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आयकर अपीलीय अधिकरण "K" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.4816/Mum/2015

(**निर्धारण वर्ष /** Assessment Year : 2010-11)

Airport Retail P. Ltd., (Formerly Known as M/s. Alpha Future Airport Retail P. Ltd.), 11, Venus Apartment Opp. Jogers Park, Chikuwadi, Borivali (West) Mumbai-400092 Also at : 338, 3rd, Floor, OM Shubham Tower, Neelam Bata Road, NIT Faridabad-121001 Haryana	**बनाम**/ v.	DCIT CIR 8(1) Mumbai
स्थायी लेखा सं./PAN:AAFCA9796H		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri. Dhanesh Bafna/ Shri. Arpit Agarwal
Revenue by :	Shri. Manoj Mumar, DR

सुनवाई की तारीख **/Date of Hearing : 22.10.2018**

घोषणा की तारीख **/Date of Pronouncement : 09.01.2019**

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by assessee, being ITA No. 4816/Mum/2015, is directed against appellate order dated 30.03.2015 passed by learned Commissioner of Income Tax (Appeals)-55, Mumbai (hereinafter called

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"the CIT(A)"), for assessment year 2010-11, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 04.03.2014 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s. 144C(3)(a) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2010-11, which assessment order was passed by the AO in pursuant to the order dated 15.01.2014 passed by learned Transfer Pricing Officer(hereinafter called the "the TPO") u/s 92CA(3) of the 1961 Act.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> *"1. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) - 55 ['Ld. CIT(A)'] erred in confirming the adjustment of Rs 5,87,35,794/- made by the Learned Deputy. Commissioner of Income-Tax Circle -8(1), ('Ld. AO') towards the international transaction of import of finished goods for resale.*
>
> *The Appellant prays that the aforesaid adjustment be deleted.*
>
> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in making a disallowance of Rs. 1,05,53,740/- by applying the provisions of section 4o(a)(ia) of the Income Tax Act , 1961 ('the Act') being charges paid for processing of credit card transactions on the alleged ground that the Appellant was liable to deduct tax at source on such amount as per provision of section 194 H of the Act.*
>
> *3. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in making a disallowance of Rs 95,75,838/- applying the provision of section 40(a)(ia) of the Act being charges paid for collection and deposit of foreign exchange by authorised money collector/ exchanger into the Appellant's EEFC account on the alleged ground that the Appellant was liable to deduct tax at source on such amount as per the provision section 194 H of the Act.*

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4. On the facts and in the circumstances of the case and in law, the Ld AO erred in initiating penalty proceedings under Section 274 read with Section 271(1)(c) of the Act.

5. The Appellant craves leave to add, to delete or alter the above grounds of appeal."

3. The brief facts of the case are that the assessee company is in the business of retail trade and operation of duty free shops at airports in India. The assessee had entered into an international transactions within the meaning of Section 92B of the 1961 Act with its Associated Enterprises(AE) as defined u/s. 92A of the 1961 Act, the matter was referred by the AO u/s. 92CA to Transfer Pricing Officer to compute Arms Length Price of international transactions entered into by the assessee with its AE by selecting most appropriate method(MAM) as prescribed u/s. 92C of the 1961 Act to compute the income from international transaction having regard to Arms Length Price(ALP) as defined u/s. 92 of the 1961 Act.

4. The assessee has reported following international transactions in Form no. 3CEB for AY 2010-11, as under:-

S.No.	Nature of Transactions	Value (in Rs.)	Value (Rs)	Method adopted by the assessee
		F.Y 2008-09	F.Y2009-10	
1.	Purchase of Traded/Finished Goods for Resale	74,90,52,673	48,69,75,336	Resale Price Method (RPM)
2.	Sale of finished goods		41,95,709	
3.	Purchase of Fixed Assets	11,32,472	371,367	CUP

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4.	Reimbursement of expenses	8,70,132	6,00,394	CUP
5.	Recovery of expenses	3,65,87,954	23,74,808	CUP
6.	Guarantee charges		29,67,969	CUP
Total		78,76,43,231		

The AO observed that the assessee has earned gross profit margin of 58.01% and net profit margin of -8.55% . The AO observed that the assessee has purchased finished goods to the tune of Rs. 48.70 crores from its Associated Enterprise(AE) i.e. Alfa Group entities to resell the same at the retail shops setup by the assessee in India. The assessee adopted Resale Price Method(RPM) and Profit Level Indicator(PLI) was Gross Profit/Sales(GP/Sales). The assessee selected itself as tested party and eleven comparables were identified by assessee with PLI of 24.87% , while assessee own PLI was 58.01% and thus, it was concluded by the assessee in its TP study report that international transaction entered into by the assessee are at Arms Length Price. The assessee had submitted before TPO that it is reseller of products and does not add substantial value to the goods by physically altering them. The assessee submitted before the TPO that the RPM measures the value of functions performed and is ordinarily appropriate in cases involving the purchase and resale of tangible goods/services in which the buyer/seller does not add substantial value to the goods by physically altering them. Thus, the assessee pleaded before the TPO that the RPM should be considered as the most appropriate method(MAM) in case of the assessee.

5. The TPO after going through the contentions of the assessee held that Transactional Net Margin Method(TNMM) is the most appropriate method to compute ALP and to benchmark the international transaction entered into by the assessee with its AE. While arriving at this decision, the TPO was also guided by the

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decision of Ld. CIT(A) for AY 2008-09 , wherein the Ld. CIT(A) vide appellate order dated 21.10.2013 has upheld the TNMM method as the most appropriate method to benchmark international transaction entered into by the assessee with its AE. Thus , adoption of TNMM method and comparables selected by the TPO led to the proposed adjustment to the ALP of the international transaction entered into by the assesssee with its AE to the tune of Rs. 5,87,35,794/- by the TPO, vide order dated 15.01.2014 passed u/s 92CA(3) of the 1961 Act. The order dated 15.01.2014 passed by the TPO u/s 92CA(3) of the 1961 Act led to the additions being made by the AO vide adjustment to ALP of the international transactions entered into by the assessee with its AE to the tune of Rs. 5,87,35,794/- which were added to the income of the assessee by the AO , vide assessment order dated 04.03.2014 passed by the AO u/s 143(3) read with section 144C(3)(a) of the 1961 Act.

6.Aggrieved by the assessment framed by the AO vide assessment order dated 04.03.2014 passed u/s 143(3) read with Section 144C(3)(a) of the 1961 Act, the assessee filed first appeal with Ld. CIT(A) who was pleased to dismiss the appeal of the assessee , vide appellate order dated 30.03.3015 , by holding as under:-

> *"3. Through Ground No. 1 the appellant's A.R. contended that the A.O./TPO erred in not appreciating that in respect of the international transaction of import of finished goods for sale, none of the conditions set out in Section 92C(3) of the Act are satisfied and therefore, it was incorrect to disregard the transfer pricing analysis carried out by the appellant and to re-determine the arm's length price for said transaction.*
>
> *4. I find that the AO passed the Assessment Order u/s. 143(3) r.w.s. 144C of the I.T.Act, 1961 dated 04.03.2014 wherein as per discussion made in para 4 of the order, the A.O. made the addition of Rs,5,87,35,794/~ on account of assessment made by the TPO u/s.92CA(3) of the Act vide order dated 15.01.2014 in determining the ALP of the International Transaction of the appellant with it's A.E.. Further, I find that the TPO vide its order dated 15.01.2014 has deliberated in detail while making the*

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aforesaid adjustment wherein the TPO took note of appellant's submission dated 23.04.2013 of the order. However, after taking note of the appellant's submissions, the TPO did not agree with the appellant's submission and as per the details assigned in para 6.5 of the TPO's order dated 15.01.2014, the TPO determined the ALP of Rs. 5,87,35,794/- Having taken note to the TPO's order, 1 find that the TPO has assigned very valid reasons for working out the aforesaid adjustment in determining the total arm's length price in relation to the international transactions entered into by the appellant company with its Associated Enterprise.

5. I have considered the AO/TPO's order as well as the appellant A.R's submission. I find that similar issue has been adjudicated in the appellant's own case for A.Y.2008-09 wherein the CIT(A)-15, Mumbai as per detailed discussion made in para 4.3 has assigned detailed reasons for adjudication therein vide CIT(A)'s order No.CIT(A)-15/Arr.204/JCIT(OSD) 8(1)/13-14 dated 21.10 2013. Even I find that similar issue was also adjudicated by DRP in the appellant's own case in A.Y.2009-10 which was decided against the appellant vide its order dated 31.10.2013. Having perused my predecessor CIT(A)'s order and the reasons assigned by him I find that the appellant's this issue /submission has been dealt by my predecessor CIT(A) very meticulously while rejecting the claim of the appellant. Therefore, I find that when the facts and issue remains the same in this present appeal also, following the rules of consistency, the appellant's this ground of appeal is dismissed.

6. Through Ground No. 2, the appellant's A.R. contends that the A.O. erred by not accepting Resale Price Method (RPM) as the most appropriate method for determining the arm's length margin for the international transaction of Import of finished goods for resale without providing appropriate reasons for the same.

7. I find that similar issue has been adjudicated against the appellant in the appellant's own case for A. Y. 2008-09 wherein the C1T(A)-15, Mumbai as per detailed discussion made in para 5 (i to iv) has assigned detailed reasons for adjudication therein vide CIT(A)'s order No.CIT(A)-15/Arr.204/JCIT(OSD)8(1)/13-14 dated 21.10.2013. Even I find similar issue was also adjudicated by DRP in the appellant's case in AY 2009-10 which was decided against the appellant vide its order dated 31.10.2013. Having perused my CIT(A)'s order also of DRP order referred as above and the reasons assigned

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by him I find that the appellant's this issue /submission has been dealt by my predecessor CIT(A) very meticulously while rejecting the claim of the appellant. Therefore, I find that when the facts and issue remains the same in this present appeal also, following the rules of consistency, the appellant's this ground of appeal is dismissed."

The learned CIT(A) while adjudicating the appeal against the assessee was mainly guided by the decision of his predecessor who dismissed the appeal of the assessee for AY 2008-09. The learned CIT(A) had observed while dismissing the appeal of the assessee that learned DRP has also adjudicated the issue against the assessee for AY 2009-10.

7. Aggrieved by the appellate order dated 30.03.3015 passed by learned CIT(A), the assessee has come in an appeal before the tribunal and at the outset Ld. Counsel for the assessee submitted that the facts in the impugned assessment year 2010-11 are similar to facts as were prevailing in AY 2008-09 and 2009-10 and the appeals for AY 2008-09 and 2009-10 were adjudicated by Hon'ble Tribunal in ITA no. 158/Mum/2014 for AY 2008-09 and ITA no. 1762/Mum/2014 for AY 2009-10 , vide common orders dated 17.01.2017 , wherein tribunal held as under:-

" 10. We have considered the submissions of the parties and perused the material available on record in the light of the decisions relied upon. As could be seen from the transfer pricing order as well as the facts materials on record, there is no dispute to the fact that the assessee is a reseller of finished goods, in the duty free shops set up at the Delhi Airport. It is also accepted that the products sold by the assessee such as liquor, perfumes, confectionary, tobacco, etc., are purchased from A.Es and sold to customers without any value addition or material change to such products. It is a fact that the assessee had bench marked the international transaction relating to purchase of finished goods from A.Es by adopting RPM. However, the Transfer Pricing Officer has rejected RPM primarily on the ground that gross profit computation of comparables was not produced by the assessee. He had also stated that the gross profit margin of the products sold by the assessee cannot be compared with gross profit margin of the products sold by the comparables as they are different in nature. In this context, it is to be noted that at the outset, the Transfer Pricing Officer had

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opined that the transaction of purchase of finished goods for resale was to be bench marked as per CUP method. We are unable to understand why the Transfer Pricing Officer abandoned bench marking under CUP if he considered it as the most appropriate method to bench mark the international transaction between the assessee and the A.Es.

11. At this stage, it would be appropriate to refer to certain provisions in the statue relating to transfer pricing adjustment. Section 92C of the Act, provides for computation of arm's length price of an international transaction between the assessee and its A.E. by following one of the methods prescribed therein. Rule 10C, defines most appropriate method to be one which is best suited to the facts and circumstances of each particular transaction and which provides the most reliable measure of arm's length price in relation to the international transaction. Sub–rule (2) of rule 10C, specifies the factors to be considered for selecting most appropriate method. Rule 10B provides the mode and manner of determination of arm's length price under different methods. As per rule 10B(1)(b), determination of arm's length price under RPM is applicable to a case where the price at which property purchased or service obtained by the enterprise from the A.E. is resold or is provided to an unrelated enterprise. The gross profit margin in respect of such a transaction is thereafter compared to the gross profit margin of similar comparable uncontrolled transactions and after making necessary adjustment with regard to expenditure incurred, functionally and other differences the arm's length price is determined. Thus, when there is no dispute to the fact that the assessee is purchasing finished products from the A.Es for the purpose of reselling to unrelated parties without any value addition, under normal circumstances, the most appropriate method to bench mark the arm's length price of such transaction in terms of 10B is RPM. The Tribunal, Mumbai Bench, in Mattel Toys India Pvt. Ltd. (supra), after analyzing the applicability of most appropriate method in respect of such kind of international transactions has observed, under RPM product similarity is not a vital aspect for carrying out comparability analysis but operational comparability is to be seen. The Bench observed, gross profit margin earned by the independent enterprise in comparable uncontrolled transaction will serve as a guiding factor which is also the case in case of a distributor wherein property and service purchased from the A.E. are resold to other independent entities without any value addition. Thus, it was concluded by the Bench that in such case of purchase and resale of finished products without any value addition RPM, is the best method to evaluate the arm's length price of the transactions. In case of Luxottica India Eyeware Pvt. Ltd. (supra), the Tribunal, Delhi Bench, following a number of other decisions held as under:–

> *"10.2. Coming to the argument that the assessee himself has adopted TNMM as the MAM for its transfer pricing study and hence it cannot turn around and argue for*

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adoption of RSPM as the MAM, we find that the Mumbai Bench of the Tribunal in the case of Mattel Toys(I) Pvt.Ltd. in ITA no.2476/Mum/2008 held as follows.

> *"41. Now coming to the argument of the Ld. DR that once the assessee itself has chosen TNMM as the MAM in TPR, then it cannot resort to change its method at an assessment or appellate stage. In our opinion, such a contention cannot be upheld because if it is found on the facts of the case that a particular method will not result into proper determination of the ALP, the TPO or the appellate authorities can very well hold that why a particular method can be applied for getting proper determination of ALP or the assessee can demonstrate a particular method to justify its ALP. Thus, even if the assessee had adopted TNMM as the MAM in the TP report, then also it is not precluded from raising the contentions/objections before the TPO or the appellate Courts that such a method was not an appropriate method and is not resulting into proper determination of ALP and some other method should be resorted. The ultimate aim of the TP is to examine whether the price or the margin raising from an international transaction with the related party is at ALP or not. The determination of approximate ALP is the key factor for which the MAM is to be followed. Therefore, if at any stage of the proceedings, it is found that by adopting one of the prescribed methods other than chosen earlier, the most appropriate ALP can be determined, the assessment authorities as well as the appellate Courts should take into consideration such a plea before them provided, it is demonstrated as to how a change in the method will produce better or more appropriate ALP on the facts of the case. Accordingly, we reject the contentions of the Ld.DR and also the observations of the AO and the Ld.CIT(A) that the assessee cannot resort to adoption of RPM method instead of TNMM."*

10.3 The case of the assessee is much better than the case of M/s Mattel Toys (I) Pvt.Ltd. (supra) for the reason that the assessee in its transfer pricing report has also used RSPM as the MAM. Hence this argument of the Revenue is rejected.

10.4. As the undisputed fact is that the functional profile of the assessee is that of a trader and as the characterisation of the transaction is purchase and sale of goods, we hold that RSPM is the MAM by applying the following decisions of the Co-Ordinate Bench of the Tribunal. "

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"13. This finding in our humble opinion is wrong for the reason that the CIT(A) has adopted these very comparables, along with three others while arriving at the operating margins at Para 7.16 of his order. As the assessee is a trader, without value addition to the goods, we find force in the submissions of the assessee that resale price method is the most appropriate method for determining the ALV with respect to AE transaction. In fact, the Revenue has accepted this method in earlier two years. The TPO in his order dt. 7.3.2005 for the AY 2002-03 and order dt. 20.3.2006 for the AY 2003-04, has agreed with the computation of arm's length price made by the assessee under the resale price method." (ii) In the case of L'Oreal India P. Ltd. vs. ITO (ITA no.5423/Mum/2009) it is held as follows:

"19. During the course of hearing, ld. DR also supported the method considered by TPO and referred to Para 2.29 of OECD price guidelines 2010 as stated hereinabove. On the other hand, ld.AR justified the RPM method adopted by it and also referred to order of TPO in the preceding AY as well as succeeding AY to the AY under consideration to substantiate that RPM is the most appropriate method to determine ALP. He submitted that the assessee made adjustment for marketing and selling expenses to the profits to make it comparable to the comparable companies' profits. We agree with the Ld.CIT(A) that there is no order of priority of methods to determine ALP. RPM is one of the standard method and OECD guidelines also states that in case of distribution and marketing activities when the goods are purchased from AEs which are sold to unrelated parties, RPM is the most appropriate method. In the case before us, there is no dispute to the fact that the assessee buys products from its AEs and sells to unrelated parties without any further processing."

(iii) In the case of Danisco (India) Pvt.Ltd. vs. ACIT, Circle 10(1), New Delhi (ITA no.5291/Del/2010), it is held as follows:

"22. Considering the above submissions we find that the assessee established in 1998 as a 100% subsidiary of Danisco A/S Denmark. Danisco India is engaged in the business of manufacturing and trading of food additives. The manufacturing business in respect of food flavours and the trading business is for products for falling under the category of food ingredients. The main

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grievances of the assessee against the order of the Ld. TPO upheld by the Ld.DRP are regarding their approach in the manner in which transfer pricing adjustment has been made, the approach adopted by the Ld.TPO in granting 17 comparable companies denying the economic adjustment claim made by the assessee, regarding computation of margins of the assessee, non consideration of supplementary transaction and denial of adequate opportunity of being heard to the assessee by the authorities below as well as their failure to examine the contentions and arguments of the assessee in this regard. Considering these grievances as discussed herein above by us in the arguments advanced by the parties/their submissions and having gone through the decision relied upon, we find substance in the submission of the assessee and thus we are of the view that it is a fit case to set aside the matter to the file of the Ld.TPO for his fresh consideration and decide the issue afresh after affording opportunity of being heard to the assessee and discussing their submissions in the order and reasons, if any, for not agreeing or agreeing with them. It is ordered accordingly with direction to the Ld.TPO to: a) first examine as to whether, was there any value addition on imported goods, and if answer is in negative then apply RPM as a most appropriate method for trading transactions of imported goods and in consequence examine the application of appropriate method as commission payment;

(iv) Frigoglass India P.Ltd. (ITA no.463/Del/2013), it is held as follows:

"We have heard the rival contentions and perused the material available on record. In our considered view, once assessee has given a methodology for working of ALP on selection of a particular method supported by appropriate comparables, the working can be dislodged by TPO on the basis of cogent reasons and objective findings. In this case except theoretical assertions and generalized observations, no objective findings have been given to come to a reasoned conclusion that assessee's adoption of CPM for manufacturing segment and RPM for trading segment was Factually and objectively not correct. Thus the rejection of methods by TPO as adopted by assessee is bereft of any cogency and objectivity. The same is a work of guessing and conjectured. Similarly the TNMM method applied by the TPO suffers from the same inherent aberrations as mentioned above. In these circumstances we are

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of the view that Assessee's methods of CPM and RPM respectively worked by applying appropriate comparables is to be upheld. Thus the ALP working returned by the assessee is upheld. The Assessee's TP grounds are allowed."

(v) Textronic India Pvt.Ltd. vs. DCIT (ITA no. 1334/Bang/2010), it is held as follows:

"We have considered the rival submissions. The dispute is with regard to the ALP in respect of international transactions whereby the assessee imports equipment from its AE and resells them without any value addition to the Indian customers. In similar circumstances, Mumbai Bench of the Tribunal in the case of L'Oreal India Pvt.Ltd. (supra) has taken the view that the RPM would be the most appropriate method for determining the ALP. The Mumbai Bench of Tribunal in this regard, has referred to the OECD guidelines wherein a view has been expressed that RPM would be the best method when a resale takes place without any value addition to a product. In the present case, the assessee buys products from the AE and sells it without any value addition to the Indian customers. In such circumstances, we are of the view that the ratio laid down by the Mumbai Bench of the Tribunal in the case of L'Oreal India Pvt. Ltd. (supra) would be squarely applicable to the facts of the assessee's case. In that event, the GP as a percentage of sales arrived at by the TPO in Annexure to the TPO's order insofar as trading activity of comparables identified by the TPO at 12.90%. The GP as a percentage of sales of the assessee is at 35.6% which is much above the percentage of comparables identified by the TPO. In such circumstances, we are of the view that no adjustment could be made by way of ALP. We, therefore, accept the alternative plea of the assessee and delete the addition made by the AO. In view of the above conclusion, we are not going into the other issues on merits raised by the assessee on the approach adopted by the TPO in arriving at the ALP.Thus, ground Nos. 2 to 7 are allowed.

10.5 In view of the above discussion, we direct the TPO to adopt RPM as the MAM in this case."

12. The aforesaid decision of the Tribunal, Delhi Bench, was challenged before the Hon'ble Delhi High Court by the Department. However, the High Court dismissed the appeal of the Revenue on the issue of acceptance of RPM selected by the

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assessee over TNMM applied by the Department. It is further necessary to observed, in case of OSI Systems Pvt. Ltd. (supra), the Tribunal, Hyderabad Bench, following the decision in case of Luxottica India Eyeware Pvt. Ltd. (supra) held as under:–

> *"44. On a perusal of the extracted portion from the order of the Coordinate Bench, it is very much clear that after considering a number of decisions on the very same issue from different Benches of the ITAT, it was held that in case of transactions related to purchase and sale of goods, RPM is the most appropriate method. The principles laid down by the Delhi Bench clearly applies to the facts of the present case not only because the assessee is involved purely in trading activity, but also in the TP study assessee has adopted RPM as the most appropriate method. Only because in the preceding assessment year for some reason assessee has not challenged the decision of DRP in upholding application of TNMM, assessee cannot be prevented from objecting to adoption of TNMM in the impugned assessment year. In view of the aforesaid, we remit the matter back to the file of the AO/TPO to examine assessee's analysis under the RPM and decide the issue accordingly after due opportunity of being heard to the assessee."*

13. At this stage, it is necessary to observe, the Transfer Pricing Officer has not made any genuine effort to find out whether bench marking can be done under RPM considering the fact that in these types of transactions, RPM is the best suited method. Instead of doing that the Transfer Pricing Officer had straight away proceeded to bench mark the transaction under TNMM. Further, it is necessary to observe, only when it is impossible or rather difficult to determine the arm's length price by applying any of the direct methods like CUP, RPM, CPM, then only as a method of last resort, TNMM should be applied. Therefore, in all fairness, the Transfer Pricing Officer should have made an effort to bench mark the transaction under RPM instead of rejecting the RPM applied by the assessee on some flimsy ground and straight away proceeding to apply TNMM. Moreover, we find various inconsistencies in the order of the Transfer Pricing Officer as. Though, at first he has observed that CUP is the most appropriate method but abruptly discarded it without reason. Similarly, RPM was also discarded under flimsy ground. Even as far as selection of comparables are concerned, though, the Transfer Pricing Officer has observed that the comparables selected by the assessee cannot be similar due to broad variance, however, ultimately he has retained them while bench marking the arm's length price under TNMM.

14. As we have stated earlier, in case of international transaction relating to purchase of goods from A.E. and resale to unrelated parties, RPM is the most appropriate method. Therefore, in our considered opinion, the Assessing Officer / Transfer Pricing Officer must examine assessee's bench

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marking under RPM in an objective manner. If the Assessing Officer / Transfer Pricing Officer are of the view that necessary / relevant data relating to gross profit margin of the comparables selected by the assessee are not available, it is open for the Assessing Officer / Transfer Pricing Officer to call for necessary / relevant materials from the assessee or else the Assessing Officer / Transfer Pricing Officer is free to independently proceed for selection of comparables under RPM after obtaining necessary information. As far as the contention of the learned Departmental Representative in relation to the issue whether license fee / addition license fee should form the cost based, in our view, it does not merit consideration at this stage as this is not an issue arising out of the order of the Transfer Pricing Officer or learned Commissioner (Appeals). It is open for the parties concerned to dwell upon all the issues while determining the arm's length price of the international transaction with the A.E. The grounds raised are allowed for statistical purposes.

15. We must make it clear that the Assessing Officer / Transfer Pricing Officer should afford adequate opportunity of hearing to the assessee and then decide the issue after considering the submissions of the assessee and keeping in view the judicial precedents which may be relied upon by the assessee.

16. In the result, appeal for A.Y. 2008–09 is allowed for statistical purposes."

It was submitted by learned counsel for the assessee that in nutshell the tribunal accepted the Resale Price method(RPM) as the most appropriate method(MAM) adopted by the assessee and TNMM was rejected by tribunal while adjudicating the appeal of the assessee for AY 2008-09 and 2009-10 in assessee's own case and the matter was set aside to the file of the AO to re-compute ALP after considering RPM method.

8. The Ld. DR on the other hand placed reliance on the appellate order passed by Ld. CIT(A).

9. We have considered rival contentions and have perused the material on record including cited judicial orders. We have observed that the assessee company is in the business of retail trade and operation of duty free shops at airports in India. The assessee had entered into international transactions within the meaning of Section 92B of the 1961 Act with its associated enterprise(AE) as defined u/s.

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92A of the 1961 Act .The assessee has reported following international transactions in Form no. 3CEB for AY 2010-11, as under:-

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Total		78,76,43,231		

The assessee has purchased finished goods to the tune of Rs. 48.70 crores from its Associated Enterprise(AE) i.e. Alfa Group entities to resell the same at the retail shops setup by assessee in India. The assessee adopted Resale Price Method(RPM) and Profit Level Indicator(PLI) being Gross Profit/Sales(GP/Sales). The assessee selected itself as tested party and eleven comparables were identified by assessee with PLI of 24.87% , while assessee own PLI was 58.01% and thus, it was concluded by the assessee in its TP study report that international transaction entered into by the assessee are at Arms Length Price. The assessee had submitted before TPO that it is reseller of products and does not add substantial value to the goods by

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physically altering them. The assessee adopted the RPM as the most appropriate method which as per assessee measures the value of functions performed and is ordinarily appropriate in cases involving the purchase and resale of tangible goods/services in which the buyer/seller does not add substantial value to the goods by physically altering them. The TPO on the other hand had adopted TNMM as the most appropriate method to compute arms length price(ALP) of the international transaction entered into by the assessee with its AE. The TPO selected its own comparables and finally it led to the additions to the tune of Rs. 5,87,35,794/- to the income of the assessee by way of TP adjustment by the AO while passing assessment order, and the appeal against assessment order stood dismissed by learned CIT(A) The learned CIT(A) while dismissing appeal of the assessee relied upon the appellate order passed by its predecessor for AY 2008-09. The assessee has claimed that it has not added any substantial value to the goods imported from its AE. We have observed that the said issue was adjudicated by the tribunal for AY 2008-09 and 2009-10 in ITA no. 158/Mum/2014 and 1762/Mum/2014 for AY 2008-09 and 2009-10 respectively , vide common orders dated 17.01.2017 wherein the tribunal has accepted the resale price method(RPM) as adopted by assessee for computation of ALP of the international transaction of import of finished goods entered into by the assessee with its AE i.e. Alpha Group of entities. The tribunal set aside the matter to the file of AO/TPO in the aforesaid common order dated 17.01.2017 for AY 2008-09 and 2009-10 respectively in assessee's own case, with certain direction as detailed here under:-

> *" 10. We have considered the submissions of the parties and perused the material available on record in the light of the decisions relied upon. As could be seen from the transfer pricing order as well as the facts materials on record, there is no dispute to the fact that the assessee is a reseller of finished goods, in the duty free shops set up at the Delhi Airport. It is also accepted that the products sold by the assessee such as liquor, perfumes, confectionary, tobacco, etc., are purchased from A.Es and sold to customers without any value addition or material change to such products. It is a fact that the assessee*

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had bench marked the international transaction relating to purchase of finished goods from A.Es by adopting RPM. However, the Transfer Pricing Officer has rejected RPM primarily on the ground that gross profit computation of comparables was not produced by the assessee. He had also stated that the gross profit margin of the products sold by the assessee cannot be compared with gross profit margin of the products sold by the comparables as they are different in nature. In this context, it is to be noted that at the outset, the Transfer Pricing Officer had opined that the transaction of purchase of finished goods for resale was to be bench marked as per CUP method. We are unable to understand why the Transfer Pricing Officer abandoned bench marking under CUP if he considered it as the most appropriate method to bench mark the international transaction between the assessee and the A.Es.

11. At this stage, it would be appropriate to refer to certain provisions in the statue relating to transfer pricing adjustment. Section 92C of the Act, provides for computation of arm's length price of an international transaction between the assessee and its A.E. by following one of the methods prescribed therein. Rule 10C, defines most appropriate method to be one which is best suited to the facts and circumstances of each particular transaction and which provides the most reliable measure of arm's length price in relation to the international transaction. Sub–rule (2) of rule 10C, specifies the factors to be considered for selecting most appropriate method. Rule 10B provides the mode and manner of determination of arm's length price under different methods. As per rule 10B(1)(b), determination of arm's length price under RPM is applicable to a case where the price at which property purchased or service obtained by the enterprise from the A.E. is resold or is provided to an unrelated enterprise. The gross profit margin in respect of such a transaction is thereafter compared to the gross profit margin of similar comparable uncontrolled transactions and after making necessary adjustment with regard to expenditure incurred, functionally and other differences the arm's length price is determined. Thus, when there is no dispute to the fact that the assessee is purchasing finished products from the A.Es for the purpose of reselling to unrelated parties without any value addition, under normal circumstances, the most appropriate method to bench mark the arm's length price of such transaction in terms of 10B is RPM. The Tribunal, Mumbai Bench, in Mattel Toys India Pvt. Ltd. (supra), after analyzing the applicability of most appropriate method in respect of such kind of international transactions has observed, under RPM product similarity is not a vital aspect for carrying out comparability analysis but operational comparability is to be seen. The Bench observed, gross profit margin earned by the independent enterprise in comparable uncontrolled transaction will serve as a guiding factor which is also the case in case of a distributor wherein property and service purchased from the A.E. are resold to other independent entities without any value addition. Thus, it was concluded by the Bench that in such case of purchase and

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resale of finished products without any value addition RPM, is the best method to evaluate the arm's length price of the transactions. In case of Luxottica India Eyeware Pvt. Ltd. (supra), the Tribunal, Delhi Bench, following a number of other decisions held as under:–

> *"10.2. Coming to the argument that the assessee himself has adopted TNMM as the MAM for its transfer pricing study and hence it cannot turn around and argue for adoption of RSPM as the MAM, we find that the Mumbai Bench of the Tribunal in the case of Mattel Toys(I) Pvt.Ltd. in ITA no.2476/Mum/2008 held as follows.*
>
> > *"41. Now coming to the argument of the Ld. DR that once the assessee itself has chosen TNMM as the MAM in TPR, then it cannot resort to change its method at an assessment or appellate stage. In our opinion, such a contention cannot be upheld because if it is found on the facts of the case that a particular method will not result into proper determination of the ALP, the TPO or the appellate authorities can very well hold that why a particular method can be applied for getting proper determination of ALP or the assessee can demonstrate a particular method to justify its ALP. Thus, even if the assessee had adopted TNMM as the MAM in the TP report, then also it is not precluded from raising the contentions/objections before the TPO or the appellate Courts that such a method was not an appropriate method and is not resulting into proper determination of ALP and some other method should be resorted. The ultimate aim of the TP is to examine whether the price or the margin raising from an international transaction with the related party is at ALP or not. The determination of approximate ALP is the key factor for which the MAM is to be followed. Therefore, if at any stage of the proceedings, it is found that by adopting one of the prescribed methods other than chosen earlier, the most appropriate ALP can be determined, the assessment authorities as well as the appellate Courts should take into consideration such a plea before them provided, it is demonstrated as to how a change in the method will produce better or more appropriate ALP on the facts of the case. Accordingly, we reject the contentions of the Ld.DR and also the observations of the AO and the Ld.CIT(A) that the assessee cannot resort to adoption of RPM method instead of TNMM."*
>
> *10.3 The case of the assessee is much better than the case of M/s Mattel Toys (I) Pvt.Ltd. (supra) for the reason that the assessee in its transfer pricing report has also*

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used RSPM as the MAM. Hence this argument of the Revenue is rejected.

10.4. As the undisputed fact is that the functional profile of the assessee is that of a trader and as the characterisation of the transaction is purchase and sale of goods, we hold that RSPM is the MAM by applying the following decisions of the Co-Ordinate Bench of the Tribunal. "

> *"13. This finding in our humble opinion is wrong for the reason that the CIT(A) has adopted these very comparables, along with three others while arriving at the operating margins at Para 7.16 of his order. As the assessee is a trader, without value addition to the goods, we find force in the submissions of the assessee that resale price method is the most appropriate method for determining the ALV with respect to AE transaction. In fact, the Revenue has accepted this method in earlier two years. The TPO in his order dt. 7.3.2005 for the AY 2002-03 and order dt. 20.3.2006 for the AY 2003-04, has agreed with the computation of arm's length price made by the assessee under the resale price method." (ii) In the case of L'Oreal India P. Ltd. vs. ITO (ITA no.5423/Mum/2009) it is held as follows:*
>
> *"19. During the course of hearing, ld. DR also supported the method considered by TPO and referred to Para 2.29 of OECD price guidelines 2010 as stated hereinabove. On the other hand, ld.AR justified the RPM method adopted by it and also referred to order of TPO in the preceding AY as well as succeeding AY to the AY under consideration to substantiate that RPM is the most appropriate method to determine ALP. He submitted that the assessee made adjustment for marketing and selling expenses to the profits to make it comparable to the comparable companies' profits. We agree with the Ld.CIT(A) that there is no order of priority of methods to determine ALP. RPM is one of the standard method and OECD guidelines also states that in case of distribution and marketing activities when the goods are purchased from AEs which are sold to unrelated parties, RPM is the most appropriate method. In the case before us, there is no dispute to the fact that the assessee buys products from its AEs and sells to unrelated parties without any further processing."*

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(iii) In the case of Danisco (India) Pvt.Ltd. vs. ACIT, Circle 10(1), New Delhi (ITA no.5291/Del/2010), it is held as follows:

> *"22. Considering the above submissions we find that the assessee established in 1998 as a 100% subsidiary of Danisco A/S Denmark. Danisco India is engaged in the business of manufacturing and trading of food additives. The manufacturing business in respect of food flavours and the trading business is for products for falling under the category of food ingredients. The main grievances of the assessee against the order of the Ld. TPO upheld by the Ld.DRP are regarding their approach in the manner in which transfer pricing adjustment has been made, the approach adopted by the Ld.TPO in granting 17 comparable companies denying the economic adjustment claim made by the assessee, regarding computation of margins of the assessee, non consideration of supplementary transaction and denial of adequate opportunity of being heard to the assessee by the authorities below as well as their failure to examine the contentions and arguments of the assessee in this regard. Considering these grievances as discussed herein above by us in the arguments advanced by the parties/their submissions and having gone through the decision relied upon, we find substance in the submission of the assessee and thus we are of the view that it is a fit case to set aside the matter to the file of the Ld.TPO for his fresh consideration and decide the issue afresh after affording opportunity of being heard to the assessee and discussing their submissions in the order and reasons, if any, for not agreeing or agreeing with them. It is ordered accordingly with direction to the Ld.TPO to: a) first examine as to whether, was there any value addition on imported goods, and if answer is in negative then apply RPM as a most appropriate method for trading transactions of imported goods and in consequence examine the application of appropriate method as commission payment;*

(iv) Frigoglass India P.Ltd. (ITA no.463/Del/2013), it is held as follows:

> *"We have heard the rival contentions and perused the material available on record. In our considered view, once assessee has given a methodology for working of ALP on selection of a particular method supported by appropriate comparables, the working can be dislodged by TPO on the basis of cogent reasons and objective findings. In this case*

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except theoretical assertions and generalized observations, no objective findings have been given to come to a reasoned conclusion that assessee's adoption of CPM for manufacturing segment and RPM for trading segment was Factually and objectively not correct. Thus the rejection of methods by TPO as adopted by assessee is bereft of any cogency and objectivity. The same is a work of guessing and conjectured. Similarly the TNMM method applied by the TPO suffers from the same inherent aberrations as mentioned above. In these circumstances we are of the view that Assessee's methods of CPM and RPM respectively worked by applying appropriate comparables is to be upheld. Thus the ALP working returned by the assessee is upheld. The Assessee's TP grounds are allowed."

(v) Textronic India Pvt.Ltd. vs. DCIT (ITA no. 1334/Bang/2010), it is held as follows:

"We have considered the rival submissions. The dispute is with regard to the ALP in respect of international transactions whereby the assessee imports equipment from its AE and resells them without any value addition to the Indian customers. In similar circumstances, Mumbai Bench of the Tribunal in the case of L'Oreal India Pvt.Ltd. (supra) has taken the view that the RPM would be the most appropriate method for determining the ALP. The Mumbai Bench of Tribunal in this regard, has referred to the OECD guidelines wherein a view has been expressed that RPM would be the best method when a resale takes place without any value addition to a product. In the present case, the assessee buys products from the AE and sells it without any value addition to the Indian customers. In such circumstances, we are of the view that the ratio laid down by the Mumbai Bench of the Tribunal in the case of L'Oreal India Pvt. Ltd. (supra) would be squarely applicable to the facts of the assessee's case. In that event, the GP as a percentage of sales arrived at by the TPO in Annexure to the TPO's order insofar as trading activity of comparables identified by the TPO at 12.90%. The GP as a percentage of sales of the assessee is at 35.6% which is much above the percentage of comparables identified by the TPO. In such circumstances, we are of the view that no adjustment could be made by way of ALP. We, therefore, accept the alternative plea of the assessee and delete the addition made by the AO. In view of the above conclusion, we are not going

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> *into the other issues on merits raised by the assessee on the approach adopted by the TPO in arriving at the ALP.Thus, ground Nos. 2 to 7 are allowed.*
>
> *10.5 In view of the above discussion, we direct the TPO to adopt RPM as the MAM in this case."*

12. The aforesaid decision of the Tribunal, Delhi Bench, was challenged before the Hon'ble Delhi High Court by the Department. However, the High Court dismissed the appeal of the Revenue on the issue of acceptance of RPM selected by the assessee over TNMM applied by the Department. It is further necessary to observed, in case of OSI Systems Pvt. Ltd. (supra), the Tribunal, Hyderabad Bench, following the decision in case of Luxottica India Eyeware Pvt. Ltd. (supra) held as under:–

> *"44. On a perusal of the extracted portion from the order of the Coordinate Bench, it is very much clear that after considering a number of decisions on the very same issue from different Benches of the ITAT, it was held that in case of transactions related to purchase and sale of goods, RPM is the most appropriate method. The principles laid down by the Delhi Bench clearly applies to the facts of the present case not only because the assessee is involved purely in trading activity, but also in the TP study assessee has adopted RPM as the most appropriate method. Only because in the preceding assessment year for some reason assessee has not challenged the decision of DRP in upholding application of TNMM, assessee cannot be prevented from objecting to adoption of TNMM in the impugned assessment year. In view of the aforesaid, we remit the matter back to the file of the AO/TPO to examine assessee's analysis under the RPM and decide the issue accordingly after due opportunity of being heard to the assessee."*

13. At this stage, it is necessary to observe, the Transfer Pricing Officer has not made any genuine effort to find out whether bench marking can be done under RPM considering the fact that in these types of transactions, RPM is the best suited method. Instead of doing that the Transfer Pricing Officer had straight away proceeded to bench mark the transaction under TNMM. Further, it is necessary to observe, only when it is impossible or rather difficult to determine the arm's length price by applying any of the direct methods like CUP, RPM, CPM, then only as a method of last resort, TNMM should be applied. Therefore, in all fairness, the Transfer Pricing Officer should have made an effort to bench mark the transaction under RPM instead of rejecting the RPM applied by the assessee on some flimsy ground and straight away proceeding to apply TNMM. Moreover, we find various inconsistencies in the order of the Transfer Pricing Officer as. Though, at first he has observed that CUP is the most appropriate method but abruptly discarded it without reason.

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Similarly, RPM was also discarded under flimsy ground. Even as far as selection of comparables are concerned, though, the Transfer Pricing Officer has observed that the comparables selected by the assessee cannot be similar due to broad variance, however, ultimately he has retained them while bench marking the arm's length price under TNMM.

14. As we have stated earlier, in case of international transaction relating to purchase of goods from A.E. and resale to unrelated parties, RPM is the most appropriate method. Therefore, in our considered opinion, the Assessing Officer / Transfer Pricing Officer must examine assessee's bench marking under RPM in an objective manner. If the Assessing Officer / Transfer Pricing Officer are of the view that necessary / relevant data relating to gross profit margin of the comparables selected by the assessee are not available, it is open for the Assessing Officer / Transfer Pricing Officer to call for necessary / relevant materials from the assessee or else the Assessing Officer / Transfer Pricing Officer is free to independently proceed for selection of comparables under RPM after obtaining necessary information. As far as the contention of the learned Departmental Representative in relation to the issue whether license fee / addition license fee should form the cost based, in our view, it does not merit consideration at this stage as this is not an issue arising out of the order of the Transfer Pricing Officer or learned Commissioner (Appeals). It is open for the parties concerned to dwell upon all the issues while determining the arm's length price of the international transaction with the A.E. The grounds raised are allowed for statistical purposes.

15. We must make it clear that the Assessing Officer / Transfer Pricing Officer should afford adequate opportunity of hearing to the assessee and then decide the issue after considering the submissions of the assessee and keeping in view the judicial precedents which may be relied upon by the assessee.

16. In the result, appeal for A.Y. 2008–09 is allowed for statistical purposes."

We do not find any reason to deviate from the aforesaid common order dated 17.01.2017 passed by the tribunal for AY 2008-09 and 2009-10 respectively in assessee's own case . Thus, Respectfully following the decision of tribunal in assessee own case for AY 2008-09 and 2009-10 as detailed above, the issue is being restored to the file of the AO/TPO for fresh adjudication with similar directions as were given by tribunal in assessee's own case vide its orders dated 17.01.2017 for AY 2008-09 and 2009-10 respectively to re-compute ALP of

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international transaction of import of finished goods entered into by assessee with its AE i.e. Alfa Group of entities by following resale price method(RPM). While arriving at aforesaid decision, we are guided by the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT (1992) 193 ITR 321(SC) that rule of consistency need to be followed. Thus, ground of appeal No. 1 is allowed for statistical purposes. We order accordingly.

10. The second issue concerns itself with disallowance made by the AO u/s 40(a)(ia) of the 1961 Act on account of non- deduction of Income-tax at source(TDS) u/s 194H of the 1961 Act with respect to the commission/bank charges paid to the banks on credit cards payment by the customer while making purchases at the retail shops of the assessee. The assessee has made payments of Rs. 1,05,53,740/- towards bank charges for credit card payments . The AO made the additions as the assessee made payment towards bank charges for credit card totalling Rs.1,05,53,740/- without deduction of income-tax at source(TDS) u/s 194H by invoking provisions of Section 40(a)(ia) of the 1961 Act. We have observed that the same issue travelled to the tribunal for AY 2009-10 in assessee's own case and the tribunal was pleased , vide orders dated 17.01.2017 in ITA no. 1762/Mum/2014 for AY 2009-10, to delete the additions made on the grounds of non deduction of income-tax at source(TDS) u/s 194H on payments made to the banks towards credit card charges, by holding as under:-

> *" 25. We have considered the submissions of the parties and perused the material available on record. As far as payment to bank towards credit card charges is concerned, as per the decision relied upon by the learned Authorised Representative cited supra, provisions of section 194H are not applicable as the bank makes payments to the assessee after deducting certain fees and it is not a commission. In view of the aforesaid, no disallowance under section 40(a)(ia) can be made in respect of payments made to bank towards credit card charges. As far as the amount paid towards charges for conversion of forex into cash, we are of the view that the matter*

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needs re–examination in view of assessee's submissions that there is no principal–agent relationship between the assessee and Thomas Cook, therefore, provisions of section 194H is not applicable. We have noticed, though, in the course of the proceedings before the DRP, the assessee had submitted copies of agreement with bank as well as with Thomas Cook India Ltd., the authorities concerned have not properly examined the issue to ascertain the fact whether there is any principal–agent relationship between the assessee and Thomas Cook India Ltd. We, therefore, set aside the issue to the file of the Assessing Officer for fresh consideration after providing adequate opportunity of hearing to the assessee. Ground no.2, is allowed and ground no.3 is allowed for statistical purposes."

We have observed that Ld. CIT(A) has followed the earlier years order for 2009-10 passed by learned DRP , while upholding the additions made by the AO. The facts are similar in this year before us which is not disputed by rival parties before the bench and hence we do not find any reason to deviate from the orders of the tribunal for the AY 2009-10 as detailed above in assessee own case and Respectfully following the aforesaid decision of the coordinate benches of the tribunal in assesse's own case for 2009-10 , we allow the claim of the assessee and order deletion of the additions made by the AO and as were confirmed by Ld. CIT(A). While arriving at aforesaid decision, we are guided by the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT (1992) 193 ITR 321(SC) that rule of consistency need to be followed. This ground number 2 of the assessee is allowed. We order accordingly.

11. The third issue relates to the disallowance made by the AO u/s 40(a)(ia) of the 1961 Act on non deduction of Income-tax at source(TDS) u/s 194H on charges of Rs.95,75,838/- paid to Thomas Cook India Ltd. on conversion of foreign exchange into Indian Rupee with respect to the foreign exchange currency received by the assessee at its retail outlet at Delhi Airport. We have observed that the similar issue arose for earlier years and the Ld. CIT(A) has dismissed the claim of the assessee by following DRP orders for AY 2009-10 . The matter travelled to the tribunal at the behest of the assessee wherein

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the tribunal after considering the submission of both the parties in ITA no. 1762/Mum/2014 for AY 2009-10 vide orders dated 17.01.2017 was pleased to set aside and restore the matter to the file of the AO as in the view of tribunal the matter needed re-examination in view of the assessee submission that there is no principal-agent relationship between assessee and Thomas Cook India Ltd., and this issue of disallowance of conversion charges of foreign exchanged into cash by invoking provisions of Section 40(a)(ia) for non deduction of income-tax at source u/s 194H of the 1961 Act, was restored to the file of the AO for denovo determination of the issue by the AO , in an order passed by tribunal in assessee's own case with certain directions, by holding as under:

> *"25. We have considered the submissions of the parties and perused the material available on record. As far as payment to bank towards credit card charges is concerned, as per the decision relied upon by the learned Authorised Representative cited supra, provisions of section 194H are not applicable as the bank makes payments to the assessee after deducting certain fees and it is not a commission. In view of the aforesaid, no disallowance under section 40(a)(ia) can be made in respect of payments made to bank towards credit card charges. As far as the amount paid towards charges for conversion of forex into cash, we are of the view that the matter needs re– examination in view of assessee's submissions that there is no principal–agent relationship between the assessee and Thomas Cook, therefore, provisions of section 194H is not applicable. We have noticed, though, in the course of the proceedings before the DRP, the assessee had submitted copies of agreement with bank as well as with Thomas Cook India Ltd., the authorities concerned have not properly examined the issue to ascertain the fact whether there is any principal–agent relationship between the assessee and Thomas Cook India Ltd. We, therefore, set aside the issue to the file of the Assessing Officer for fresh consideration after providing adequate opportunity of hearing to the assessee. Ground no.2, is* allowed and ground no.3 is allowed for statistical purposes."

We have observed that Ld. CIT(A) has followed the earlier years order for 2009-10 passed by learned DRP , while upholding the additions

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made by the AO. The facts are similar in this year before us which is not disputed by rival parties before the bench and hence we do not find any reason to deviate from the orders of the tribunal dated 17.01.2017 for the AY 2009-10 as detailed above in assessee own case and Respectfully following the aforesaid decision of the coordinate benches of the tribunal in assesse's own case for 2009-10 , we set aside the issue to the file of the AO for fresh consideration of the issue in accordance with law , with similar directions as were given by the tribunal vide its order dated 17.01.2017 for AY 2009-10 in assessee's own case as detailed above . While arriving at aforesaid decision, we are guided by the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT (1992) 193 ITR 321(SC) that rule of consistency need to be followed. This ground number 3 of the assessee is allowed for statistical purposes. We order accordingly.

12. In the result , the appeal of the assessee in ITA no. 4818/Mum/2015 for AY 2010-11 is partly allowed as indicated above.

Order pronounced in the open court on 09.01.2019.

आदेश की घोषणा खुले न्यायालय में दिनांकः 09.01.2019 को की गई

Sd/-	Sd/-
(MAHAVIR SINGH)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, dated: 09.01.2019

Nishant Verma
Sr. Private Secretary
copy to…

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI