claim during the course of assessment proceedings. He submitted that additional claim of depreciation was not discussed by the AO in the order. When the matter was carried before the DRP, DRP relying on the decision rendered in the case of **Goetze (India) Ltd. (supra)** upheld the order of AO. Aggrieved by the order of DRP, assessee is now before us.

54. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that the issue is covered in favour of the assessee by the decision of Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2010-11 &

2012-13. He pointed to the relevant orders in the paper book. Learned AR therefore submitted that following the decision of Coordinate Bench of Tribunal in assessee's own case in earlier years the matter may be remitted back to the file of AO for verification and thereafter allowing the claim on merits.

55. Learned DR on the other hand did not seriously controvert the submissions made by Learned AR and also did not object to the prayer for remitting the issue back to AO for verification.

56. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the claim of additional depreciation u/s 32(1)(ia) of the Act. It is the case of the assessee that it did not claim the additional depreciation in the return of income but was claimed before the AO but however AO did not discuss the issue and when the matter was carried before the DRP, DRP also did not allow the claim of additional depreciation. We find that identical issue arose in assessee's own case in A.Y. 2010-11. The Coordinate Bench of Tribunal restored the issue back to the file of AO for considering the claim of assessee by observing as under.

*“44. The facts as submitted are that assessee claimed additional depreciation @10% (half of 20%) amounting to Rs.18,67,13,454/- on assets being the plant and machinery put to use for less than 180 days during the relevant assessment year 2010-11. The assessee claimed that in respect of additional 180 days or more is not applicable. Therefore in view of assessee, it is eligible to claim to full additional depreciation @20% on value of assets put to use during the year irrespective of timing of such put to use during the*

balance 10% left unclaimed – Rs.18,67,13,454/-, the assessee filed an additional claim during assessment proceedings for A.Y. 2010-11 however the same was neither entertained by AO nor by DRP.

45. The Ld. Counsel has placed reliance on following judicial pronouncements:

- *Apollo Tyres Ltd. vs. ACIT* (2014) 64 SOT 203
- *CIT vs. Cosmo Films Ltd.* (2012) (ITA 1404/2008)
- *CIT vs. SIL Investment Ltd.* (2012) (ITA No. 24319 (Del) 2010)
- *TCPL Packaging Ltd. vs. Deputy Commissioner of Income Tax* (2019-TIOL-907-ITAT-MUM)
- *CIT vs. Kalpataru Power Transmission Ltd.* [2019-TIOL-1424-ITAT-AHD]

The coordinate Bench in case of *CIT vs. Cosmo Films Ltd.* (supra) while holding that remaining additional depreciation shall be allowed in the subsequent year observed as under :

“This additional benefit in the form of additional allowance under section 32(1)(iia) is onetime benefit to encourage the industrialization and in view of the decision of Supreme Court in the case of *Bajaj Tempo Ltd. vs. CIT* [1992] 196 ITR 188/62 Taxman 480, the provision related to it have to be constructed reasonably, liberally and purposively to make the provision meaningful while granting the additional allowance.”

Similarly in case of *TCPL Packaging Ltd.* (supra), the Mumbai Bench has held that remaining additional depreciation claimed can be allowed in immediately succeeding year which could not be allowed in the year of acquisition on the ground that new plant and machinery has been put to use for less than 180 days.

46. The Finance Act, 2015, has amended the law by inserting third proviso to section 32(1)(iia) – applicable w.e.f. 1<sup>st</sup> April 2016 to allow the claim of additional depreciation for assets put to use for less than 180 days in subsequent Assessment Year.

47. *The AO is thus, directed to consider the claim of the assessee and give his findings thereon. For this purpose this issue is set aside to the file of AO. The AO shall be free to call for such information and explanation as he deems fit in order to adjudicate this claim of the assessee after granting reasonable opportunity to the assessee of being heard. The assessee will be at liberty to file such documents, explanations, submissions as it deems fit in respect of this claim.”*

57. We further find that following the decision of the tribunal for A.Y. 2010-11, the claim was allowed in A.Y. 2012-13. Before us, no distinguishing features in the facts of the case in the year under consideration and that of the earlier years has been pointed out by Revenue. Revenue has also not placed any material on record to demonstrate that the ITAT orders in assessee's own case for earlier years has been stayed/ set aside/ overruled by higher judicial forum. We therefore, following the reasoning of the Co-ordinate Bench for A.Y. 2010-11 and for similar reasons set aside the issue back to the file of AO to consider the same on merits after considering the submissions made by assessee and in accordance with law. The AO shall be free to call for such information and explanations as he deems fit to adjudicate the claim of the assessee. Needless to state that AO shall grant adequate opportunity of hearing to the assessee and the assessee shall also be at liberty of file such documents, explanations and submissions as deemed fit in respect of its claim. **Thus the ground of assessee is allowed for statistical purposes.**

58. **Ground No.22.3** is with respect to TDS and self assessment tax which was not claimed in the return of income.

59. Before us, Learned AR submitted that the allowance of TDS deducted on the sale of immovable property amounting to Rs.2,70,000/- and self assessment tax amounting to Rs.47,61,334/- which was inadvertently left to be claimed while filing the return of income. The claim was made before the AO during the course of assessment proceedings but the AO did not discuss it in the order and thereby claim has not been allowed to the assessee. When the matter was carried before the DRP, Hon'ble DRP relying on the decision of the Hon'ble Apex Court in the case of **Goetze (India) Ltd. (supra)** upheld the order of AO. Aggrieved by the direction of DRP, assessee is now before us.

60. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that the claim of the assessee is *bonafide* and based on documentary evidences furnished before the AO. He submitted that the necessary evidences were furnished before the AO but the same was not examined and considered. He therefore submitted that the matter may be remitted back to the AO for verification and allow the claim on merits.

61. Learned DR on the other hand supported the order of lower authorities.

62. We have heard the rival submissions and perused the material available on record. Before us, assessee is seeking the credit for TDS amounting to Rs.2,70,000/- deducted on sale of immovable property and the claim of self assessment amounting to Rs.47,61,334/- which was inadvertently claimed as TDS. Assessee has furnished the copy of the self assessment tax challan in the paper book and the copy of Form 26QB evidencing the deduction of TDS amounting to Rs.2,70,000/-. We find merit in the prayer of Ld AR. We therefore considering the submissions of the Learned AR restore the matter to AO to examine the same as per record and if the claim of the assessee is found to be in order, to allow the claim. **Thus the ground of assessee is allowed for statistical purposes.**

63. Additional ground is with respect to claim of deduction of education cess.

64. Before us, Learned AR submitted that during the relevant assessment year assessee has paid education cess amounting to Rs.34,79,518/- under the normal provision of the Act. He submitted that Hon'ble Rajasthan High Court in the case of **Chambal Fertilisers & Chemicals Ltd. vs. CIT in Appeal No.52/2018 vide order dated 03.07.20218** has held that education cess is an allowable deduction while computing the income under the head "profit and gains of business or profession" as it does not fall within Section 40(a)(ia) of the Act. He submitted that Hon'ble Bombay High Court in the case of

**Sesa Goa Limited vs. JCIT in Tax Appeal No.17/2013 and others order dated 28.02.2020** have also held the education cess to be an allowable expenses. He therefore submitted that Education Cess being not in the nature of tax and not being a disallowable expenditure u/s 40A(2) of the Act, the claim of its deduction be allowed.

65. Learned DR on the other hand did not controvert the submission.

66. We have heard the rival submissions and perused the materials available on record. With respect to the additional ground with claim of deduction of Rs.34,79,518/- on account of payment of education cess, Before us, it is Ld AR's contention that assessee has paid education cess which was not claimed as deduction in the return of income filed by the assessee and the assessee now seeks its deduction. We find that identical issue arose in case of ExLServices.com (India) Pvt. Ltd. vs ACIT wherein the co-ordinate Bench of Tribunal in ITA No.7392/Del/2018 vide order dated 06.09.2021 wherein the issue was decided in favour of the assessee by observing as under:

*"22. We have heard the rival submissions and perused the materials available on record. The issue in the present additional ground is with respect to claim of deduction of Rs.70,98,828/- on account of payment of education cess. We find that identical issue arose in assessee's own case and the Co-ordinate Bench of Tribunal decided the issue in favour of the assessee by observing as under:*

*“33. By way of additional ground, the assessee has claimed deductibility of education cess.*

*34. Before us, the ld. counsel for the assessee stated that in the return of income filed for relevant A.Ys, the assessee did not claim deduction for education cess paid before the due date for filing return of income for subject A.Ys. It is the say of the ld. counsel for the assessee that the Hon'ble Rajasthan High Court in the case of Chambal Fertilizers and Chemicals Limited in ITA No. 52/2018 order dated 31.07.2018 has held that education cess is an allowable deduction while computing the income under the head “Profits and gains from profession or business”.*

*35. Even the CBDT, in its Circular No. 91/58/66-ITJ(19) dated 18.05.1967 has clarified that the word “Cess” has been omitted from clause and effect of omission of the word “Cess” is that only taxes paid are to be disallowed in the assessments for the years 1961-63 onwards.*

*36. In light of the decision of the Hon'ble Rajasthan High Court [supra] we direct the Assessing Officer to allow claim of deductibility of cess from the income in the captioned A.Ys. Additional ground in all the appeals is allowed.”*

*23. We find that facts of the case in the year under consideration are identical to that of the earlier years. Further no distinguishing feature in the facts of the case in the year under consideration and that of the earlier years has been pointed out by the Revenue. Before us, Revenue has also not placed any material on record to demonstrate that the ITAT orders in assessee's own case for earlier years on identical issue has been stayed/ set aside/ overruled by higher judicial forum. We therefore, following the order of the Tribunal in assessee's own case for earlier years and for similar reasons direct the AO to allow the claim of deductibility of cess amounting to Rs.70,98,828/-. **Thus the ground of the assessee is allowed.”***

67. Since the issue being identical to the issue in the case of ExLServices.com (India) Pvt. Ltd (supra), we therefore for similar reasons hold the expenses on education cess to be allowable and

accordingly direct the AO to allow its deduction. **Thus the ground of assessee is allowed.**

**68. In the result, appeal of the assessee is partly allowed.**

**Order pronounced in the open court on 13.12.2021**

**Sd/-**

**(KULDIP SINGH)  
JUDICIAL MEMBER**

*Date:- 13.12.2021*  
PY\*

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI