INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2": NEW DELHI
BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.510/Del/2014
(Assessment Year:2005-06)

AT Kearney India Private Limited, 6th Floor, Tower-D, Global Business Park, Gurgaon PAN:AADCA1436G **(Appellant)**	Vs.	ITO, Ward-1(1), New Delhi **(Respondent)**

ITA No.511/Del/2014
(Assessment Year: 2007-08)

AT Kearney India Private Limited, 6th Floor, Tower-D, Global Business Park, Gurgaon PAN:AADCA1436G **(Appellant)**	Vs.	ITO, Ward-1(1), New Delhi **(Respondent)**

Assessee by :	Shri Salil Kapoor, Adv Ms. Ananya Kapoor, Adv
Revenue by:	Sh. Amit Ray, Sr. DR
Date of Hearing	14/07/2016
Date of pronouncement	23/09/2016

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. There are two appeal filed by the assessee for Ay 2005-06 and AY 2007-08 which were heard together and disposed off as under :-

ITA NO 510/Del/2014 A Y 2005-06.

2. This is an appeal filed by the assessee against the order of the ld CIT (A) –IV, New Delhi dated 2011.2013 for the Assessment Year 2005-06.

3. The assessee has raised the following grounds of appeal:-

"1. Based on the facts and circumstances of the case and in law, the Hon'ble Commissioner of Income-tax (Appeals) ['CIT(A)'] has erred in upholding the order of the learned Income-tax officer, Ward 1(1), New Delhi ('the learned assessing officer1) in assuming jurisdiction under section 147 of the Income Tax Act, 1961 ('Act') and issuing notice under section 148 of the Act to the appellant.

1.1. Based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the order passed under section 148 of the Act by the learned assessing officer as reasons to believe are invalid and reassessment proceedings cannot be initiated on mere change of opinion especially when the claim of deduction under section 10A of the Act has been verified in detail during the course of assessment proceedings for the earlier assessment years.

1.2. Based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the action of the learned assessing officer in initiating the reassessment proceedings under section 147 of the Act on the basis of proceedings concluded for a subsequent assessment year and not on the basis of any tangible material available for the concerned assessment year.

1.3. Based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the order passed under section 147/ 143(3) of the Act by the learned assessing officer since the same was based on surmises and conjectures and is therefore, bad in law and void ab-initio.

Non applicability of Section 10A(7) read with 80IA(10)

2. Based on the facts and circumstances of the case and in law, the Hon'ble CIT (A) has erred in confirming the action of the learned assessing officer in invoking Section 10A(7) read with Section 80IA(10) of the Act and thereby restricting the amount of deduction available under Section 10A of the Act to Rs. 11,374,842 as against Rs. 39,280,361 claimed by the appellant.

2.1. Based on the facts and circumstances of the case and in law, the Hon'ble CIT (A) has erred in ignoring the fact that all the customers of the appellant are overseas entities outside the jurisdiction of Indian tax laws, and therefore there cannot be any motive to abuse the tax concession provided under section 10A of the Act.

2.2. Based on the facts and circumstances of the case and in iaw, the Hon'ble CIT (A) has erred in not appreciating the fact that the appellant has paid MAT under section 115JB of the Act on book-profits beginning from Assessment Year 2006-07 and Dividend Distribution taxes in India and therefore, the allegation that no taxes are paid in India is baseless.

2.3. Based on the facts and circumstances of the case and in law, the Hon'ble CIT (A) has erred in upholding the action of the learned assessing officer in applying the provisions of section 80IA(10) of the Act to determine profits earned from international transactions and further using the Transfer Pricing Study to determine "ordinary profit" for the purpose of section 10A(7) read with section 80IA(10) of the Act.

2.4. Based on the facts and the circumstances of the case and in law, the Hon'ble CIT (A) has erred in not appreciating the various judicial precedents relied upon by the appellant in this regard.

2.5. Without prejudice to Grounds 2.1 to 2.4 above, based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in not appreciating that section 10A of the Act is a beneficial provision and should be given such an interpretation so as to grant the tax incentive intended by the legislation."

4. Brief facts of the case are that assessee, a company engaged in the business of providing ITes services, filed return of income on 28.10.2005 declaring Nil income. While filing return of income it

claimed deduction u/s 10A of the Income Tax Act, 1961 of Rs. 39280361/-. Its return was processed u/s 143(1) of the Act on 17.05.2006. Subsequently, notice u/s 148 of the Act was issued on 23.03.2012 for reopening of the assessment recording following reasons:-

> *"The assessee had filed its Return of Income vide acknowledgement no. 0101000559 dated 28-10-2005, declaring its total income at Rs.Nil, and claiming an exempt income of Rs.3,92,80,361/-. A refund of Rs.28,30l/- was claimed on the basis of TDS. The return was processed under section 143(1) of the I.T. Act. 1961 on 17-05-2006, determining a Refund of Rs.30.282/- including interest.*
>
> *From the perusal of the I.T. Return, the following was observed:*
>
> *1.1. As per annexure 5, notes to the computation, the assessee is engaged in providing IT enabled services involving research and production support to overseas group entities engaged in consulting projects. The nature of services are of 'back office operations' (as per schedule 8 to the Audited Accounts).*
>
> *2. The assessee has claimed deduction u/s IDA of the Act to the tune of fts.3,92,80,361/-. Its turnover of Rsfi,24,85,165/- was 100% from Export of its services as detailed in (1) above, to its overseas associate enterprises (as per Form 3CEB doted 22'10-2005).*
>
> *3. After deducting the expenditure of Rs.4,75,70,229/- from the turnover of Rs.8,24,85,165/-, the Operating Profit comes to Rs.3,49,14,936/-. in percentage terms, this Operating Profit is 73.496 over the Operating Cost.*
>
> *4. The Operating Profit ratio is prima-facie at a very high level. This becomes a matter of dose watch when such huge margins are being earned by virtue of transactions with associate enterprises and the assessee is claiming deductions u/s 10A of the Act. Section 10A(7) of the Act refers to Section 80-IA(10) of the Act, Section 80-IA(10) creates the limitations on the quantum of eligible deduction. According to this section, where, owing to mutual*

arrangement, the transaction between the connected parties is yielding more than ordinary profits in the eligible entity, then the AO shall re-compute the amount of profits as may be reasonably deemed to have derived there-from.

5. *As per me general trends in such stream of business, the average Operating Profits in IT enables services are approximately 15-20% over the Operating Costs. It is pertinent to mention that same issue was adjudicated upon during the scrutiny proceedings for A.Y.2009-10 in the case at the same assessee. In that year, after elaborate discussions the deduction u/s 10A was restricted to 20% over the Operating Cost.*

6. *Therefore, I have reason to believe that the assessee has claimed excessive deduction u/s 10A of the Act. As already discussed in (5) above, the average Operating Profits in I.T. enables services are approximately 15-20% over the Operating Costs. Even at a liberal estimate, for the purpose of computing deduction u/s 10A of the Act, if the assessee is considered eligible for the mark-up of 20% over the Operating Cost, the assessee has claimed excessive deduction, calculated as*

A	*Turnover*	*As per P&L Account*	*82485165*
B	*Operating Cost*	*Exp. as per P&L Account*	*47570229*
C	*Operating Profit*	*'A' - 'B' (approx. 73.4% of 'B'}*	*34914936*
D	*Operating Profit (eligible for deduction u/s 10 A)*	*20% on 'B'*	*9514046*
E	*Balance Operating Profits (not eligible for deduction u/s 10A)*	*•C - 'D' (Excessive Deduction claimed u/s IDA)*	*25400890*

Further, as per the P&L A/c, the assessee has earned interest income on deposits with banks to j the tune of Rs.1,26,118/-. In the case of the assessee, the same is taxable under the head Income from Other Sources'. However, the same has also not been offered to tax.

Hence I have reason to believe that an income of east Rs.2,55,27.008/- (25400890 + 126118} has escaped assessment and the case is fit for issuing Notice U/s 14B of the I.T. Act, 19 61."

5. Ld AO supplied reasons for reopening to assessee on 23.04.2012 against which the assessee filed objection dated 14.05.2012 and order disposing objections was passed on 18.05.2012. Subsequently, assessment order u/s 143(3) read with section 147 of the Act was passed making following two additions/disallowances:-

   i. interest income of Rs. 126118/- shown by the assessee as "business income" was treated by the ld Assessing Officer as "income from other sources".

   ii. the assessee claimed deduction u/s 10A of the Act of Rs. 39280361/- which was reduced to Rs. 11374842/- by the ld Assessing Officer holding that the assessee's profit from the eligible undertaking is 'more than ordinary' and therefore applying provisions of section 10A(7) read with section 80IA(10), the ld Assessing Officer arrived at a sum of Rs. 27779401/- which is more than the ordinary profit and consequently reduced the deduction by this sum.

6. Against this order assessee preferred an appeal before first appellate authority challenging reopening of assessment, quantum of deduction u/s 10A and lastly on account of treatment of interest income of Rs. 126118/- as income from other sources. Ld CIT (A) confirmed validity of reopening of assessment u/s 147 of the Act and also confirmed deduction u/s 10A of the Act to Rs. 11374842/- as against claim of Rs. 39280361/-. On issue interest income chargeable as 'income

from other sources' he also confirmed the treatment given by ld AO. On being aggrieved by the order of the ld CIT(A), assessee has preferred this appeal before us.

7. The first ground of appeal is against reassessment proceedings arguing that the same are bad in law. The ld AR first submitted that for the Assessment Year 2008-09 the case of the assessee was reopened u/s 148 of the Act on reappreciation of the same facts which were available in original assessment proceedings. Further based on assessment proceedings u/s 143(3) of the Act for subsequent Assessment Year i.e. AY 2009-10, present assessment is reopened. In those proceedings it was alleged that the assessee is earning high level of operating profits and consequently the claim of assessee of deduction u/s 10A of the Act is excessive. Subsequently the Coordinate bench has decided this issue for Ay 2009-10 in favour of the assessee. However on that basis ld AO has reopened the assessment for this year. Similar proceedings were also initiated for AY 2006-07 which as challenged before the Hon'ble Delhi High Court and Hon'ble High Court vide its decision dated 16.09.2014 held as under:-

> *"6. We find that there is one factor which is different from that case and, that is, that while in the previous case no appeal had been filed against the Tribunal's order, in the present case the Tribunal's order had been passed only on 26.08.2014 and there is still time for filing of the appeal on the part of the Revenue. In these circumstances, while the very basis for the issuance of the notice under Section 148 no longer survives, we are of the view that as there is still time for the filing of an appeal by the Revenue before this court, a different order would be required to be passed.*
>
> *7. It is clear that as the position stands today, the reasons do not survive. However, subsequently the position may be altered in case the Revenue files and appeal and succeeds*

therein. Therefore, the Revenue also has to be protected. Consequently, we are inclined to adopt the approach indicated in National Agricultural Co-operative 'Marketing Federation of India Ltd. v. Assistant Commissioner of Income Tax - Circle 32(1), VV.P.(C) 5895/2010 decided on 07.08.2014 wherein we passed the following order:-

> *"In these circumstances, we find that as of no\f, the very basis of initiating the re-assessment proceedings by virtue of (he notice dated 02,02.2010 issued under Section 148 of the Income Tax Act, 1961 does not survive. Therefore, we arc disposing of this writ petition with liberty to both sides to seek revival in case the need arises. We make it clear that in case it is ultimately held in favour of the revenue, then the revenue shall be entitled to revive its proceedings pursuant to the notice under Section 148 of the said Act and the assessee shall not take up the plea of limitation.*
>
> *The writ petition stands disposed of accordingly."*

8. *Consequently, we direct that the re-assessment proceedings stand closed and the present writ petition is disposed of with liberty to both sides to seek revival in case the need arises. We make it clear that if the case is ultimately decided in favour of the Revenue in respect of the assessment year 2009-10, then the Revenue shall be entitled to revive its proceedings pursuant to the impugned notice under Section 148 of the said Act and the assessee shall not take up the pica of limitation. As of now, the re-assessment proceedings initiated by virtue of the impugned notice under Sectional 48 does not survive. We are making it clear that we have not expressed any opinion with regard to the validity of the issuance of the notice under Section 148 on the date on which it was issued."*

8. Therefore, he submitted that the order of ITAT dated 26.08.2014 referred to by the Hon'ble Delhi High Court has not been challenged and therefore on this ground the reopening may be held to be invalid for this year. The ld AR further submitted that

the revenue has not filed any appeal against the decision of the ITAT for Assessment Year 2009-10 in ITA No. 348/Del/2013.

9. Against this the ld DR submitted that the ld CIT(A) has upheld the reopening relying on the decision of the Hon'ble Supreme Court in case of ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. 219 ITR 500 (SC) and therefore the reopening has been correctly initiated by the ld Assessing Officer. He vehemently relied on para 4.3 of the order of the ld CIT(A), further, he submitted that the assessment proceedings in case of the assessee of subsequent years becomes a tangible material based on which assessment can be reopened.

10. We have carefully considered the rival contentions and also perused the decision of the Hon'ble Delhi High Court placed before us. On reading of the decision of the Hon'ble Delhi High Court , it is clear that identical issue was decided. Though the Hon'ble High Court relying on the decision of Silver Oak Laboratory Pvt Ltd. Vs. DCIT dated 18.12.2008 as held that in earlier years the additions has been deleted by the tribunal and it was noted that against that decision of the tribunal revenue has not filed any appeal. The reopening based on the findings in the assessment proceedings of subsequent years cannot be used to reopen assessment of previous assessment years when there was no specific allegation with regard to the order in question. Here also we have perused the order of the Tribunal dated 26.08.2014 in case of the assessee for Assessment Year 2009-10 whereby an addition with respect to disallowance u/s 10A has been deleted. Almost two years have passed after the date of pronouncement of the order. On a specific question of the bench

about filing of the appeal against this order before higher forum the parties could not point out whether an appeal has been filed before Hon'ble Hon'ble Delhi High Court against the order of the Tribunal. In AY 2006-07, Hon'ble Delhi High Court did not quashed reopening notice only because of the reason that there was still time for filing the appeal by revenue before the Hon'ble High Court. In the present case the time limit has already been expired for filing of appeal against that order. In view of this respectfully following the decision of the Hon'ble Delhi High Court and assessee own case we are of the opinion that when the very basis for the issue of notice u/s 148 no longer survives, the reopening is invalid on that count.

11. However on looking to the second issue of the reasons recorded which shows that the assessee has shown interest earned on deposits with banks to the tune of Rs. 126118/- shown by the assessee under the head 'business income but according the Assessing Officer the same is taxable under the head 'income from other source'. As there is no order framed in the case of the assessee u/s 143(3) and return is accepted u/s 143(1) of the Act we are of the view that there is no error in the order of the ld CIT(A) in upholding the validity of the reopening following the decision of the Hon'ble Supreme Court in the case of ACIT Vs. Rajesh Javeri Stock Brokers Pvt. Ltd. (supra). We also draw support from the decision of the Hon'ble Delhi High Court in case of Indu Lata Rangwala 348 ITR 337 (del) dated 18.05.2016 wherein it has been held that where reopening is sought of a assessment in a situation where the initial return is processed u/s 143(1) the Assessing Officer can form reasons to believe that

income has escaped assessment by examining the very return and on the documents accompanying the return. In such cases it is not necessary for the Assessing Officer to come across, tangible material to form reasons to believe that income has escaped assessment. Hon'ble Delhi High Court while deciding the above issue has considered all the decisions cited before us regarding the reopening of the assessment. Hon'ble Delhi High Court in the above case has also considered the decision of the Hon'ble Supreme Court in case of CIT Vs. Kelvinator India Ltd. 320 ITR 561 (SC) and decision of the Hon'ble Delhi High Court in case of CIT Vs. Orient Craft Ltd. 354 ITR 546 (Del). In view of this we uphold the reopening of the assessment in the case of the assessee u/s 147 of the Act. In the result, Ground No. 1 of the appeal of the assessee is dismissed.

12. Ground No. 2 of the appeal of the assessee is against the reduction in deduction available u/s 10A of the Act of Rs. 11374842/- as against Rs. 39280361/- claimed by the appellant. It was submitted before us that identical issue has been considered by the coordinate bench in assessee's own case for Assessment Year 2009-10 in ITA No. 348/Del/2013 dated 26th August 2014. The parties before us have also agreed that there is no change in the facts and circumstances in this year compared to the year for which decision is rendered.

13. We have carefully considered the rival contentions and also perused the decision of the coordinate bench. The appellant is a software technology park unit engaged in the business of providing information technology enabled serviced to its overseas group entities. The entire proceeds received by the assessee are

from export of services to its associated enterprises. On profit of this unit it has claimed deduction u/s 10A of the Act. According to the Assessing Officer the assessee has earned huge margins over and above margins of comparable companies and therefore it invoked provision of section 10A(7) of the Act read with section 80IA (10) wherein it has provided that where the Assessing Officer owning to the close connection between the parties, is of the view that the assessee is earning more than ordinary profit then he shall compute reasonable profit derived from such eligible industrial undertaking. The coordinate bench in Assessment Year 2009-10 has dealt with this issue vide para No. 5 to 11 as under:-

"5. We have heard the rival submissions and perused the relevant material on record. The Revenue has made out a case that reduction in the amount of deduction u/s 10A was justified because of the operation of the provisions of sub-section (10) of section 80IA. Sub-sec. (7) of sec. 10A provides that: 'The provisions of sub-sec. (8) and sub-sec. (10) of section 80IA shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80IA'. The essence of this provision is that the disabling provisions contained in sub-secs. (8) and (10) of sec. 80IA have full application to sec. 10A as well, wherever applicable. The Assessing Officer has applied only sub-sec. (10) of sec. 80IA to restrict ITA No. 348/Del/2013 A. T. Kearney India Pvt. Ltd. 4 the amount of deduction u/s 10A to this level. It is clear from the facts of the case narrated above that the assessee is otherwise entitled to deduction u/s 10A in respect of export of eligible goods. The fact that the Assessing Officer himself allowed deduction u/s 10A @ 20% proves that all the eligible conditions set out in sec. 10A of the Act were satisfied by the assessee. The sole reason assigned by the AO for restricting the amount of benefit u/s 10A is the applicability of 80IA(10) in terms of which the assessee and its foreign AE arranged the course of business in

such a way so as to produce more than ordinary profits to the assessee carrying on eligible business in India.

6. *In order to evaluate and examine the rival contentions on the action of the authorities below in restricting the amount of deduction u/s 10A, it would be apposite to consider the mandate of sub-sec. (10) of sec. 80IA as applicable at the relevant time, as under:-*

> *"(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:'*
>
> *With this backdrop, we will deal with the issues taken up before us, one by one.*
>
> *I.* ***Whether sec. 80IA(10) applies when the second party to the transaction is a non-resident.***
>
> *7.1. The ld. AR vehemently argued that sub-sec (10) of sec. 80IA cannot be applied to transactions between two enterprises, one of which is not a resident of India. In support of this contention, he sought to rely on Circular No. 308 dated 29.6.1981 explaining the provisions of sec. 10A. Referring to para 6.10 of the Circular, dealing with the applicability of sub-sec. (8) and (9) of sec. 80I to sec. 10A, the ld. AR argued that its last line clearly provides that this provision has been made with a view to avoid abuse of the tax concession by manipulation of profits between associate concerns or different units of the same concern. Drawing strength from these lines, the ld. AR canvassed a view that the manipulation of profits between two enterprises can only be in a situation where both such enterprises are residents of India, so that the increase in profit of the eligible business results in a corresponding decrease in the profit of the other non-eligible business. If an assessee having eligible assessee*

is resident of India and the other person having non-eligible business is resident of another country, there can be no question of manipulation of profit, as in such a scenario it is only the resident assessee whose profits are taxable in India and there can be no ITA No. 348/Del/2013 A. T. Kearney India Pvt. Ltd. 6 corresponding decrease in the profits of the assessee having non-eligible business.

7.2. We do not find any force in this contention made on behalf of the assessee. A plain reading of sub-sec. (10) of sec. 80IA makes it explicit that the Assessing Officer of the assessee having eligible business is empowered to scale down the profits where it appears to him that owing to the close connection between the assessee carrying on eligible business and 'any other person', the course of business is so arranged that the business transacted between them produces to the assessee more than the ordinary profits, which might be expected to arise in such eligible business. The essential requirement for invoking sub-sec. (10) of sec. 80IA is that the course of business between the assessee having eligible business and the closely connected 'any other person' should be arranged. The expression `any other person' has not been qualified by the phrase `resident of India'. It has no where been provided in any part of this provision that such connected person also must be a resident of India. The essence of this disabling provision is that when the close connection between two related persons artificially produces more than ordinary profits to the assessee having eligible business, then the same should be set right. It does not matter that such other related person assisting in artificially increasing the profits of the eligible assessee, is resident of India or of any other country. Further, we are unable comprehend from the unambiguous language of the provision that there should be shifting of profits from one taxable entity in India to another taxable entity in India, as a pre-condition for invoking sub-section (10). There is no such stipulation in the provision that the increase in the profits of the assessee having eligible business must correspond with the decrease in the taxable profits in India of the person carrying noneligible business. This provision is simply concerned with the increase in the profits of the assessee having eligible business. To argue that unless there is corresponding decrease in the profits of the other assessee,

also a resident of India, the mandate of sub-sec. (10) is not activated, is akin to reading more than the actual content of the provision, which is obviously impermissible. We, therefore, hold that section 80IA(10) applies notwithstanding the fact that the other related person is resident or non-resident. This contention is thus rejected as devoid of any merit.

II. It should be an arranged course of business between the related persons to produce more than ordinary profits.

8.1. We have set out sub-section (10) above as was applicable at the material time. As the AO has made out a case that owing to the close connection between the assessee and the foreign AE, the course of business between them was so arranged as to produce more than ordinary profit to the assessee, thus, the part of the provision stipulating -'or for any other reason'-, is not applicable to the facts of the instant case. Thus on an analysis of the parts of sub-section (10), as are relevant and applicable to the factual matrix under consideration, it can be seen that it has the following ingredients : -

i. There should be close connection between the assessee carrying on the eligible business and any other person ; and

ii. The course of business between the assessee and such other closely connected person should be so arranged that the business transacted between them produces more than the ordinary profits to the assessee carrying on eligible business.

If the above i. and ii. are cumulatively satisfied, then

iii. The Assessing Officer shall take the amount of profits as may be reasonably deemed to have been derived from the transactions of such arranged course of business in computing the profits of such eligible business for the purposes of the deduction under this section.

8.2. There is no dispute as regards the applicability of i. above inasmuch as there is a close connection between the assessee carrying on the eligible business in India and its

associated enterprise, being any other person, carrying on business outside India.

8.3. Now we espouse ii. above, which is crucial for our decision and the major thrust of arguments has been on it. This ingredient provides that the course of business between the assessee and such other closely connected person should be so arranged that it produces more than the ordinary profits to the assessee carrying on eligible business. A bare reading of the relevant part of the provision indicates that in order to invoke this provision, it is of utmost importance on the part of the AO to first demonstrate that the transactions between the assessee and the other related person were `arranged' with a view to produce more profit to the assessee carrying on eligible business.

8.4. At this juncture, it is of significant to note from iii. above that sub-section (10) is a fictional provision, deeming reasonable profits as actual profits for the purposes of computing the amount of the eligible deduction u/s 10A in case the conditions under i. and ii. above are satisfied. The noteworthy point is that instantly we are dealing with a deeming provision. A deeming provision or a legal fiction is one whose mandate does not exist but for such provision. Because of such deeming provision alone, the given imaginary state of affairs is taken as reality notwithstanding the fact that it is at variance with the reality and the other relevant provision of the enactment. It has been fairly settled that the scope of a deeming provision should be restricted to what is expressly stated in such a provision. There can be no inference or intendment as regards such a provision. The Hon'ble Supreme Court in CIT Vs. Amarchand N. Shroff (1963) 48 ITR 59 (SC) and CIT Vs. Mother India Refrigeration Industries P. Ltd. (1985) 155 ITR 711 (SC) considered the ambit of deeming provisions and held that the fiction cannot be extended beyond the object for which these were enacted. The Hon'ble Bombay High Court in CIT Vs. Ace Builders P. Ltd. (2006) 281 ITR 210 (Bom.) has also taken similar view. On an appraisal of the above judgments, the position which emerges is that whenever a legal fiction is created by way of a deeming provision, it is vital to go strictly by the express prescription of this provision. Such a deeming provision cannot be extended beyond what is expressly stated therein. If certain consequences have been made to follow on the

fulfillment of certain set out conditions in a deeming provision, then unless such conditions are strictly fulfilled, the consequences cannot be deduced. In other words, a deeming provision is to be strictly construed.

8.5. With this background that sub-section (10) is a deeming provision and it must be strictly construed, we revert to the point under consideration that the Assessing Officer must show at the first instance that the course of business between these closely connected persons was arranged so as to produce more than ordinary profits in the hands of a person carrying on the eligible business. Such a position has to be necessarily proved. There can be no inference as to the fulfillment of such a condition. Thus, it is vivid that unless such `arrangement' or manipulation is shown to exist, there can be no question of discarding the declared actual profit and substituting it with a reasonable profit. It is manifest that there are two components of this. First is the arrangement' between the related parties and second, such arrangement should lead to higher profit. High profit must necessarily be the consequence of such an arrangement. To put it simply, if such an `arrangement' is a cause, the higher profit is its `effect'. It is well known that higher or lower profit of a business can be as a result of the cumulative effect of several factors. To cite an example, if one person succeeds in cutting down its costs without affecting the quality of output, he will naturally earn more profit than others in the same line of business. Similarly, economies of scale also affect the profit. In the like manner, the extent of administrative, marketing and selling expenses also has a bearing on the overall profit of a business. Other factors for the increase in the profits may be economical purchases or costly sales. If a businessman manages to make economical purchases from the market, he will naturally earn more profit. On the other hand, if the purchases are not actually economical, but because of the close connection with the seller, the arrangement is such so as to show low purchase price in the accounts of the person carrying on eligible business, the apparent profit will still be high. Though in both such cases, the profit of the eligible business has shot up, but in the first instance, it is higher due to efficiencies and in the second, it is higher due to `arrangement'. Similarly, if a businessman manages to make sales in the market at a higher price

because of its effective selling techniques, he will earn more profit. On the other hand, if the sales are not at high price because of the effective marketing strategy, but because of the close connection with the buyer, the arrangement is such so as to show higher sale price in the accounts of the person carrying on eligible business, the profit will still be high. Though in both the cases the profit of the eligible business will be higher, but in the first instance it will be higher due to better marketing strategy and in the second, it will be higher due to `arrangement'. What is relevant for invoking subsection (10) is the prevalence of the second situation above where the higher profit has resulted due to 'arrangement' between the assessee and its closely connected person and not the first, where the higher profit resulted due to the assessee's effectively managing the business. Thus it is evident that though in both the situations, the profit is higher, but recourse to sub-section (10) can be taken only in the case of `arrangement' between the assessee and the closely connected person. In other words, the mere higher profit of the person carrying on the eligible business is no criteria to press into service this provision, unless the `arrangement' is proved in the first instance. The `arrangement' needs to be specifically proved by the AO by showing that the assessee intentionally made purchases at a relatively lower rate from the closely connected person vis-à-vis that available in the market for the same products or the assessee made sales to the closely connected person at a relatively higher rate vis-à-vis the prevailing market price of the similar products etc. or that the assessee having eligible income booked relatively less expenses or showed relatively more income on other counts in transactions with closely connected person. It is only when the existence of` `arrangement' is proved in this manner that the provisions of sub-section (10) can be employed to reduce the extraordinary profits resulting from such lower payments or excess recoveries to/from the related person. To put it simply, the higher profit shown by the eligible assessee is the end point of the exercise to be undertaken by the AO in this regard, starting with expressly showing as to how the transactions were specifically arranged to produce more than ordinary profits to the assessee carrying on the eligible business. The mere higher profit earned by such eligible

assessee can be no reason to conclude that the assessee transacted in such an `arranged' manner with its related persons so as to produce more profits to it. At the cost of repetition, we reiterate that the higher profit should be the `effect' of such an `arrangement' and cannot be a substitute of such `arrangement' itself, which is a `cause', for invoking sub-section (10) of section 80IA.

8.6. It can be seen from the facts of the instant case that the AO has simply treated high profit earned by the assessee as a reason to summon sub-section (10), without even remotely demonstrating the existence of any `arrangement' between the assessee and its AEs aimed at producing extra ordinary profits in the hands of the assessee. The conclusion drawn by the authorities below in such circumstances cannot be ex consequenti sustained. ITA No. 348/Del/2013 A. T. Kearney India Pvt. Ltd. 14

III. Effect of insertion of proviso to sub-section (10) w.e.f. 1.4.2013

9.1. It can be seen that the Assessing Officer simply took support of the Transfer Pricing study report furnished by the assessee for coming to the conclusion that the A.Es. and the assessee company, owing to their close connection, had so arranged the course of business amongst themselves so that the business transacted between them produced more than ordinary profits to the assessee. Now the question arises as to whether the TP study report can be construed as a sufficient evidence to prove that the course of business was arranged between the assessee and its foreign A.Es to produce more profits in the hands of the assessee. The ld. DR strongly argued that the Transfer pricing study report submitted by the assessee clearly proved that the assessee charged higher profit from its associated enterprises. In his opinion, the lower profits earned by the other comparable cases in similar circumstances was sufficiently indicative of the fact that the assessee arranged transactions with its related parties so as to produce more profits in its accounts. He forcefully relied on proviso to sub-section (10) of section 80IA, which talks of computing ordinary profits having regard to the arm's length price

9.2. In order to scrutinize this contention, it is relevant to note the text of proviso to sub-sec. (10) which has been inserted by the

Finance Act, 2012 w.e.f. 1.4.2013. This proviso reads as under:-

> *`Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F.'*

9.3. A close scrutiny of the above proviso transpires that in case `the aforesaid arrangement' (that is, the arrangement referred to in main sub-section (10) between the eligible assessee and the related person under which transactions are so arranged as to produce more than ordinary profits to the eligible assessee) involves a specified domestic transaction, then the amount of reasonable profits from such transactions between the eligible assessee and the related person shall be determined having regard to arm's length price of such transactions. Meaning of `Specified domestic transaction' has been given in section 92BA of the Act as any of the given five specific and one general transaction, not being an international transaction, including, inter alia, (iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA, where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of five crore rupees. When we read the proviso in entirety, it divulges the following components :-

i. There should be arrangement between the eligible assessee and the other related person under which transactions are so recorded as to produce more than ordinary profits in the hands of the eligible assessee; and

ii. Such arrangement should involve a specified domestic transaction, that is, the aggregate of all the six types of given transactions should exceed a sum of five crore rupees.

iii. In such a case, the reasonable profits to be substituted with the declared profits, is the one determined having regard to the ALP.

9.4. It is only when i. and ii. above are collectively satisfied that the iii. above is set in motion so as to determine the

amount of reasonable profits, as determined having regard to the ALP, to be substituted with the declared profit of the eligible assessee. If the aggregate of all the given six transactions does not exceed a sum of five crore rupees, then it would not become specified domestic transactions. But in such a case also, wherever the relevant provisions are applicable, those will hold the field. The mandate of the main part of section 80IA(10) will also continue to apply in case the aggregate of six transactions is less than a sum of five crore rupees, in which case the amount of reasonable profit will still have to be computed by the AO himself but without taking recourse to the ALP, which in any case will not be available as the assessee will not be required in that situation to make its Transfer ITA No. 348/Del/2013 A. T. Kearney India Pvt. Ltd. 17 pricing study report. However, the important factor, which needs to be highlighted here is that in a case of specified domestic transaction, that is, where the aggregate of six transactions exceeds a sum of five crore rupees, the proviso simply provides a mechanism for the computation of reasonable profit to be determined having regard to the ALP. This is the only mandate of the proviso. Even in that case also, the existence of the 'arrangement' between the assessee and its related party, aiming to increase the profits of the eligible assessee, is a pre-requisite for resorting to sub-section (10). Notwithstanding the fact that the profit of the eligible assessee is higher in comparison with the profit computed having regard to ALP of the specified domestic transactions, still the substitution of such profits with that computed having regard to ALP, will be possible only if the AO firstly demonstrates the existence of such `arrangement'. The only change which has been made by the insertion of this proviso is that in case of the `arranged' specified domestic transaction, the AO now need not separately find out and establish the genuineness of the `reasonable profits' to be substituted for the declared profits. In such a scenario, the profit determined having regard to the ALP shall be automatically considered as `reasonable profits' to be substituted with the declared profits by the eligible

assessee. To contend that the proviso has dispensed with the need on the part of the AO to establish such `arrangement', is not correct. What has been dispensed with is the calculation of the `reasonable profits'. The existence of such an `arrangement' is still required to be proved by the AO. The crux of the insertion of the proviso to sub-sec. (10) is that where the course of business between two connected resident assessees is so arranged that the business transacted between them produces more than the ordinary profits to the assessee carrying on the eligible business, then the reasonableness of the profits so charged shall be judged with reference to ALP of such transaction.

9.5. *It is paramount to note that proviso to sub-sec. (10) has been inserted w.e.f. 1.4.2013 simultaneous with the inclusion of `specified domestic transaction' within the ambit of transfer pricing provision, whereas Chapter-X dealing with the computation of income from international transaction having regard to Arm's Length Price was inserted by the Finance Act, 2001 w.e.f. 1.4.2002. At that time, subsec. (10) of sec. 80IA was very much on the statute. The legislature did not consider it expedient to deem profit from international transaction having regard to ALP as reasonable profit in the course of the arranged course of business between the Indian assessee carrying on the eligible business and foreign A.E. The fact that only the profit from specified domestic transaction determined having regard to the ALP has been considered as reasonable for the purposes of sec. 10A w.e.f. 1.4.2013, goes to prove that the legislature did not intend to consider profit from an international transaction computed having regard to ALP, as relevant ITA No. 348/Del/2013 A. T. Kearney India Pvt. Ltd. 19 for sub-sec. 10A from 1.4.2002. The further fact that the proviso to subsec. (10) of sec. 80IA inserted by the Finance Act, 2012 encompasses only the specified domestic transaction and not the international transaction, as is the case under consideration, amply proves that the legislature neither intended nor intends to have recourse to the profits from international transaction having regard to their ALP as a yardstick of `reasonable*

profits' to be substituted for the declared profits as per sub-section (10) of section 80IA.

10. *The ld. AR has commended to us the judgment of the Hon'ble Bombay High Court in CIT Vs Schmetz India Pvt. Ltd. (2012) 254 CTR (Bom.) 504 in which it has been held that merely because an assessee makes extra ordinary profit, it would not lead to the conclusion that the same was organized/arranged for the purpose of claiming higher deduction u/s 10A of the Act. Our attention has also been drawn towards an order passed by the Hyderabad Bench of the Tribunal in Zavata India Pvt. Ltd. Vs ITO (ITA No. 628/Hyd./2008) and another passed by the Chennai Bench of the Tribunal in M/s Visual Graphics Computing Services (India) Pvt. Ltd. Vs ACIT (2073/Mds/2011) in which it has been held that the TP study report cannot be considered for determining excess profit and thereby denying/restricting the amount of deduction u/s 10A. No contrary precedent has been brought to our notice by the ld. DR.*

11. *Adverting to the facts of the extant case, we find that the AO simply relied on the TP study report submitted by the assessee to form a bedrock for the disallowance of the part of the amount of deduction u/s 10A, without firstly showing that there existed any arrangement between the assessee and its overseas related party, by which the transactions were so arranged as to produce more than the ordinary profits in the hands of the assessee. The assessment year under consideration is 2009-10. Neither the proviso to sub-section (10) existed at that time, nor such a proviso can be applied as we are dealing with an international transaction and not specified domestic transaction. Under these circumstances, we are of the considered opinion that the impugned order upholding the invocation of sub-sec. (10) of sec. 80IA cannot be countenanced to this extent. Ergo, it is held that the ld. CIT(A) erred in sustaining the disallowance made by the Assessing Officer by restricting the amount of deduction u/s 10A of the Act to Rs. 2.63 crore as against Rs. 8.22 crore claimed by the assessee. The impugned order on this issue is overturned and it is directed to allow deduction as claimed."*

14. In view of admission of the parties that there is no change in the facts and circumstances of the case in the present year compared to Assessment Year 2009-10 , therefore following the decision of the coordinate bench we delete the addition made by the Assessing Officer in restricting the amount of deduction claimed u/s 10A of Rs. 39280361/- to Rs. 11374842/-. In view of this we allow ground No. 2 of the appeal of the assessee reversing the order of the ld CIT(A).

15. Ground No. 3 of the appeal is against denying deduction u/s 10A on interest income from bank deposits amounting to Rs. 126118/- considering it as income from other sources. The ld AR submitted that the issue is squarely covered in favour of the assessee by an order of the Hon'ble Hon'ble Delhi High Court in case of CIT Vs. Hritinik Export Pvt Ltd. dated 13.11.2014. He further relied on the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Motorola India Electronics Pvt. Ltd. 46 Taxmann. Com. 167.

16. Against this the ld DR submitted that interest income is earned from the fixed deposits and the issue is squarely covered against the assessee in view of this decision of Hon'ble Supreme Court in case of Liberty India Vs CIT 317 ITR 218 and Pandian Chemicals Ltd Vs. CIT 262 ITR 278 (SC).

17. We have carefully considered the rival contentions. Assessee has earned interest on short term deposit with the bank and appellant treated it as business income whereas the ld Assessing Officer was of the view that interest income is chargeable to tax as income from other sources and as it is not business income deduction on this sum is not allowable u/s 10A of the Act. The ld

CIT(A) has dealt with this issue at Page 6.3 of his order as under:-

"6.3 I have carefully considered the submissions of the Id. AR and perused the order passed by the AO. Section 10A provides a deduction of profits and gains derived by an industrial undertaking from the export of articles, earthings or computer software, Hon'ble Supreme Court has examined the meaning of word derived in various cases. In the case of Pandian Chemicals Ltd. vs. CIT 262 ITR 278 (SC) it was held that the words derived from must be understood as something which has direct or immediate nexus with the industrial undertaking. The Hon'ble Apex Court in the case of Liberty India vs. CIT 317 ITR 218 (SC) has held that by using the expression 'derived from', Parliament intended to cover the sources not beyond the first degree. The Hon'ble Madras High Court in the case of CIT vs. N.S.C. Shoes 258 ITR 749 has held that interest on amount deposited with bank cannot be said to be income derived from industrial undertaking. The interest income was held to be not having any direct and proximate link with the industrial undertaking. In view of the facts of the case and judicial pronouncements discussed above, ! hold that the AO was fully justified in treating the income of Rs. 1,26,1187- as income from other sources and rejecting the claim of the appellant for deduction u/s 10A in respect of this amount. The same is therefore upheld. This ground of appeal is rejected."

18. We have carefully considered the decision of Hon'ble Delhi High Court in case of CIT Vs. Hritnik excessive pvt Ltd. (supra). The issue in that case was with respect to the duty draw back in the form of DEPB benefits whether they are deemed to be the part of the business income , thus it was treated as profit derived from the business undertaking. In the present case the first issue to be decided as whether the interest income falls under the head of business or not. Therefore, the ratio laid down by that decision do not apply to the present case. Consequently, reliance on this decision does not help assessee. Decision of the Hon'ble

Karnataka High Court was also with respect to interest income earned from inter corporate loan and deposit lying EEFC account. The Hon'ble High Court did not have the question before it whether the interest income is chargeable to tax under the head business income or income from other sources. In view of this We do not find any infirmity in the order of the ld CIT(A) in holding that the interest income earned by the assessee on surplus funds is chargeable to tax under the head income from other sources and not business income therefore the ground No. 3 of the appeal is dismissed.

19. In view this appeal of the assessee for Assessment Year 2005-06 is partly allowed.

ITA No. 511/Del/2014

Assessment Year 2007-08

20. This appeal is filed by the assessee against the order of the ld CIT(A) dated 28.11.2013 raising following grounds of appeal:-

> ***"Re-assessment proceedings are bad in law***
>
> *1. Based on the facts and circumstances of the case and in law, the Hon'ble Commissioner of Income-tax (Appeals) ['CIT(A)'] has erred in upholding the order of the learned Income-tax officer, Ward 1(1), New Delhi ('the learned assessing officer[1]) in assuming jurisdiction under section 147 of the Income Tax Act, 1961 ('Act') and issuing notice under section 148 of the Act to the appellant.*
>
> *1.1. Based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the order passed under section 148 of the Act by the learned assessing officer as reasons to believe are invalid and reassessment proceedings cannot be initiated on mere change of opinion especially when the claim of deduction under section 10A of the Act has been verified in detail during the course of assessment proceedings for the earlier assessment years.*
>
> *1.2. Based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the action of the learned assessing officer in initiating the reassessment proceedings under section 147 of the Act on the basis of proceedings concluded for a subsequent assessment year and not*

on the basis of any tangible material available for the concerned assessment year.

1.3. Based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the order passed under section 147/143(3) of the Act by the learned assessing officer since the same was based on surmises and conjectures and is therefore, bad in law and void ab-initio.

Non applicability of Section 10A(7) read with 80IA(10)

2. Based on the facts and circumstances of the case and in law, the Hon'ble CIT (A) has erred in confirming the action of the learned assessing officer in invoking Section 1QA(7) read with Section 80IA(10) of the Act and thereby restricting the amount of deduction available under Section 10A of the Act to Rs. 15,636,462 as against Rs. 27,957,136 claimed by the appellant.

2.1. Based on the facts and circumstances of the case and in law, the Hon'ble CIT (A) has erred in ignoring the fact that all the customers of the appellant are overseas entities outside the jurisdiction of Indian tax laws, and therefore there cannot be any motive to abuse the tax concession provided under section 10A of the Act.

2.2. Based on the facts and circumstances of the case and in law, the Hon'ble CIT (A) has erred in not appreciating the fact that the appellant has paid MAT under section 115JB of the Act on book-profits beginning from Assessment Year 2006-07 and Dividend Distribution taxes in India and therefore, the allegation that no taxes are paid in India is baseless.

2.3. Based on the facts and circumstances of the case and in law, the Hon'ble CIT (A) has erred in upholding the action of the learned assessing officer in applying the provisions of section 80IA(10) of the Act to determine profits earned from international transactions and further using the Transfer Pricing Study to determine "ordinary profit" for the purpose of section 10A(7) read with section 801A(10) of the Act.

2.4. Based on the facts and the circumstances of the case and in law, the Hon'ble CIT (A) has erred in not appreciating the various judicial precedents relied upon by the appellant in this regard.

2.5. Without prejudice to Grounds 2.1 to 2.4 above, based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in not appreciating that section 10A of the Act is a beneficial provision and should be given such an interpretation so as to grant the tax incentive intended by the legislation.

2.6. Without prejudice to Grounds 2.1 to 2.5 above, based on the facts and circumstances of the case and in law, the Hon'ble CIT (A) has erred in confirming the incorrect estimation of operating margin percentage and actual profit margin by the learned assessing officer.

Allowability of deduction u/s 10A on Interest Income

3. Based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the action of the learned assessing officer in denying deduction u/s 10A on interest income and considering the interest income of Rs. 113,340 as'Income from other sources'.,

Set off of Unafasorbed Depreciation

4. Based on the facts and circumstances of the case and in law, the Hon'ble CIT (A) has erred in upholding the action of the learned assessing officer in not granting the set off of brought forward unabsorbed depreciation amounting to Rs. 2,58,273 as claimed by the appellant in the return of income.

4.1. Without prejudice to Ground 4 above, based on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in upholding the action of the learned assessing officer in not granting the benefit of set off of unabsorbed depreciation against interest income which has been treated as 'Income from Other Sources' by the learned assessing officer."

21. The first ground of appeal is against the reopening of the assessment u/s 147 of the Act by issue of notice u/s 148 of the Act. The assessee filed return of income on 8.11.2007 showing annual income and claiming deduction 10A of the Act of Rs. 27957136/-. On 27.03.2012 notice u/s 148 was issued and reasons for reopening which are identical to Assessment Year 2005-06 except the figures. In a nutshell the reopening was made for disallowance excess deduction u/s 10A of Rs. 13343719/- on account of more than ordinary profits earned by the assessee and consequently an issue of interest income earned of deposit with the banks of Rs. 113340/- offered for taxation of business income against the view of the Assessing Officer that it is chargeable to tax as income from other sources. We have already decided the identical issue in Assessment Year 2005-06 in case of the assessee wherein we have held that reopening made by the LD AO is valid as no assessment was

framed u/s 143(3) of the Act. Similarly in this appeal we hold that reopening has been validly initiated by the Assessing Officer. Therefore, ground No. 1 of the appeal of the assessee is dismissed.

22. Ground No. 2 of the appeal is with respect to the restriction of the deduction u/s 10A to Rs. 15636462/- against Rs. 27957136/- claimed by the appellant. The parties before us submitted that this issue is identical to the issue decided in assessee's appeal for Assessment Year 2005-06 passed by the coordinate bench in Assessment Year 2009-10. We have carefully considered the rival contentions and also perused the facts of the case. As we have already decided this issue following the order of the coordinate bench in assessee's own case reversing the order of the ld CIT(A) in restricting the amount of deduction to Rs. 15636462/- as against Rs. 27957136/-., we similarly allow the appeal of the assessee on this ground. In the result the ground No. 2 of the appeal of the assessee is allowed.

23. Ground No. 3 of the appeal is against considering the interest income of Rs. 113340/- as income from other sources by the ld Assessing Officer as against the sum offered for taxation by the assessee as business income and thereby claiming deduction u/s 10A on this sum.

24. The parties have confirmed that the issue is identical to ground No. 3 of the appeal of the assessee for Assessment Year 2005-06.

25. We have carefully considered the rival contentions. While disposing the ground No. 3 of the appeal of the assessee in Assessment Year 2005-06 we have held against the assessee holding that interest income is chargeable to tax under the head

income from other sources. Accordingly, we also decided the ground No. 3 against the assessee. In the result the ground No. 3 of the appeal of the assessee is dismissed.

26. Ground No. 4 of the appeal is against not granting the set off and carry forward unabsorbed amount of depreciation amounting to Rs. 258273/-. It was submitted before us that unabsorbed depreciation of Rs. 258273/- claimed by the appellant in the return of income was not allowed as adjustment made to the total income of the assessee in Assessment Year 2006-07 for which the appeal is pending before ITAT. The ld CIT(A) has also given the same reasons vide para No. 8.2 of his appellate order. From the detail available on record it is not possible to ascertain about the exact claim of depreciation which remained unabsorbed in the hands of the assessee same is allowable to assessee as current years depreciation as per provisions of section 32(2) of the Act. In view this we set aside this ground of appeal to the file of Assessing Officer to grant set off of this, sum if any remaining unabsorbed , in accordance with provision of section 32(2) of the Act making consequential adjustment to the computation of income after affording opportunity of hearing to the assessee. In the result ground No. 4 of the appeal of the assessee is allowed for statistical purposes.

27. In the result the appeal of the assessee for A Y 2007-08 is partly allowed.

Order pronounced in the open court on 23/09/2016.

-Sd/-	**-Sd/-**
(DIVA SINGH)	**(PRASHANT MAHARISHI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated:23/09/2016

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi