**IN THE INCOME TAX APPELLATE TRIBUNAL**
**MUMBAI BENCHES "B", MUMBAI**

## Before Shri R.S.Syal, AM and Shri D.K.Agarwal, JM

ITA No.7977/Mum/2010 : Asst. Year 2006-2007

| | | |
|---|---|---|
| M/s. Bayer Material Science P. Ltd.,<br>Bayer House, Central Avenue,<br>Hiranandani Gardens, Powai,<br>Mumbai-400 076.<br>**PAN: AAACB2419H.** | Vs. | The Addl.Commissioner of Income-tax<br>Range 10(3)<br>Mumbai. |
| (Appellant) | | (Respondent) |

**Appellant by : Shri M.P.Lohia & Ms.Aashish Kasad**
**Respondent by : Shri Pravin Varma**

| | |
|---|---|
| **Date of Hearing : 08.12.2011** | **Date of Pronouncement : 16.12.2011** |

**O R D E R**

**Per R.S.Syal, AM :**

This appeal by the assessee is directed against order dated 14-10-2010 passed by the Assessing Officer u/s. 143(3) read with sec. 144C(13) of the Income-tax Act, 1961 in relation to assessment year 2006-07.

2. Ground nos. 2 to 8 (except ground nos. 4 & 7 which were not pressed by the ld. A.R.) deal with confirmation of addition of Rs.25,56,99,421/- towards transfer pricing adjustment.

3. The factual matrix of these grounds is that the assessee entered into international transactions with its Associated Enterprises (AEs). The AO referred the matter of determining the Arm's Length Price (ALP) to the Transfer Pricing Officer (TPO). The TPO passed order u/s. 92CA(3) by making an upward adjustment to ALP of Rs.25.56 crores on account of transactions with the overseas AE. The AO proposed addition of Rs.25.56 crores in the draft assessment order. The assessee filed objections before the DRP, who rejected such objections and confirmed the stand of the Department. Based on the TPO's

order and the draft order approved by the DRP, the AO made addition of Rs.25.56 crores .

4. At this stage, it would be relevant to consider the order of TPO passed on 29-10-2009. From this order it can be seen that during the year in question, the assessee entered into the following international transactions with its AEs:

(Figures in Rs. ' 000)

| | | | |
|---|---|---|---|
| 1. | Import of raw materials | 57783 | Transactional Net Margin Method ('TNMM') |
| 2. | Import of finished goods | 310098 | TNMM |
| 3. | Export of finished goods | 97766 | TNMM |
| 4. | Receipt of indenting commission | 94481 | TNMM |
| 5. | Recovery of expenses | 27520 | Recovery of actual Cost (TNMM) |
| 6. | Reimbursement of expenses | 405 | Reimbursement of Actual cost (TNMM) |

5. The TPO noted that the activities of the assessee were largely classified into manufacturing and trading. As regards the manufacturing activity, he observed that the assessee manufactured and sold thermo plastics, polyurethane. For manufacturing these products, the assessee imported raw material from its AEs and also exported some of its manufactured products to the other group companies. The TPO did not propose any adjustment in such international transactions. As part of trading, the assessee imported finished polycarbon etc. from Bayer Group companies for resale in India. It also received indenting commission from Bayer Group entities whenever certain Indian customers placed orders directly on Bayer Group entities through the mediation of the assessee. For the purposes of transfer pricing, the assessee combined the

activities of trading and indenting into a single group. Since in the opinion of TPO the functions performed and the risks undertaken in respect of trading and indenting activities were different and varied, the assessee was asked to furnish segmental accounts for these activities distinctly. On 13-8-2009, the assessee furnished segmental accounts in respect of manufacturing and trading activities showing net profit margin in respect of manufacturing at 13.49% and trading at 6.41%. As the assessee did not disclose indenting as a separate segment and the entire commission income on indenting was clubbed with the income from trading segment, the TPO required the assessee to show reasons for not making a bifurcation. It was stated on behalf of the assessee that trading and indenting were undertaken by the assessee as an integrated trading business with common employees, common facilities, common strategies and common management. Since the functions, assets employed and risks undertaken in indenting business are completely different from trading, the TPO held that both the activities could not be clubbed. In his opinion, both activities were to be benchmarked on a separate basis keeping in view FAR analysis. Thereafter, the assessee furnished detailed accounts, a copy of which is placed at page 353 of the paper book. The TPO found that these results were incomplete. The assessee produced another split-up between trading and indenting segments, a copy of which is placed at page 436 of the paper book. Still thereafter, the assessee came out with one more financial split-up between the trading and indenting segment, copy of which is placed at page 510 of the paper book. The TPO observed that the furnishing of four different allocations during the course of proceedings before him itself showed the reliability or unreliability of the accounts being maintained and margins being shown by the assessee. He analyzed the final split-up given by the assessee (copy on page 510 of the paper book) between trading and indenting segments and noticed from it that the assessee had bifurcated all other expenses except Employee cost and Rent on the basis of trading turnover to the indenting turnover (i.e. 42:734). Employee

cost was bifurcated by the assessee in the ratio of 1:1 between trading and indenting segments. In the opinion of the TPO, the entire Employee cost was required to be bifurcated on the basis of trading and indenting turnover. He, therefore, allocated a sum of Rs.4.60 crores to the indenting segment. Similarly, as regards Rent totaling Rs.53.90 lakhs, the assessee attributed equal amount to both the activities. Applying the same yardstick of apportioning in turnover ratio, the TPO allocated Rs.50.94 lakhs to indenting segment and Rs.2.96 lakhs to trading segment. In this way, he revised the segmental accounts in respect of trading and indenting activities as under :

(Figures in Rs. ' 000)

| | TRADING | INDENTING | TOTAL |
|---|---|---|---|
| SALES | 427,176,242 | 7,348,320,873 | 7,775,497,115 |
| OTHER OPERATING INCOME | | | |
| COST RECOVERY | | 13,627,771 | 13,627,771 |
| REIMBURSEMENTS | 2,560,561 | 3,452,494 | 6,013,055 |
| TOTAL | 429,736,803 | 7,365,401,138 | 7,795,137,941 |
| EXPENDITURE | | | |
| COST OF TRADED GOODS SOLD | 396,864,566 | 7,253,684,515 | 7,623,549,081 |
| EMPLOYEE COST | 2,674,547 | 46,007,776 | 48,682,323 |
| FREIGHT & CLEARING | 6,470,721 | 1,939,505 | 8,410,226 |
| RENT | 296,145 | 5,094,307 | 5,390,452 |
| RATES & TAXES | 21,769 | 374,469 | 396,238 |
| INSURANCE | 700,493 | 0 | 700,493 |
| OTHERS | 18,162 | 312,421 | 330,583 |
| TRAVELLING & CONVEYANCE | 969,010 | 16,668,993 | 17,638,003 |
| COMMUNICATION | 119,977 | 2,063,854 | 2,183,831 |
| PRINTING & STATIONARY | 20,611 | 354,548 | 375,159 |
| DIRECTORS SITTING FEE | 7,504 | 129,080 | 136,584 |

| | | | |
|---|---|---|---|
| AUDITORS REMUNERATION | 62,281 | 1,071,366 | 1,133,647 |
| ADVERTISEMENT & PUBLICITY | 175,403 | 3,017,303 | 3,192,706 |
| COMMISSION | 64,228 | 1,104,857 | 1,169,085 |
| BAD DEBTS | 321,225 | | 321,225 |
| LEGAL & PROFESSIONAL | 221,856 | 3,816,392 | 4,038,248 |
| COST SHARING EXPENSES | 1,626,188 | 27,973,839 | 29,600,027 |
| EXCHANGE LOSS | 4,644,853 | | 4,644,853 |
| MISCELLANEOUS EXPENSES | 132,876 | 2,285,743 | 2,418,619 |
| DEPRECIATION | 182,287 | 3,135,713 | 3,318,000 |
| | 388,594,701 | 7,369,034,682 | 7,757,629,383 |
| RECOVERIES | | 6,566,138 | 6,566,138 |
| TOTAL EXPENDITURE | 388,594,701 | 7,362,468,544 | 7,751,063,245 |
| | | | |
| OPERATING PROFIT | 41,142,102 | 2,932,594 | 44,074,696 |
| | | | |
| OPERATING COST | 386,034,140 | 95,156,258 | |
| OP/SALES | 9.63% | 0.04% | |

6. By means of the above calculation, the ratio of Operating profit to Sales in trading segment was worked out at 9.63% and in indenting segment at 0.04%. The TPO accepted the ratio of Operating profit to Sales in the trading activity as representing ALP. He however did not accept the Operating profit ratio in indenting activity as showing ALP. He noticed that as per the terms of agreement between the Bayer Group companies and the assessee, indenting commission was payable to the assessee only on the making of payment by the customers. For the services rendered by the assessee, commission rates ranged between 1% to 3%. It was also observed that the assessee changed its agreement with effect from 13.1.2006 under which it was to be remunerated by way of reimbursal of total cost i.e. direct expenses and a fair allocation of indirect

expenses plus 0.6% of the sale value of the AE's goods indented in India through the assessee. The TPO opined that arm's length indenting commission should be based as a percentage of sale and not as a percentage of cost inasmuch as the compensation was only for the effective sales made through the assessee. The most appropriate method for compensating such kind of indenting services, in his opinion, was not a cost plus but a percentage of sales method. He noticed that the assessee had shown to have earned margin of 23.73% under indenting segment, which was erroneously depicted as a percentage of its gross commission and hence was meaningless. The assessee was given an opportunity to give the names of the comparable companies which were indulging in such kind of indenting business in chemicals to prove that its price was at ALP. The assessee failed to discharge this burden. Taking strength from the Special Bench order in the case of *Aztec Software & Technology Services Ltd. vs. ACIT (2007) 107 ITD 141 (Bang) (SB)*, the TPO came to hold that, in the absence of the assessee forthcoming with any comparable cases, he will apply a reasonable rate of commission charged in similar activity. It was noticed by him that the transactions of indenting in the products dealt with by the assessee, were usually between two AEs. As no data about the uncontrolled transactions of similar nature was readily available, he considered it appropriate to use data of controlled transactions. Proceeding on this line, he noticed that one company, namely, M/s Huntsman International Pvt. Ltd., assessed in his office, undertook identical functions as those of the assessee in as much as, that was also engaged in trading, indenting and manufacturing polyurethane products. It also undertook indenting services for its AE by procuring orders for Isocynate and Polyols. As per the terms of agreement, the AE of this comparable company paid an agency commission equal to 5% of the agency sale value of the products sold in the territory of that company. The TPO further analyzed various factors such as characteristics of products, economic circumstances, functional and risk profiles, business strategies, etc., of the assessee and M/s

Huntsman International Pvt. Ltd. and found them similar. The TPO found another comparable case of M/s INCOS ABS (India) Ltd. indenting polycarbonate products for Bayer Material Science Ltd., Hongkong. Commission in that case was also received at the rate of 5% of the sales. Another case of M/s Rathi Bros. Madras Ltd. was noticed having indenting commission @ 5 to 6%. In the light of these comparable cases, the TPO held that the arm's length commission earned by the assessee on indenting turnover of Rs.734.83 crores @ 5% would be Rs.36,74,16,044/-. As the actual amount received by the assessee was at Rs.11,17,16,623/-, the TPO proposed adjustment of Rs.25,56,99,421./-. It is this amount of Rs.25.56 crores which was added by the AO, against which the assessee has come up in appeal before us.

7. We have heard the rival submissions and perused relevant material on record. It is observed that the assessee entered into certain international transactions with its AEs. Apart from manufacturing, the assessee also undertook the business of trading and indenting. There is no dispute as regards arm's length price declared by the assessee in respect of manufacturing activity. The assessee consolidated its results from the other two streams of activities, namely, trading of finished polycarbon etc., purchased by it from Bayer group for resale and indenting commission earned from Bayer group on sales effected by them through the assessee's assistance. The TPO requested the assessee to segregate the results in respect of trading and indenting activities and furnish segmental accounts separately. Initially it was argued before the TPO on behalf of the assessee that it was not practicable to segregate the results in respect of trading and indenting activities. The assessee revised the calculations of such profit one after the other, for four times, sometimes voluntarily and on others at the instance of the TPO. Final calculation, a copy of which is available on page 510 of the paper book, was filed splitting trading and indenting activities, which has been considered by the TPO for further adjustments. Thus it can be seen that

though the assessee was initially hesitant to give segmental accounts in respect of trading and indenting activities separately but eventually complied with and furnished such details.

8. The first question in this regard is whether the TPO was justified in proceeding with the exercise of determining the ALP distinctly in respect of trading and indenting activities ? There cannot be any dispute on the proposition that if functions, assets and risks are same in more than one activity, then these can be clubbed for determining the ALP. If however the FAR analysis indicates diversion in two activities then bench-marking should be done on separate basis. It is relevant to note that there is vast difference in indenting and trading activities. In a trading activity, a trader finds the customers, undertakes the risk in maintaining inventory, realization of sale proceeds, incurring interest and other costs in respect of maintaining and keeping the stock. In such a case, the functions also include unloading the goods, bringing them to its warehouse, loading and unloading at the customer's place so on and so forth. On the other hand, the indenting activity is confined only in finding the customers and getting an appropriate price. There are no financial risks involved in indenting activity and further the costs incurred herein are substantially less when compared with the trading activity. From here, it follows that trading and indenting activities are quite distinct from each other and hence, benchmarking is also required to be done separately. In our considered opinion, the TPO was justified in venturing to determine the ALP in respect of both these activities distinctly.

9. The TPO went ahead in determining the ALP in respect of trading and indenting activities separately. Obviously the first step in the determination of ALP is to find out the percentage of profit of the assessee from the international transactions, unless it relates to the incurring of any expense in an

international transaction. Normally it is the profit declared by the assessee from the international transactions which is taken into consideration, except where the TPO finds that the affairs have been reflected in such a manner so as not to depict the segment wise correct profit or any other means have been adopted which have the effect of not showing the correct income in international transactions. Then comes the second step in finding out the profit rate of comparable cases and then comes the final stage of determining as to whether or not the profit of the assesse represents ALP.

10. The TPO undertook the first step of finding out the correctness of profit declared by the assessee with reference to the final (fourth) calculation submitted by the assessee splitting the results showing net profit margin at 3.90% in the case of trading and 23.73% in the case of indenting activities. Here, it is pertinent to note that trading margin at 3.90% was determined by considering the figure of net sales of Rs.42.71 crores as denominator. On the other hand, the net profit margin in the case of indenting activity at 23.73% was computed by adopting the gross figure of indenting commission along with cost recovery as denominator instead of actual turnover on which such indenting commission was earned. The figure of such indenting turnover was admitted by the assessee as Rs.734.83 crores . The TPO substituted the figure of indenting turnover with the gross commission adopted by the assessee for the purposes of working out the Operating profit to Sales ratio in the indenting segment. In the fourth and the final financial split, the assessee bifurcated all expenses, except Employee costs and Rent in the ratio of trading to indenting turnover, that is, 42 : 734. However, these two expenses were apportioned equally in the ratio of 1:1. The TPO accepted all other figures given by the assessee except the bifurcation of these expenses. He apportioned these two expenses also in the ratio of trading and indenting turnover. On making this alteration, the TPO determined the ratio of operating profit to sales at 9.63% in the case of trading activity and 0.04% in

the case of indenting activity as per the table extracted above. The resulting ratio of Operating profit to Sales in the trading activity was accepted by the TPO as representing ALP. Thus it is manifest that the entire dispute revolves around the determination of ALP in respect of indenting business.

11. The ld. AR objected to the adoption of figure of indenting turnover and also the bifurcation of employee cost and rent as done by the TPO. It was argued by the ld. AR that the TPO ought to have considered the gross commission as the turnover. We are not convinced with this submission for the simple reason that indenting commission is gross remuneration allowed to the assessee on the amount of turnover achieved by the assessee's A.E. through its efforts. It is beyond our comprehension as to how the figure of commission, which constitutes a small fraction of the turnover in the indenting business, can be compared with the turnover in the trading segment. Sales value minus the purchase cost and direct expenses gives the figure of gross profit. When we reduce the indirect expenses from the gross profit, the amount of net profit is determined. Bringing gross commission from the indenting segment and turnover in the trading segment on one platform for comparison is wholly absurd. In fact, gross commission from the indenting activity can be likened with the gross profit from trading minus costs related to the maintenance of inventory, risk and other related costs. If any comparison of the trading turnover is to be contemplated with the indenting activity, that can be only with its turnover. It is wholly unrealistic to compare the gross indenting commission with the turnover in the trading activity for comparing the ratio of operating profit to turnover. As the assesse showed net profit margin of 23.73% in the indenting segment by considering the amount of gross commission in the denominator, the same is not capable of comparison with the net profit margin in the trading segment with the amount of turnover as denominator. Rounds cannot be compared with the squares and *vice versa*. It is only the turnover and

not the gross commission in the indenting activity, which can be compared with the turnover in the trading activity. We, therefore, repel this contention raised on behalf of the assesse and approve the view canvassed by the TPO in adopting the figure of turnover in the indenting segment at Rs.734.83 crores .

12. The second objection raised by the assessee is on the bifurcation of employee cost between trading and indenting segments. Whereas, the assessee divided employee cost in equal shares between the trading and indenting activities, the TPO apportioned it in the ratio of turnover. The ld. AR argued that the basis adopted by the assesse in bifurcating such cost was correct. We are again unconvinced with the submissions tendered on behalf of the assessee in this regard that the employee costs should be segregated in equal proportion between the two segments. The obvious reason is that the assessee itself admitted before the TPO that "*trading and indenting are being undertaken by the company as an integrated trading business with common employees, common facilities and common strategies and common management*". If one of the two activities consumes a small fraction of the total time, it cannot be said that expenditure in both is similar. When the employees were common in both the segments, how the assessee could have bifurcated such expenditure in an *ad hoc* manner in the ratio of 1:1. It should have come out with the evidence of time spent by employees in the respective activities. It will be seen *infra* while dealing with ground No.10 of the appeal that the assessee furnished hour-wise utilization of time by the employees of BCS in different divisions of each segment for justifying that it was the reimbursement of cost incurred without having any profit element. When the assessee is so meticulous in maintaining and providing such minute details, it could have maintained similar details in respect of each employee in trading and indenting activities to justify the apportionment of cost in a befitting manner. As the stand of the assessee before the TPO was that both these activities were conducted in an integrated manner

with common employees and common management, naturally it did not maintain any separate record in respect of these two activities. When we are considering the question of allocation of employees cost between trading and indenting activities, in the absence of any other reasonable basis, the bifurcation in the ratio of turnover in the two segments, is quite appropriate. It is further relevant to note that the assessee divided all other expenses in the ratio of turnover in trading and indenting segments. In that view of the matter, we are unable to find any infirmity in the TPO's view in allocating employee cost also in the same ratio. What has been discussed in the context of employees cost would squarely apply to the rent also. Here again the assessee distributed total rent expenditure in the ratio of 1 : 1 between the two segments, which the TPO did not accept and apportioned in the ratio of turnover of these segments. To sum up, we hold that the TPO has rightly worked out the assessee's profit rate from the international transactions in the indenting segment at 0.04% of the turnover. If we consider the ratio of gross commission to the indenting turnover, the same comes to around 1.5%.

13. Now we move to the second step of finding out the profit rate of comparable cases. We have approved the view of the TPO in holding that both the trading and indenting activities were required to be benchmarked separately. We have noticed above that the assessee gave comparable cases showing profit margins in trading and indenting activities taken as one consolidated unit, without there being any segregation for indenting activity. In that view of the matter the comparable cases cited by the assessee lost their significance. Left with no comparable case available for comparison from the side of the assessee, the TPO rightly requested the assessee to give names of companies indulging in such kind of indenting business in chemicals to show that its price was at arm's length. The assessee did not furnish any details of the comparable cases. In the absence of the assessee discharging its onus the TPO took upon himself the duty

of finding comparable cases. He noticed that no data was available on such activity in the realm of uncontrolled transactions. He, accordingly, took note of three comparable cases entering into similar indenting business by way of controlled transactions, viz., M/s Huntsman International Pvt. Ltd., M/s INEOS ABS (India) Ltd. and M/s Rathi Properties Madras Ltd. showing the percentage of indenting commission to sales at five percent. Now the question arises as to whether the TPO was justified in considering these three cases as comparable.

14. The ld. counsel argued that the TPO erred in rejecting the comparable cases given by the assessee and choosing comparable cases at his own. From the facts recorded above, we find that the assessee did not give any comparable case in the indenting activity alone. Since the benchmarking was to be done in respect of such activity alone, it was for the assessee to initially submit a list of comparable cases. Not having done so, the TPO was left with no option but to find out suitable comparable cases at his own. But for the comparable cases chosen by the TPO, the determination of ALP in respect of indenting activity would have become impossible. In our considered opinion the following are the essential steps in the selection of comparable cases :-

i. As the assessee knows the nature of its business well, it is he who always has the prerogative of choosing the comparable cases.
ii. Once the assessee has chosen the comparable cases, then it becomes the duty of the TPO to find whether these cases are, in fact, comparable or not. If he finds that the cases given by the assessee are comparable on the basis of FAR analysis, the matter ends. He will accept them and then determine the average profit.
iii. If the TPO is not satisfied as to the comparability of some of the cases given by the assessee, he will exclude such cases from the final list of comparables, after giving cogent reasons.

iv. The TPO may possibly find that the assessee has done cherry picking and ignored the comparable cases giving higher profit margins. In such a case he may himself find out such comparable cases and after taking objections from the assessee include them also in the final list of comparables along with those left out of the assessee's list as per step iii. above. Here it is important to mention that the voluntary selection of comparable cases by the TPO is his *power* and not the *duty*. He may or may not exercise his power in given circumstances. If he gets satisfied with the cases left out from the assessee's list, he may skip the exercise of voluntarily finding the comparable cases at his end. Thus it is the aggregate of such cases being those short-listed from the assessee's list and those voluntarily included by the TPO, which are considered to find out the average profit for the purposes of comparison.

v. It may also happen that all the cases chosen by the assessee turn out to be incomparable and as such the basket of comparable cases is emptied. As the exercise of determining ALP is inconceivable without any comparable case, the TPO will have to afford one more opportunity to the assessee enabling it to give certain other cases which are really comparable. On the receipt of details of such comparable cases, the steps at ii. to iv. shall be undertaken by the TPO.

vi. If despite being put to notice as per step v., the assessee fails to give any list of comparable cases or the cases given are again found to be incomparable, then the *power* of the TPO in voluntarily selecting comparable cases as discussed in step iv. above shall get converted in to his *duty*. He will have to undertake the exercise of finding comparable cases so as to complete his job.

15. Adverting to the facts of the instant case, it is noted that the assessee initially gave list of comparable cases. All such cases were found to be incomparable as having been given for combined trading and indenting activities. Since the TPO was to benchmark only indenting activity and none of the cases given by the assessee satisfied this functional test of comparability, the TPO requested the assessee to give a list of comparable cases indulging into the indenting of the related product. The assessee failed to cite any such case. In order to undertake the exercise of determining the ALP, the TPO was left with no option but to find out comparable cases at his own. In our considered opinion, the TPO was fully justified in selecting comparable cases at his own for the purposes of making comparison with the assessee's results.

16. The ld. counsel for the assessee raised one more objection by contending that the TPO was not justified in considering controlled transactions as comparable data in respect of M/s Huntsman International P. Ltd., M/s INEOS(ABS) India Ltd. and M/s Rathi Bros. Madras Ltd. It was argued that there are catena of orders in which it has been held that only uncontrolled comparable cases can be considered for the purpose of benchmarking. It was, therefore, urged that as the above mentioned three cases were controlled transactions (i.e. between two associated enterprises), the same be excluded.

17. Section 92(1) provides that any income arising from an international transaction shall be computed having regard to the arm's length price. Explanation to sec. 92(1) clarifies that allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price. Section 92C(1) states that the arm's length price in relation to an international shall be determined by any of the methods prescribed in the provision, being the most appropriate method, having regard to the nature of the transaction or class of transaction etc. Section 92F(ii) defines "Arm's

Length Price" to mean "*a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions*". A perusal of this definition amply brings out that ALP is a price which is applied between "persons other than associated enterprises". The expression "other than associated enterprise" implies two independent entities which are not associated to each other. Section 92C(1) prescribes certain methods, out of which one which is most appropriate should be chosen for computing ALP. The manner of determination of ALP as per these methods has been set out in Rule 10B of the I.T. Rules, 1962. There is reference to "uncontrolled transaction" in this rule. Rule 10A (a) defines "*uncontrolled transaction*" to mean "*a transaction between enterprises other than associated enterprises, whether resident or non-resident*". When we read sections 92C(1) and 92F(ii) in conjunction with Rules 10A and 10B, it becomes ostensible that ALP is to be determined with reference to uncontrolled transactions or, in other words, the price applied or proposed to be applied in a transaction between other than Associated Enterprises in uncontrolled conditions.

18. In order to appreciate the rival contentions in this regard, it will be pertinent to note that sections 92 to 92F dealing with computation of income from international transactions having regard to the ALP are placed in Chapter X with the marginal note : "Special provisions relating to avoidance of tax". The very purpose of introducing these provisions under Chapter X is to curb the tendency of avoiding the payment of lawful tax in certain circumstances. When two Associated Enterprises enter into transactions with each other, the possibility of arranging the affairs in such a manner that due tax is not paid in India cannot be ruled out. Albeit such a tendency is not omnipresent, yet it is not difficult to find out the instances where the affairs are cooked up between the Associated Enterprises in such a way that due tax does not come into the coffers of the exchequer in India. In order to curb such evil practice and protect the

interest of our country, these sections have been inserted to ensure that income in respect of international transactions is offered at the arm's length price. In other words, the mechanism is to disregard the apparent consideration recorded in the books of account and substitute it with the consideration which would have been agreed upon if the entities had been independent of each other, if the latter is higher. This exercise is precisely called the determination of ALP in which Transfer Pricing Officer finds out the amount of income earned or expenditure incurred which would have been actually earned or incurred if the two enterprises had been independent of each other, thereby ruling out the possibility of camouflaging. It is this purpose which is behind the enactment of these provisions. The end result in this regard can be achieved most appropriately by comparing the profit on account of transactions between two associated enterprises with that of the two independent entities. That is why the transaction between two independent entities is called "uncontrolled transaction". It is with this avowed object that the comparable uncontrolled transactions are considered for determining the ALP in a transaction between two associated enterprises.

19. It is possible that the nature of international transaction between two associated enterprises may be such which, in normal course, is unusual between independent enterprises. In such a case there will be hardly any comparable uncontrolled case for the purposes of benchmarking of such transaction. The question will arise as to whether in such a situation, the transfer pricing provisions will fail and cease to be applicable and as such the TPO will be compelled to accept the manoeuvred price declared by the assessee. The further question will be as to whether any cognizance can be taken of such controlled transactions for benchmarking. We have observed above that a majority of assesses do not intend to play foul with the Revenue by unnecessarily attempting to reduce the tax liability. In such circumstances the declared income

from such international transactions will itself represent the arm's length price. Thus, where it is an admitted position between the tax payer and the tax collector that there is no comparable uncontrolled transaction due to the nature of transaction being such that it is ordinarily between associated enterprises, in such a case, a transaction between two associated enterprises at arm's length price, though technically called 'controlled transaction', would partake of the character of `uncontrolled transaction' for the purposes of determining the ALP in a later international transaction between two AEs. In such a situation, no fetters can be placed on the powers of the TPO to consider such comparable controlled transaction – having adorned the garb of uncontrolled transaction - for the purposes of benchmarking. If the contention of the ld. A.R. is accepted that controlled transaction should be altogether shunted out for the purpose of transfer pricing provision, even in rare circumstances as are presently prevailing, then the very rationale and purpose of sections 92 to 92F, being the determination of ALP, which is otherwise achieved from the controlled transaction, will be defeated. It is in such exceptional circumstances that the principle of purposive interpretation will come into play to set free the hands of the TPO tied with determining ALP only on the basis of uncontrolled transactions.

20. We have noticed above that the purpose behind these provisions is to prevent the avoidance of tax in the international transactions by ascertaining the arm's length price. These provisions are basically for the assistance of the Revenue as is evident from sec. 92(3) which mandates that the provisions of this section shall not apply in a case where the computation of income under sub-section (1) or the determination of allowance for any expense or interest under that sub-section or determination of any cost or expense allocated or apportioned has the effect of reducing the income chargeable to tax computed on the basis of entries made in the books of account in respect of the previous

year in which the international transaction was entered into. The effect of section 92(3) is that if the determination of income from international transaction at arm's length price results into a lower income than what has been declared by the assessee as per the entries in the books of account, then no cognizance should be taken of such determination of ALP, which shall be ignored and the income shall be computed on the basis of entries made. On the other hand, if the income determined at arm's length price is higher than that emanating from entries in the books of account, then such income at arm's length price, being higher than that from the entries in the books of account, shall be included in the total income of the assessee. It is, therefore, manifest that the higher of income determined at arm's length price or as emerging from the entries made in the books of account, is taken into consideration for computing the total income of an assessee. This sub-section (3) of section 92 when seen in juxtaposition to the Chapter X in which the relevant sections have been resided titled as `Provisions relating to avoidance of tax', makes it apparent that the purpose behind such provisions is to uncover the arrangement made by the associated enterprises in not reflecting the true profit from the international transactions. If we accept the contention raised by the ld. A.R. that the controlled transactions should be completely ignored in such a situation when there are no uncontrolled transactions at all, it would amount to defeating the object of these provisions. When the very purpose of these provisions is to determine arm's length price and there is admittedly no record of any uncontrolled transaction, in our considered opinion, it is perfectly in order to consider a controlled transaction genuinely entered in an uncontrolled manner between some other associated enterprises, for the purposes of benchmarking of such a transaction.

21. Reverting to the facts of the instant case, it is seen that the list of comparable cases initially given by the assessee was meaningless for

benchmarking the transactions in the indenting business. Despite the TPO's request, the assessee failed to furnish the names of any comparable cases. The TPO did not find any data of uncontrolled transactions in this activity because of its peculiar nature. It was only thereafter, that he proceeded with the three cases, namely, M/s Huntsman International Pvt. Ltd., M/s INEOS ABS (India) Ltd. and M/s Rathi Brothers Madras Ltd. In our considered opinion the TPO, in the absence of having been pointed out any comparable uncontrolled case by the assessee or himself finding any such case, was right on the question of picking up the cases having controlled transactions for determining the ALP of the assessee's international transactions.

22. Now we will examine the comparability of these cases with that of the assessee. The first case is M/s Huntsman International Pvt. Ltd. which is engaged in trading, indenting and manufacturing Polyurethane products. It also undertook indenting services for its A.E. by procuring orders and as per the terms of agreement, it was given commission equal to 5% of the products sold by the A.E. to the customers in the territory of that company. Commission of Rs.3.74 crores was shown by M/s Huntsman International Pvt. Ltd. from its A.E. at the rate of 5% on the turnover. It can be seen that functionally both the assessee as well as the M/s Huntsman International Pvt. Ltd. are quite similar and dealing in identical products namely Polyurethane and Isocynates. Both the companies undertook the payment of commission after the realization of sale proceeds from the customers. Because of similarity in the nature of activity, there was hardly any risk involved in both the cases. The learned A.R.'s sole objection as to its comparability was the difference in the amount of turnover. He stated that assessee's turnover from the indenting activity was Rs.734.83 crores, whereas that of M/s Huntsman International Pvt. Ltd. was only Rs.74.8 crores going by the commission of Rs.3.74 crores @ 5% of turnover. The second case is that of M/s INEOS ABS (India) Ltd. which was also engaged in

the indenting business of polycargo net products for Bayer Material Science Ltd. Hongkong. This company also received commission @ 5% of the sales. The learned A.R. has referred to the balance sheet of this company (copy placed at page 821 of the paper book) to demonstrate that the turnover from indenting activity was only to the tune of Rs.79.19 crores . Here also the only objection as to comparability was the volume of turnover. Due to similarity in the names of Bayer Material Science Ltd. Hongkong with that of the assessee, namely, Bayer Material Science Ltd., it was inquired from the bench if there was any relation between these two companies. The ld. AR was fair enough to inform that both are group concerns. On further inquiry, it transpired that M/s INEOS ABS Ltd. was earlier a group concern of the assessee itself, but it ceased to be so somewhere in the calendar year 2004. It, therefore, becomes patent that that in the previous year relevant to the assessment year under consideration M/s INEOS ABS (India) Ltd. was not an associated enterprise of M/s Bayer Material Science Ltd. Hongkong, and hence, satisfies the test of uncontrolled transaction. The third company namely M/s Rathi Brothers Madras Ltd. also did the business of indenting and received commission @ 5% to 6%. The learned A.R. while referring to pages 848 of the paper book, being the balance sheet of this company distinguished it again on the basis of its low turnover of only Rs.10.65 crores .

23. Thus it is evident that the similarity in the nature of business and other relevant facts in these cases with that of the assessee, except the volume of turnover, is not in doubt. Now the question is whether these cases, which are otherwise comparable, should be disregarded simply on the ground of smallness of turnover when compared with that of the assessee. Considering the fact that the assessee did not come out with any comparable case to justify its price at arm's length and further the TPO found out these cases having functionally identical activities duly confronted to the assesse, it is not possible to disregard

such cases merely on the ground that the volume of turnover is lower in comparison to that handled by the assesse. One more important factor which cannot be lost sight of is that in the case of M/s Rathi Brothers Madras Ltd. indenting commission is 5% to 6% with turnover of Rs.10.65 crores . The same rate of commission of 5% prevails in the case of M/s Huntsman International Pvt. Ltd. and M/s INEOS ABS (India) Ltd. with turnover of around Rs.75 crores and around Rs.80 crores respectively. It shows that the rate of commission in such business does not vary on the basis of turnover.

24. Finding a case exactly identical to another in all aspects is very difficult, if not impossible. If the FAR analysis indicates that the matching factors in two cases considerably overshadow those which make them as distinguishable, then such cases have to be considered as comparable. Further, Rule 10B(3) provides that an uncontrolled transaction shall be comparable if none of the differences, if any, between the transactions being compared are likely to materially affect the price or cost charged or paid in or the profit arising from such transactions in the open market. It indicates that two cases are to be considered as incomparable when the difference between them is such as "*to materially affect*" the profit etc. The mere fact that there is difference in the volume of turnover of the case under consideration and those being compared, cannot be considered as materially affecting the profit arising from such transactions, more so when the circumstances are such as are prevailing in the present case. In our considered opinion, the TPO was justified in considering these three cases as comparable for benchmarking the profits from the assessee's indenting activity. The further contention of the ld. AR that the data of these three cases was not in public domain and hence the assessee could not properly distinguish such cases is sans merits. Firstly, it is noted that the TPO confronted and the assessee duly dealt with such cases in its written submissions before the TPO. Further ground no. 14 challenging the lack of adequate opportunity given by the

AO and TPO, set out in the memorandum of appeal, has specifically been not pressed by the ld. AR.

25. When the rate of arm's length indenting commission at 5% is applied to the turnover of Rs.734.83 crores, the amount of arm's length commission comes to Rs.36.74 crores . As against that, the assessee showed only a sum of Rs.11.17 crores as indenting commission. In our considered opinion, the AO was right in making addition of Rs.25.56 crores .

26. The learned A.R. has raised one more objection by contending that the TPO was not correct in rejecting the Transactional Net Marginal Method (TNMM) applied by the assessee and choosing the Comparable Uncontrolled Price Method (CUP) for determining the ALP. Again we are unable to accept this contention advanced on behalf of the assesse. The TNMM compares net profit margin realized by an enterprise from an international transaction in relation to cost incurred or sales effected or assets employed or having regard to any other relevant base. Here the comparison is that of net profit margin and not the gross income with the sales effected etc. As we are dealing with a case of commission income which is normally allowed as a percentage of turnover effected, the ratio of net profit to sales cannot be held as appropriate. On the other hand, the CUP method is useful where the A.Es buy or sell similar goods or services. In the present case, we are concerned with the rendering of services by one A.E. to another. In that view of the matter, CUP method appears to be the most appropriate method in the given circumstances. It is further relevant to note that the question of applying one method or the other can arise if the data of the comparable cases concerning such method is available. The assessee is agitating that TNMM should have been applied, but it failed to provide any data of comparable cases in that respect. It has not been shown by the ld. AR that the assessee's net margin of 0.04% (under TNMM) compares favorably

with that of the comparable cases chosen by the TPO despite the fact that the annual accounts of these cases are available in the paper book filed by the assesse. On the other hand, the ratio of gross commission to turnover of the assessee at 1.5% (under CUP) is far less than 5% of the comparable cases. As such we are unable to accept this argument advanced on behalf of the assessee.

27. In view of the foregoing discussion, we are satisfied that the Assessing Officer was fully justified in making addition of Rs.25.56 crores and odd towards adjustment under section 92CA(4) of the Act.

28. Ground no. 9 raised by the assessee is against the confirmation of disallowance u/s.14A amounting to Rs.66,91,085/-.

29. Briefly stated facts of the ground are that the assessee earned dividend income of Rs.86,45,948/- which was claimed as exempt. The assessee offered disallowance u/s 14A for a sum of 7,708/- being proportionate administrative cost of the Treasury Department. Not convinced with the assessee's calculation, the AO worked out the disallowance amounting to Rs.66,91,085/- by applying rule 8D. This decision was taken by the AO after getting the draft assessment order approved u/s.144C(1) by the Dispute Resolution Panel (DRP). The assessee is aggrieved against this addition.

30. After considering the rival submissions and perusing the relevant material on record, we find that the issue raised through this ground is no more *res integra* in view of the judgment of the Hon'ble jurisdictional High Court in *Godrej & Boyce Mfg. Ltd. vs. DCIT (2010) 328 ITR 81 (Bom)* in which it has been held that disallowance is called for u/s.14A in such circumstances. However, the manner of computation of such disallowance has been restored to the file of AO for making on some `reasonable basis'. It has further been held in this case the provisions of Rule 8D are prospective. Respectfully following the

precedent, we set aside the impugned order and direct the AO to compute disallowance u/s.14A in accordance with the *ratio* laid down by the Hon'ble jurisdictional High Court in the aforenoted case of *Godrej & Boyce Ltd.*

31. Ground no. 10 is against the confirmation of disallowance amounting to Rs.2,96,26,000/- made by the AO u/s.40(a)(ia) of the Act.

32. On the perusal of the Profit and loss account of the assessee, it was observed by the AO that the assessee had claimed deduction for a sum of Rs.2.96 crores under the head "Cost sharing expenses". On being called upon to explain as to why the deduction of tax at source was not made before making the payment, the assessee stated that it was only reimbursement of costs to its group concern, namely, Bayer Corp Science Ltd. (BCS) and no profit element was involved in such payment. Not convinced, the AO held that the payment made by the assessee was liable to suffer deduction of tax at source u/s.194C. As the assessee had not deducted tax at source from such payment, the AO disallowed the amount of Rs.2.96 crores u/s.40(a)(ia) of the Act.

33. We have heard the rival submissions and perused the relevant material on record. It is noticed that the assessee is a manufacturer of high performance material such as polyurethane etc. apart from engaged in trading of polycarbonate. BCS is sister concern of the assessee engaged in manufacturing and distribution of crop protection products, fungicides and non-agricultural based control and related products. They are affiliates of Bayer AG, Germany. Both BCS and the assessee company entered into two separate agreements dated 18-4-2005 effective from 1-4-2005 under which it was agreed to share personnel and facilities of each other as per requirement on cost to cost basis without having any mark up towards profit. In this regard, the assessee made payment of Rs.2.96 crores to BCS for utilizing their employees and services

during the year. Copies of both the agreements are available on pages 874 and 887 onwards of the paper book. In these agreements, it has been provided that the parties shall share the costs in respect of identified personnel utilized by them and the identified facilities used by them on the basis specified in Article 3 of these agreements. It has been stipulated that the identified personnel when acting for the other company will act under the direction and/or with the support of the management and personnel of such other company, but will continue to remain employees of its base company. Further the employer company shall at all times remain responsible for all the statutory compliances or commitments relating to employment of the identified personnel. In so far as the payment towards using of facilities is concerned, it has been provided in the second agreement that both the companies would share the identified facilities depending on their requirements. The identified facilities shall always remain the property of the facilitating company which owns them. Clause 3.4 of the Employees Sharing Agreements provides : "The basis of cost sharing shall be an exact reimbursal of the proportional time, cost of the identified personnel, without any mark up, margin or addition". Similarly, clause 3.4 of the second Agreement providing facilities to each other states that : "The basis of cost sharing shall be an exact reimbursal of the proportional cost of the identified facilities, without any mark up, margin or addition". From the Profit and loss account of the assessee, it is seen under Schedule 18 that the assessee independently incurred various expenses such as Stores and spares consumed, Power and fuel, Freight, Rent, Repairs and Travelling, etc., apart from paying Cost sharing expenses of Rs.2.96 crores. The P & L account of BCS is also available on record. It can be seen from it that the amount recovered by BCS from the assessee and other group companies towards cost sharing has been excluded from the expenditure incurred by it. The net effect of these transactions is that BCS provided its personnel and services to the assessee on cost to cost basis which the assessee included in its expenditure, whereas the

BCS reduced the amount recovered from the assessee and other group concerns from its expenses. The contention that there was no profit element in such reimbursement of expenses was also raised before the AO, which remained uncontroverted. Now, the position which emerges is that BCS incurred certain costs on employees and facilities which were utilized by the assessee and the other group concerns for which there was reimbursement of actual expenditure incurred to BCS without any profit element. The ld. DR also failed to lead any material to show that there was any profit element in such payment. The Hon'ble jurisdictional High Court in *CIT vs. Simon Aktiongtsellschaft (2009) 310 ITR 320 (Bom)* has held that payment by way of reimbursement of expenses incurred on behalf of payer is not an income chargeable to tax in the hands of payee. Similar view has been taken by the Special Bench of the Tribunal in *Mahindra & Mahindra Ltd. vs. DCIT (2009) 122 TTJ (Bom) (SB) 577*. In view of the aforenoted precedents, it becomes clear that where payment is made towards reimbursement of expenses, there cannot be any element of income in such payment in the hands of the payee. Once the element of income is missing, naturally, there cannot be any question of deducting tax at source from such payment made, which pre-supposes the taxability of such sum in the hands of payee. It is further relevant to note that BCS entered into Cost sharing agreement not only with the assessee but other group concerns as well. Whereas the assessee paid Rs.2.96 crores to BCS, M/s. Bayer Pharmaceutical Pvt. Ltd. paid Rs.2.81 crores, M/s. Bayer Biocides Pvt. Ltd. paid Rs.4.02 crores and other associated concerns also paid to BCS for similar services. The ld. A.R. has placed on record copies of the assessment orders passed u/s 143(3) of these concerns to demonstrate that no disallowance has been made in any of the above referred concerns u/s.40(a)(ia). In view of the above discussed principle emanating from the judgment of Hon'ble jurisdictional High Court and the Special Bench that reimbursement of cost does not require deduction of tax at source and further following the principle of consistency, we hold that the AO

was not justified in making the said addition of Rs.2.96 crores and odd u/s.40(a)(ia).We, therefore, order for the deletion of this addition. This ground is allowed.

34. Ground no. 11 is against not allowing the adjustment to the value of the opening stock amounting to Rs.33,23,889/-. The assessee argued before the DRP that in the immediately preceding year, the AO made addition to the value of closing stock on account of CENVAT credit to this extent and hence the value of the current year's opening stock be correspondingly increased. The DRP directed the AO to allow the corresponding adjustment in the value of the opening stock to the assessee u/s.145A of the Act to the extent such addition in the value of the closing stock of last year was finally sustained. Before the AO, it was stated on behalf of the assessee that the appellate proceedings for the immediately preceding assessment year i.e. 2005-06 were still pending. The AO, therefore, refused to allow any adjustment on this score.

35. After considering the rival submissions and perusing the relevant material on record we find that there cannot be any doubt on the proposition that if the value of closing stock of the immediately preceding year has been increased u/s 145A by CENVAT credit in the shape of addition in the assessment u/s.143(3), the corresponding increase is also required to be allowed in the value of opening stock for the current year. The logic is simple that the value of the closing stock of one year becomes opening stock for the next year. The ld. A.R. has admitted that the addition made in the immediately preceding year on this issue has been challenged by it before the ld. CIT(A) and the matter is still pending. The effect of allowing this adjustment in the value of the opening stock at this stage will be lead to the presumption that the value of closing stock has been finally determined at this figure. But as the issue of addition u/s.145A in the immediately preceding year has not attained finality, in our considered opinion,

the assessee cannot be allowed to have the benefit of the increased value of the opening stock by simultaneously assailing the addition in the preceding year as well. If increase in the value of the opening stock for the current year is allowed and the assessee also succeeds in the deletion of addition in the last year, it will give needlessly deflate the income for the current year. The right course is to allow the benefit of increase in the value of opening stock of the current year only when the issue of addition to the value of the closing stock of last year attains finality and that too, to the extent the addition is upheld. We, therefore, direct the AO to allow consequential relief on this issue as and when the matter is finally decided for the immediately preceding year. This ground is disposed of accordingly.

36. Ground No. 13 is against the levy of interest under section 234B and 234D. The learned Counsel for the assessee contended that the A.O. erred in levying interest under sections 234B and 234D for the reason that the addition on account of transfer pricing adjustment could not have been contemplated by the assessee at the time of payment of advance tax. The sum and substance of his submissions was that the advance tax can be charged only when the assessee knows about the liability to pay advance tax and there is failure to pay it. He mainly relied on the judgment of the Hon'ble Bombay High Court in the case of *Prime Securities Ltd. vs. ACIT (2011) 333 ITR 464 (Bom.).* In the opposition, the learned D.R. contended that the interest being mandatory in nature has been rightly charged.

37. We have considered the rival submissions and perused the relevant material on record. Section 234B (1) provides that where in any financial year an assessee who is liable to pay advance tax, has failed to pay it and such advance tax paid is less than 90% of the assessed tax, the assessee shall liable to

pay simple interest at the prescribed rate from 1st April next following such financial year to the date of determination of total income under section 143(1) and where the regular assessment is made to the date of such regular assessment *on an amount equal to assessed tax or* as the case may be on *the amount by which the advance tax paid falls short of the assessed tax*. Explanation 1 to section 234B(1) defines `*assessed tax*' to mean `*the tax on the total income determined under sub-section (1) of section 143 and where regular a assessment is made, the tax on the total income determined under such regular assessment as reduced by the amount of*' tax deducted or collected at source or any relief u/s 90 or 90A etc. From the above prescription of section 234B(1) read with Explanation (1) it becomes apparent that the interest under this section is charged with reference to the `assessed tax' or the amount of assessed tax as reduced by the advance tax paid, if any, as the case may be. The assessed tax has been defined to mean tax on total income determined under regular assessment in case such assessment is made. We are concerned with a case in which a regular assessment has been made under section 143(3). In such a case, assessed tax can only mean the tax on the total income determined by the A.O. under section 143(3) as reduced by the advance tax etc. There is no reference whatsoever to the proposition that the additions which could not have been foreseen by the assessee at the time of filing return, should not be considered as part of assessed income for the purposes of charging interest u/s 234B. If the contention of the ld. AR is brought to logical conclusion, then probably the interest provision would largely become redundant as in every case where the addition is correctly made by the assessee and further which, when challenged, has also been finally sustained, the assessee will contend that he had not predicted this addition and as such no interest be levied. The reliance of the learned A.R. on the Judgment of the Hon'ble Bombay High Court in the case of *Prime Securities Ltd. (supra)* is misconceived for the reason that in that case there was a change in law with retrospective effect. Under those special

circumstances, the Hon'ble Bombay High Court held that the assessee could not have anticipated his liability under the provisions changed subsequently with retrospective effect. This judgment is confined to its facts and is not of universal application even to a case of a lawful addition made by the AO on the basis of provisions of law existing and continuing as such before and after the filing the return of income. As the charging of interest under section 234B is compensatory and mandatory, it has to be charged with reference to the assessed tax on the total income determined under regular assessment as reduced by the advance tax, if any.

38. We find that there is a direct judgment of the Hon'ble Delhi High Court in the case of *CIT vs. INSILCO Ltd. (2010) 321 ITR 105 (Del.)* holding that levy of interest under section 234B is compensatory and interest is chargeable notwithstanding the fact that the default is *bona fide*. In that case, the assessee took a plea that it was under a *bona fide* belief that a particular income was not chargeable to tax which belief was turned down by the assessing authority. The assessee resorted to the weapon of its *bona fide* belief about non-taxability of income as a tool to escape from the levy of interest under section 234B. Repelling this contention, the Hon'ble Delhi High Court held that the interest has to be charged notwithstanding the *bona fide* belief of the assessee that a particular income was not chargeable to tax. It is still further noted that the Hon'ble Supreme Court in *CIT vs. Anjum M.H. Ghaswala & Others (2001) 252 ITR 1 (SC)* has held that interest is mandatory and chargeable. In view of the foregoing discussion, we are satisfied that the Assessing Officer was justified in charging interest. This ground is not allowed.

39. Other grounds are either general or pre-mature or not pressed, not requiring any adjudication.

40. In the result, appeal is partly allowed.

Order pronounced on this **16th day of December, 2011.**

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(D.K.Agarwal)** | **(R.S.Syal)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Mumbai : **16th December, 2011.**
NG:

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT concerned
4. The CIT(A), Mumbai.
5. The DR/ITAT, Mumbai.
6. Guard File.

TRUE COPY.

By Order

Assistant Registrar, ITAT, Mumbai.