IN THE INCOME TAX APPELLATE TRIBUNAL "J", BENCH (VIRTUAL COURT DB-II) MUMBAI

BEFORE SHRI MAHAVIR SINGH, VP
&
SHRI M.BALAGANESH, AM

ITA No.4630/Mum/2016
(**Assessment Year :2009-10**)

ACIT-2(3)(1), Room No.552, 5th Floor Aayakar Bhavan M.K.Road, Mumbai – 400 020	Vs.	M/s. Tata Sons Ltd., 24, Bombay House Homi Mody Street Fort, Mumbai – 400 001
PAN/GIR No.AAACT4060A		
(Appellant)	..	**(Respondent)**

ITA No.4637/Mum/2016
(**Assessment Year :2009-10**)

M/s. Tata Sons Ltd., 24, Bombay House Homi Mody Street Fort, Mumbai – 400 001	Vs.	Commissioner of Income Tax-58 344, Aayakar Bhavan M.K.Road, Mumbai – 400 020
PAN/GIR No.AAACT4060A		
(Appellant)	..	**(Respondent)**

Revenue by	Shri A. Mohan
Assessee by	Ms. Arati Visanji
Date of Hearing	**27/07/2020**
Date of Pronouncement	**07/08/2020**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

These cross appeals in ITA Nos.4630/Mum/2016 & 4637/Mum/2017 for A.Y.2009-10 arise out of the order by the ld. Commissioner of Income Tax (Appeals)-58 in appeal No.CIT(A)-58/Arr-74/2013-14 dated 28/03/2016 (ld. CIT(A) in short) against the order of assessment passed

u/s.143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 09/05/2013 by the ld. Asst. Commissioner of Income Tax 2(3), Mumbai (hereinafter referred to as ld. AO).

2. The first issue raised by the assessee to be decided in this regard is with regard to transfer pricing adjustment made in respect of Corporate guarantee fee.

2.1. We have heard rival submissions and perused the materials available on record. We find that the functional profile of the assessee is as under:-

Tata Sons Ltd("TSL") established as a trading firm by Jamshetji Tata in 1868 is the promoter of all the key/major Tata Companies and holds the majority promoter holding in the Tata Companies. It is the owner of the 'Tata' name and the 'Tata' trademark, which are registered in India and several other countries. These are used by various Tata companies in relation to their products and services. The terms of use of the TATA Trademark by Tata companies are governed by the Brand Equity and Business Promotion Agreement, which is by TSL and individual Tata companies.

Apart from this, the company's activities are:

To maintain shareholding in main operating companies;
To invest in operating companies to facilitate growth; and
To promote the group's entry into new businesses.

Tata Sons has two divisions:

Tata Quality Management Services: Helps Tata companies achieve business excellence through the TBEM. There are various programmes like Business Excellence Leaders' Programme, Practising Business Excellence and Management of Business Ethics. The basic contents of these programmes include detailed TBEM criteria understanding, assessment concepts, feedback comment writing, scoring, soft skills in assessment, team consensus, site visit planning, feedback presentation skills.

Tata Financial Services: In-house financial consultancy, which carries out long- and short-term financial planning for Tata companies.

TSL continues to acquire shares and securities of its existing industrial enterprises. The dividend income supplemented by the profit made on sale of investments is utilised to augment the resources of the Company for increasing the long term investments in promoted companies.

TSL also subscribes to the Rights Issues made during the year by the other Tata companies and increases its holdings in several promoted companies.

The Company has two Liaison Offices located at:

a)Washington DC USA
b)Beijing, China

The role of the Liaison Offices is to interact with the Government and the business community to promote the Tata Name and Brand and to oversee Tata business interest in these countries.

As per the Tata group organizational structure, about 66 percent of the equity capital of TSL is held by public charitable trusts endowed by members of the Tata family. The biggest of these trusts are the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust, which were created by the families of the sons of Jamshetji Tata.

2.2. Tata Limited UK is one of the associated enterprises (AEs) of the assessee company. AE acts as purchasing agent, representative, traders in commodities and industrial raw materials and trade financing. The assessee provided a corporate guarantee in October 2008 to its AE on term loan facility of USD 100 million issued by Standard Chartered Bank. The said AE is wholly owned subsidiary of the assessee company. The assessee charged 0.25% guarantee commission from its subsidiary. The assessee submitted that it had neither provided guarantee nor received guarantee from any unrelated party. Further, the AE has not obtained or provided any other guarantee loan to any unrelated party. Thus Internal Comparable Uncontrolled Price (CUP) method could not be applied to benchmark the tested guarantee transaction. In order to determine an indicative range of arm's length guarantee fee for the tested transaction, i.e. guarantee payment made by the AE to assessee, the assessee has utilised the Interest Saving (IS) approach based on External CUP method. The ld. TPO disregarded the approach of the assessee and adopted yield approach to benchmark the guarantee transaction of the assessee with its AE based on the credit rating of the assessee and yield on interest rate for one year unsecured bond period as the guarantee given by the assessee was for a period of 364 days. Accordingly, the ld. TPO applying

CUP method adopted the yield on interest rate for one year unsecured bond of 6.878% per annum and compared the same with credit rating of the AE which was at BB rating and for which the yield on interest rate for one year unsecured bond for 3.121% per annum. Accordingly, the ld. TPO arrived at the benefit accrued to the AE on account of guarantee given by the assessee at 3.757% (6.878-3.121). From that the ld. TPO also gave benefit of better bargaining power of the assessee and reduced 0.751% and finally arrived at the ALP of guarantee fee at 3.006% per annum (3.757-0.751) and made an adjustment of Rs.6,84,44,433/- after reducing the guarantee fee received by the assessee in the sum of Rs.58,03,767/-.

2.3. We find that the ld. CIT(A) observed that the credit rating of the assessee would enable the assessee to get yield of one year USD bond rate at 1.356% as against the credit rating of the AE for the same period at 2.5688% which leads to a difference of 1.32%. We find that the ld. CIT(A) had split this rate in the ratio of 60:40 based on the risks undertaken by both the assessee (being the guarantee) and the AE (being the borrower). Accordingly, he arrived the arm's length guarantee fee to be at 0.792% being 60% of 1.32%. Since the assessee has charged fee of 0.25% from its AE, he directed the ld. TPO to make adjustment only to the extent of the 0.542% (0.792-0.25).

2.4. Aggrieved, the assessee is in appeal before us.

2.5. At the time of hearing, the ld. AR fairly submitted that the grounds raised by the assessee with regard to the fact that the issue of corporate guarantee would not fall within the ambit of international transaction is not pressed by her. The same is reckoned as the statement made from

the Bar and accordingly, the grounds raised by the assessee that the corporate guarantee issue is not an international transaction are hereby dismissed as not pressed. We find that the Hon'ble Jurisdictional High Court in number of occasions had restricted the Arm's Length Price (ALP) from the guarantee fee to be at 0.5%. We find that these decisions were subsequently followed by the Co-ordinate benches of this Tribunal and one such decision which was quoted by the ld. AR at the time of hearing in the case of Virgo Engineers Ltd. vs. DCIT in IT(TP)A No.3718/Mum/2017 for A.Y.2011-12 dated 08/01/2019 wherein by placing reliance on the decision of Hon'ble Jurisdictional High court in the case of Everest Kanto Cylinder Ltd., vs. DCIT reported in 34 Taxmann.com 19, the ALP of corporate guarantee fee was restricted to 0.5%. Respectfully following the same, we direct the ld. TPO to consider the ALP of corporate guarantee fee at 0.5% and further reduce 0.25% already charged by the assessee and make adjustment accordingly. Accordingly, the ground No.1 raised by the assessee is partly allowed.

3. The ground No.2 raised by the assessee is with regard to expenses incurred towards providing additional services in respect of which service charges were collected by the assessee and separately offered to tax in addition to rent.

3.1. We have heard rival submissions and perused the materials available on record. We find that the assessee while computing income from house property, the assessee had reduced Rs.30,55,040/- from the annual value in addition to the other statutory deduction including 30% deduction allowed towards repairs u/s. 24. The assessee had submitted that these expenditures represent maintenance facilities like salaries, security charges and electricity of house property. The ld. AO observed

that assessee is entitled only for deduction for municipal tax paid and flat deduction @30% for repairs under head 'income from house property' and no other deduction shall be permissible under the Act. The assessee had received Rs.1,73,90,000/- towards amenities and service charges which were duly offered to tax as rent under the head 'income from house property' against which, this expenditure of Rs.30,55,040/- was deducted by the assessee under the head 'income from house property'. It is not in dispute that assessee had duly offered rental income as well as amounts received towards amenities and service charges under the head 'income from house property'. We find that the ld. AR referred to the decision rendered in group companies case of the assessee by this Tribunal in the case of Ewart Investments Ltd., vs. DCIT in ITA No.3623/Mum/2017 dated 28/02/2019 for A.Y.2012-13 wherein this issue was restored to the file of the ld. AO. The ld. AR fairly prayed for similar direction to be given in the impugned case. We have gone through the said decision and respectfully following the said decision, we deem it fit and appropriate to restore this issue to the file of the ld. AO and decide the issue before us on the same lines as directed by this Tribunal in ITA No.3623/Mum/2017 dated 28/02/2019 from para 5 & 6 thereon. Accordingly, the ground No.2 raised by the assessee is allowed for statistical purposes.

4. The ground No.3 raised by the assessee is with regard to the set off of interest charged and paid to the Income Tax department against interest granted by the Income Tax department on refunds in the same year.

4.1. We have heard rival submissions and perused the materials available on record. This issue is already covered positively in favour the

assessee by the order of this tribunal in assessee's own case for A.Y.2008-09 in ITA No.3192/Mum/2013 dated 06/11/2019 wherein it was held as under:-

"2. Set off of Interest on Income Tax Refund with Interest charged on income tax demands

Ground No.1 of Assessee Appeal

The brief facts of this issue is that the assessee received interest from income tax department to the tune of Rs 43.81 crores and also paid interest to income tax department on its tax demands to the tune of Rs 6.57 crores. The assessee sought to set off the interest paid on income tax demands with the interest received from income tax department in the return of income. The ld AO disallowed the interest paid on income tax demands to the tune of Rs 6.57 crores as the same is not allowable in terms of section 40(a)(ii) of the Act and accordingly taxed the gross interest received from income tax department of Rs 43.81 crores under the head income from other sources. The ld CITA by placing reliance on the order passed by his predecessor for the Asst Years 2007-08 and 2005-06 in assessee's own case upheld the action of the ld AO. The ld CITA further directed the ld AO to verify the assessment records of Asst Year 1990-91, 2003-04 and 2005-06 in order to ensure that there is no double addition. Aggrieved, the assessee is in appeal before us.

2.1. We have heard the rival submissions and perused the materials available on record including the judicial pronouncements relied upon by both the sides at the time of hearing. We find that the ld AR placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of DIT (International Taxation) vs Bank of America NT and SA in Income Tax Appeal No. 177 of 2012 dated 3.7.2014 wherein the Hon'ble High Court approved the action of this tribunal had held as under:-

"3 Even with regard to the question No.2 we do not find that it is a substantial question of law. The Tribunal found that the Assessee Bank received interest on refund of taxes paid. It also paid interest on the taxes which were payable. The Assessee sought to set off the interest paid against the interest received and offered the net interest received to tax. We do not see that such findings of the Tribunal are vitiated in law. All that the Tribunal has done earlier and now is that in the case of this Assessee simply because the exercise carried out by it does not result in loss of revenue and there could not be any prohibition for the same, allowed it. That is how the Assessing Officer's order is set aside. We do not see how any larger controversy or question arises for our consideration.

Mr.Pinto would refer to Section 57 of the Income Tax Act, 1961 in that regard and submit that this course would be adopted by other Assessees as well and in that event the order passed by this Court would come in the way of the Revenue in investigating and probing such exercise by other Assessees.

4 We do not see how this order can be cited _as .precedent inasmuch as the Assessee before the Tribunal and before us paid interest to the Income Tax Department amounting to Rs.10,26,906/-. The Assessee claimed that this was business expenditure and this should have been allowed. The Assessee has received the interest of Rs.1,07,57,930/-. It was submitted that the amount of interest paid by the Assessee should have been allowed to be set off against the interest deposited with the Department and taxed in the hands of the Assessee. The argument was that the interest paid to and received from is the same party i.e. Government of India and therefore, both transactions should be taken together.

5. We do not find that the Tribunal has, in permitting this exercise, in any way violated any of the provisions of the Income Tax Act, 1961. It was a peculiar situation between the Assessee and the Department. The Tribunal has followed the similar exercise in the case of very Assessee on the prior occasion as well. In such circumstances we are of the opinion that the second question also does not raise any substantial question of law."

2.2. Respectfully following the said decision, the ground no. 1 raised by the assessee is allowed."

4.2. Respectfully following the said decision, the ground No.3 raised by the assessee is allowed.

5. The ground No.4 raised by the assessee is with regard to disallowance made u/s.14A of the Act.

5.1. We have heard rival submissions and perused the materials available on record. We find that assessee had claimed an exempt income of Rs.1755.84 Crores as against the investment of Rs.28007.67 Crores in tax free investments. We find that the assessee had disallowed Rs.474.19

Crores voluntarily u/s.14A of the Act as expenditure related to exempt income. The ld. AO applied the computation mechanism provided in Rule 8D(2) of the Rules and made the disallowance as under:-

(a)	Under Rule 8D(2)(i)	-	Rs.39.30 Crores
(b)	Under Rule 8D(2)(ii) (without giving the benefit of netting of Interest expenditure with interest income)	-	Rs.661 Crores
(c)	Under Rule 8D(2)(iii)	-	Rs.125.50 Crores
Total			**Rs.825.80 Crores**

5.2. From this figure, we find that the ld. AO reduced the amount already disallowed by the assessee in the sum of Rs.474.19 Crores and made disallowance for the remaining sum of Rs.351.61 Crores in the assessment.

5.3. We find that the ld. CIT(A) had observed in para 9.4.2. of his order in page 54 that the activity of controlling, managing, administrating and financing various companies by the assessee is an elaborate activity which is not only for the purpose of earning dividend income but variety of other purposes including development of brand value, setting up of new enterprises, receiving royalty, rendering business development activity with respect to the member companies. For this, the company is remunerated in variety of ways and not merely through earning of dividend. Such remuneration includes royalties, cost sharing arrangement, other charges, interest in investments etc., The ld. CIT(A) further

observed that assessee is competent to perform these functions because of its controlling stake in these companies and hence, investments in these companies would be capital investment.

5.4. We find that the ld. CIT(A) had further observed that borrowed funds utilised in making investments which had yielded tax free income to the assessee would be governed by the provisions of Section 14A of the Act and not Section 36(1)(iii) of the Act. Accordingly, the ld. CIT(A) held that interest on borrowed capital utilised for making investments would be eligible for deduction u/s.36(1)(iii) subject to the provisions of Section 14A of the Act. Against this observation, we find that revenue is in appeal before us. We find that assessee is a promoter investment holding company and exercise controlling interest in various Tata companies. Out of these investments, the assessee receives income by way of dividends, interest on investments, royalty income from brand, capital gains etc., Out of this only dividend income is exempt. All other receipts thereon are taxable receipts. Even otherwise, there is absolutely no bar for allowability of interest u/s.36(1)(iii) of the Act if the borrowed funds were utilised for making investments which are meant for the purpose of business of the assessee. There is absolutely no dispute that assessee is a promoter investment holding company thereby, it had to exercise controlling interest in various Tata group companies. For the purpose of making these investments if the assessee had to use the borrowed funds, if any, then the interest paid on such borrowings would be governed by the provisions of Section 36(1)(iii) of the Act and would be squarely allowable as deduction. The findings recorded by the ld. CIT(A) that borrowed funds utilised for investment in shares of Tata group companies for acquiring the controlling stake in those companies would be treated as capital in nature is to be looked into from this perspective. We hold that

the business and commercial expediency of assessee making investments in these Tata group companies either with or without the use of borrowed funds have been proved beyond doubt in the instant case. The assessee company had earned both taxable income as well as tax free income out of these investments as detailed supra. Hence, there is absolutely no question of disallowance of interest u/s.36(1)(iii) of the Act. If the borrowed funds have been used for making investment for shares which inturn had yielded exempt income to the assessee, then, the allowability of interest need to be looked into from the angle of Section 14A of the Act r.w.r. 8D(2)(ii) of the Rules. This fact has been correctly dealt, in our considered opinion, by the ld. CIT(A) in his order. We also find that this issue is also covered in favour of the assessee's group company case by the order of this Tribunal in the case of Tata Industries Ltd., vs. ITO in ITA No.4894/Mum/2008 dated 20/07/2016 wherein this Tribunal by placing reliance on various decisions of the Hon'ble High Courts including the Hon'ble Jurisdictional High Court in the case of CIT vs. Phil Corporation Ltd., reported in 202 Taxman 368 had decided the issue in favour of the assessee with regard to allowability of interest. Hence, we do not find any infirmity in the observation made by the ld. CIT(A) that the interest on borrowed funds used for making investments would be allowable u/s.36(1)(ii) of the Act subject to the provisions of Section 14A of the Act. This observation made by the ld. CIT(A) is correct in the facts and circumstances of the instant case, which in our considered opinion, does not require any interference. Accordingly, ground No.2 raised by the revenue is dismissed.

5.5. We find that the assessee had raised various grounds in several facets before the ld. CIT(A) with regard to issue of disallowance u/s.14A of the Act and the ld. CIT(A) had granted partial relief to the assessee,

against which assessee is in appeal before us. Before us the issues that are to be decided are as under:-

(a) Whether the disallowance of interest made in the second limb of Rule 8D(2) of the rules is to be computed with relation to net interest or gross interest ?

We find that this issue is already decided in favour of assessee in its own case by this tribunal in ITA No.3192/Mum/2013 for A.Y.2008-09 dated 06/11/2019 wherein netting of interest income with interest paid for computing disallowance under second limb of Rule 8D(2) of the Rules was permitted by this Tribunal by following various judicial precedents. Accordingly, this aspect of the issue is decided in favour of the assessee.

(b) Disallowance under Rule 8D(2)(i), 8D(2)(ii) and 8D(2)(iii) are to be made by considering those investments which had actually yielded exempt income to the assessee. We find that this issue is also covered in favour of the assessee in its own case by the decision of this Tribunal in ITA No.3192/Mum/2013 for A.Y.2008-09 dated 06/11/2019. Accordingly this aspect of the issue is also decided in favour of the assessee.

(c) Disallowance made under Rule 8D(2) should be treated as cost of investment. We find that this aspect of the issue was stated to be not pressed by the ld. AR at the time of hearing. Accordingly, the same is dismissed as not pressed.

5.6. Accordingly, the ground No.4 raised by the assessee with regard to disallowance u/s.14A of the Act under normal provisions of the Act is disposed off in the aforesaid manner.

6. The next issue to be decided is with regard to disallowance made u/s.14A of the Act vis-à-vis computation of book profits u/s.115JB of the Act, for which, we find the assessee has raised an additional ground before us. We find that this additional ground goes to the root of the matter and does not involve verification of any facts. Accordingly, the said additional ground is admitted and taken up for adjudication. We find that assessee had actually disallowed the sum of Rs.474.19 Crores by identifying the actual expenditure under normal provisions of the Act. We find that the Special Bench of Delhi Tribunal in the case of Vireet Investments reported in 165 ITD 27 had held that actual expenditure alone should be considered for disallowance in terms of Clause(f) to Explanation 1 to Section 115JB of the Act. Accordingly, we direct the ld. AO to disallow Rs.474.19 Crores u/s.14A while computing book profits u/s.115JB of the Act. Accordingly, the additional ground No.4A raised by the assessee is partly allowed.

7. The ground No.5 raised by the assessee and ground No.3 raised by the revenue is with regard to disallowance of payments made to Media Relations Agency.

7.1. The facts as recorded in the assessment order with regard to this trader are that the assessee has shown an expenditure of Rs.12.66 Crores as payment given to M/s. Vaishnavi Corporate Communications Pvt. Ltd., (VCCPL) owned by Ms. Nira Radia towards consultancy fees. The assessee was asked to submit the details of services obtained for which

consultancy fees was paid. The assessee through its letter dated 26/03/2013 submitted that the payments made to VCCPL were on account of fees for media relations, strategic planning and public affairs services. It was also submitted that the said payment includes creating resources bank, creating media universe, drafting dissemination of press releases, interacting with company Senior Executives and Directors, Media familiarization, gathering information and media coverage, creating communication plans and competitive analysis, facilitating the interaction between company and public officials and agencies. The ld. AO further observed that assessee had invested Rs.1700 Crores in Tata Realty Investment and Infrastructure Ltd., which was utilised for buying lands from Unitech group by Tata Realty Investment and Infrastructure Ltd. It was noticed by the ld. AO that the Unitech Group in turn had utilised the funds for acquiring the 2G mobile telephone spectrum license. The ld. AO observed that as per the report dated 23/06/2011 sent by DIT (Investigation), New Delhi, Unitech Group during the course of investigation had admitted that Ms. Nira Radia was rendering various consultancy services to Unitech Group and Tata Realty Investment and Infrastructure Ltd., However, it was claimed by both Unitech group and Tata Realty Investment and Infrastructure Ltd., that no payments were made to VCCPL. Based on this, the ld. AO concluded that the payments made by the assessee company to VCCPL were in respect of land transactions and acquisition of 2G licenses. The ld. AO further concluded that both these transactions are not meant for the purpose of assessee's business and since, assessee had not produced the details of specific services rendered by VCCPL for which the alleged media relation fees was paid, he proceeded to disallow this sum of Rs.12,66,38,000/- as expenditure incurred not for the purpose of business of the assessee in the assessment.

7.2. Before the ld. CIT(A), the assessee submitted that similar payments were made to VCCPL for media relation services rendered under the agreement entered into with them on 21/11/2006 and the same were being allowed from A.Y.2007-08 onwards u/s.143(3) proceedings by the ld. AO. The assessee further submitted before the ld. CIT(A) that the ld. AO erroneously treated the said payment towards purchase of land and for acquisition of 2G licenses and thereby concluding that the same are not meant for purpose of business of the assessee company. It was specifically submitted before the ld. CIT(A) that broad purpose of the services delivered by the VCCPL was to create a unified media focus for the company, pro-active strategic planning for image building, branding initiatives, market related public relation and training. The assessee submitted the details of services provided by VCCPL as under:-

i. Media Relations (including Television, Print and the Internet)- This includes creating resource bank comprising of Corporate backgrounders, fact sheets, profile, etc; Drafting and dissemination of press releases, receiving and answering queries from the media; handling of all interaction involving the companies and the media; gathering information on media coverage, etc.

ii. Strategic Planning (this includes putting together short term and long term media engagement plans), creating backgrounders and research material on various industry segment, putting together communication material for different branding events, measuring and analyzing media coverage of companies competitors of industry segment.

7.3. The ld. CIT(A) observed that before him the assessee had filed a copy of the media relations, strategic planning and public affairs services agreement entered into by the assessee with VCCPL on 21/11/2006 which clearly describes the various services to be rendered by VCCPL to the assessee. The ld. CIT(A) further observed that VCCPL is in the area of corporate communications and has been rendering services to the assessee company in earlier years also. The ld. CIT(A) further observed that assessee being a holding company on number of occasions has an agreement with these corporates for rendering such services and receives payments from these companies for the same. It is also seen that the name of the Tata Realty Investment and Infrastructure Ltd., does not appear in the list of Tata entities covered by the agreement. The ld. CIT(A) observed that in the light of the fact that services have been rendered by VCCPL with respect to the transaction noted by the ld. AO, no consideration has been passed on either by Tata Realty Investment and Infrastructure Ltd., or by Unitech group and the fact that none of the other parties have any agreement with VCCPL for rendering of services, it is clear that VCCPL was appointed by the assessee to carryout these activities. This is actually the observation made by the ld. AO in his assessment order. But the ld. CIT(A) had observed that however, it could not be stated that the entire payment represents payment for services rendered by VCCPL towards Tata Realty Investment and Infrastructure Ltd., and Unitech group. He summarises the entire transaction as under:-

- Two facts are admittedly clear that VCCPL rendered certain services to Tata Realty Investment and Infrastructure Ltd., and Unitech Group that received investment of Rs.1700/- Crores in Tata Realty Investment and Infrastructure Ltd., and after use of these funds for obtaining 2G licenses and that both these companies did not make

any payment to VCCPL. The ld. CIT(A) concluded that it is clear that VCCPL rendered the above services at the instance of the assessee company. The assessee, being the only company having functional control over the activities of the VCCPL with respect to services to be rendered to Tata group, he observed that these services did not relate to the normal functional profile or mandate given to VCCPL and that since, the payment for these services was included in the overall payment of Rs.12.66 Crores made by VCCPL, only a portion of these payment relates to these services. Accordingly, he proceeded to contribute 50% of the amount paid to VCCPL as being for an activity which was not related to assessee company. The ld. CIT(A) finally concluded that 50% of the amount is to be held not for the purpose of the business of the assessee and also clarified that this is not a routine disallowance and the amount has been held to be disallowable only because of the financial services having been rendered by VCCPL in respect of other persons during that year, for which payment was received from the assessee. He categorically mentioned in his order that this disallowance should not be taken on a year on year basis.

7.4. Aggrieved by this observation, both assessee as well as the revenue are in appeal before us.

7.5. We have heard rival submissions and perused the materials available on record. We find that the following documents were duly placed on record before the lower authorities:-

(a) Copy of media relations, strategic planning and public affairs services agreement entered into between assessee and VCCPL

dated 21/11/2006 together with Annexure-A containing list of Tata companies that are part of this agreement;

(b) Annexure-B defining various services to be rendered by the parties concerned;

(c) Annexure-C defining the data code of conduct;

(d) Annexure-D defining the data code of conduct for prevention of insider trading and code of corporate disclosure practices (enclosed in pages 20-63 of the paper book).

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

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

- Tata International Limited
- Tata Autocomp Systems Ltd.

7.7. From the aforesaid list, admittedly, it could be seen that Tata Realty Investment and Infrastructure Ltd., does not figure in the said list. From the aforesaid agreement dated 21/11/2006, it could also be seen that Ms. Nira Radia is a media relations professional and VCCPL was a company promoted by her as a private limited company on 01/11/2001 and the said company has been in the business of public relation management and communication strategies and has rendered services in those areas to the assessee company and other Tata companies since 01/11/2001. These facts are not disputed by the revenue before us. We find that primarily the assessee herein has made investments of Rs.1700/- Crores in its subsidiary company Tata Realty Investment and Infrastructure Ltd. The said subsidiary company had utilised the said funds to buy lands from Unitech Group and it was Unitech group which had ultimately acquired 2G telephone spectrum licenses from Department of Telecommunications, Government of India which are governed by Telecom Regulatory Authority of India (TRAI) regulations. Hence, the primary transactions of amounts invested by the assessee in Tata Realty Investment and Infrastructure Ltd., and its consequential funding to Unitech group and Unitech group's consequential utilisation for acquiring 2G licenses cannot be linked with payments made by the assessee to VCCPL. What is to be seen here is the purpose of payments by the assessee company to VCCPL. For this purpose what is relevant is the copy of media relations, strategic planning and public affairs services agreement entered between assessee company and VCCPL dated 21/11/2006 which are part of the records before the lower authorities as stated supra. We find that this agreement clearly defines the scope of services to be rendered by VCCPL to the assessee which has got

absolutely nothing to do with Tata Realty Investment and Infrastructure Ltd., or Unitech group. That is why, rightly the name of Tata Realty Investment and Infrastructure Ltd., had not figured in the list of companies enclosed in Annexure-A of the aforesaid agreement dated 21/11/2006. The various services to be rendered by VCCPL have already been listed above. We find that the ld. CIT(A) had also partially agreed that services were indeed rendered by VCCPL to the assessee company. Since, the assessee having made investments in various group companies would certainly like to have a unified media focus for the entire Tata group and since VCCPL is a company which has got the necessary expertise of providing such services, the assessee had entered into the agreement dated 21/11/2006 with them and has made payments of Rs.12.66 Cores towards media relation agency fees. We also find that similar services were rendered by VCCPL to the assessee in earlier years as well as in subsequent years which were duly allowed as deduction by the Revenue as under:-

Fees Paid (excluding service tax)

Year	Amount (Rs Crores)
AY 2004-05	8.07
AY 2005-06	9.12
AY 2006-07	9.12
AY 2007-08	10.45
AY 2008-09	12.31
AY 2009-10	12.31
AY 2010-11	12.31
AY 2011-1 2	12.31
AY 2012-13 (upto 31st Oct. 2011)	7.18

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

8. The ground No.6 raised by the assessee is with regard to disallowance of pension amount.

8.1. We find that assessee had raised a ground challenging the action of the ld. CIT(A) in confirming the disallowance of provision for pension of Rs.4.88 Crores provided on actuarial basis. This aspect of the ground was stated to be not pressed by the ld. AR at the time of hearing before us and the same is reckoned as statement made from the Bar and accordingly, dismissed as not pressed.

8.2. We find that the assessee had raised a ground challenging the action of the ld. CIT(A) in suo moto enhancing disallowance on account of pension payment of Rs.89 lakhs. We have heard rival submissions and perused the materials available on record. We find that assessee has debited Rs.5.77 Crores as provision for pension payable to former Directors out of which a sum of Rs.89 lakhs was actually paid. The remaining sum of Rs.4.88 Crores was payable which was the subject matter in the aforesaid ground 6(i) which is not pressed by the assessee before us as stated supra. The assessee contended that the remaining sum of Rs.89 lakhs was paid to wholetime Directors in recognition of their

services to the company during their period as wholetime Directors, which was also supported by a board resolution passed in this regard. This sum was duly allowed as deduction by the ld. AO in the assessment. However, the ld. CIT(A) observed that this pension has not been paid out of any approved pension fund and hence, the same is not an allowable expenditure for the company. The ld. CIT(A) placed reliance on the decision of Hon'ble Calcutta High Court in the case of Brooke bond India Ltd., vs. JCIT reported in 337 ITR 482 to support his conclusion. We find that the issue to be adjudicated by us is as to whether the actual payment of Rs.89 lakhs made by the assessee towards pension to Shri Ratan Tata, Ex-Chairman and Shri. N.A.Soonawala on the basis of their services rendered to the company is an allowable deduction or not. We find that in the facts before the Hon'ble Calcutta High Court in the case of Brooke bond India Ltd., referred to supra, the assessee therein had claimed deduction on account of unfunded actuarial liability for pension in respect of certain categories of employees based on the Board resolution on mercantile basis. We find the decision of Calcutta High Court would not advance the case of the revenue in view of the fact that the Court in that case was dealing with allowability of expenditure which was provided on mercantile basis and not actually paid, whereas in the instant case, there is absolutely no dispute that the sum of Rs.89 lakhs was actually paid by the assessee company to its wholetime Directors on account of pension in recognition of their services rendered based on the Board resolution. Hence, reliance placed by the ld. CIT(A) on the decision of Hon'ble Calcutta High Court to justify his enhancement of disallowance of Rs.89 lakhs does not advance the case of the revenue. We find there is absolutely no dispute that the wholetime Directors to whom pension of Rs.89 lakhs was paid by the assessee company had rendered tremendous services to the assessee company which was duly recognised by the

assessee company by way of Board resolution appreciating their services and sanction for payment of pension was accorded thereon. Hence, the business expediency of the subject mentioned transaction has been duly approved by the assessee and it cannot be said that it is not incurred for the purpose of the business of the assessee. We find that the case of the assessee squarely falls within the ambit of the decision of the Hon'ble Supreme Court in the case of Sassoon J. David & Co. Pvt. Ltd., vs. CIT reported in 118 ITR 261. For the sake of brevity, the operative portion of the said decision is not reproduced herein. Hence, we hold that the payment of Rs.89 lakhs on account of pension to wholetime Directors on the basis of Board resolution of the assessee company is incurred wholly and exclusively for the purpose of business of the assessee and is allowable as deduction. Accordingly, the ground No.6 raised by the assessee is allowed.

9. The ground No.1 raised by the revenue is general in nature and does not require any specific adjudication.

10. In the result, the appeal of the assessee is partly allowed for statistical purposes and appeal of the revenue is allowed for statistical purposes.

Order pronounced on 07/08/2020 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(M.BALAGANESH)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Mumbai; Dated 07/08/2020
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai