**आयकर अपीलीय अधिकरण "जे" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"J" BENCH, MUMBAI**

**माननीय** श्री शक्तिजीत दे, न्यायिक सदस्य **एवं**
**माननीय** श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
**BEFORE HON'BLE SHRI SAKTIJIT DEY, JM AND**
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आ□करअपील सं./ I.T.A. No.5433/Mum/2017
(**निर्धारण वर्ष** / Assessment Year: 2011-12)

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| **Shilpa Shetty**<br>7/D, Aditya Apartments, SVP Nagar<br>Andheri (East)<br>Mumbai-400 054. | **बनाम**/<br>Vs. | **ACIT-Central Circle-13**<br>CGO Building Annex-11th Floor<br>Aaykar Bhavan, M.K. Road<br>Mumbai-400 020. |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **ACPPS-6622-P** | | |
| (अपीलार्थी/**Appellant**) | : | (प्रत्यर्थी / **Respondent**) |

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| अपीलार्थीकीओरसे/ **Appellant by** | : | Shri Ronak G. Doshi-Ld.AR |
| प्रत्यर्थीकीओरसे/**Respondent by** | : | Shri M.K. Singh-Ld. DR |

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| सुनवाईकीतारीख/<br>**Date of Hearing** | : | 04/06/2019 |
| घोषणाकीतारीख /<br>**Date of Pronouncement** | : | 25/06/2019 |

## आदेश / O R D E R

**Manoj Kumar Aggarwal (Accountant Member):-**

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-58, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-58/72/2014-15/138 dated 19/01/2017* on following Grounds of appeal:-

**GROUND I**

*1. On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) - 58 ('CIT(A)') erred in confirming the action of the Assistant Commissioner of Income Tax, Central Circle-13, Mumbai ("AO") in making an addition of Rs.5.40 crores on account of transfer pricing adjustment made on the basis of Share Purchase Agreement ('SPA' / 'Agreement').*

*2. He erred in holding that:*

*a. M/s. Kuki Investments ('Kuki') was an "Associated Enterprises"('AE') of the Appellant within the meaning of section 92A of the Income Tax Act, 1961 ('the Act').*

*b. Appellant's profession was an 'enterprise' within the meaning of section 92F(iii) of the Act separate from the Appellant being an 'enterprise'.*

*3. The Appellant prays that the alleged 'international transaction' was not between AEs and therefore the addition be considered as bad in law and be deleted.*

***WITHOUT PREJUDICE TO GROUND I GROUND II***

*1. On the facts and circumstances and in law the CIT(A) erred in considering that agreeing to be associated with 'Rajasthan Royals' franchise ('RR') amounted to an "international transaction" as contemplated in section 92C of the Act.*

*2. He failed to appreciate and ought to have held that:*

*a. The alleged services, if any, were provided by the Appellant, a resident to Jaipur IPL Cricket Private Limited ('JICPL'), another resident and also the owner of the RR*

*b. If at all the Appellant promoted her image by being associated with RR.*

*3. The Appellant, therefore prays that the action of the AO in making the transfer pricing adjustment was erroneous and accordingly, liable to be deleted.*

***WITHOUT PREJUDICE TO GROUND I & II GROUND III***

*1. On the facts and circumstance of the case and in law the AO erred in making an addition of Rs. 5.40 crores on account of transfer pricing adjustment made on the basis of Share Purchase Agreement ('SPA').*

*2. He failed to appreciate and ought to have held that as the SPA was signed and executed on 02.02.2009 and therefore transfer pricing adjustment, if at all, could have been made only in AY 2009-10.*

*3. The Appellant therefore prays that said transfer Pricing Adjustment be deleted.*

***WITHOUT PREJUDICE TO GROUND I, II & III GROUND IV***

*1. On the facts and circumstances and in law the CIT(A) erred in confirming the action of the AO by computing the Arm's Length Price by considering the Appellant's agreement with Star India Private Limited and applied CUP method.*

*2. The CIT(A) failed to appreciate and ought to have held that average rate of all agreements (including agreements other than Star India) must be taken and 8 days (on which matches were played) were only for 3 working hours per day, being the actual duration of the IPL matches, which the Appellant was required to attend.*

*3. Accordingly, the average daily rate and also the number of days worked out by the AO and confirmed by the CIT(A) is erroneous.*

*4. The Appellant, therefore prays that the AO be directed to recompute the transfer pricing addition accordingly.*

***GROUND V***

*1. On the facts and circumstances and in law the CIT(A) erred in confirming the action of the AO in disallowing a sum of Rs. 3,21,7637- being 0.5% of average investments u/s. 14A read with Rule 8D on*

*the ground that since there is a change in the portfolio of investment of the Appellant, certain portion of expenditure is attributable to earning exempt income.*
*2. He failed to appreciate and ought to have held that:*
*a. The Appellant, being a professional actress, had claimed expenditure in relation to her profession and no part of the expenditure could be said to have been incurred 'in relation to' earning with exempt income i.e. no nexus, direct or indirect with exempt income.*
*b. It is a settled principle that if no expenditure is incurred in relation to exempt income, no disallowance can be made u/s. 14A of the Act.*
*3. The Appellant therefore prays that the AO be directed to delete the disallowance made u/s. 14A r.w.r. 8D of Rs. 3,21,763A.*

2. The Ld. Authorized Representative for Assessee [AR], at the outset, submitted that the first issue of Transfer Pricing [TP] Adjustment stood covered in assessee's favour by the earlier decision of this Tribunal for AY 2010-11 in assessee's own case vide order dated 21/08/2018 in ITA No.2445/Mum/2014. A copy of the same has been placed on record. The Ld. DR who could not controvert the said fact.

3.1 Facts in brief are that the assessee being a *film actress* was assessed for the impugned AY u/s 143(3) on 25/03/2014 wherein the income of the assessee was determined at Rs.1303.15 Lacs after certain transfer pricing adjustments and disallowance u/s. 14A as against returned income of Rs.759.94 Lacs e-filed by the assessee on 25/09/2011.

3.2 The issue of TP adjustment of Rs.540 Lacs stem from the fact that the assessee acted as brand ambassador for *Jaipur IPL Team.* In the capacity of brand ambassador, the assessee involved herself in Cricket Matches, photo shoots, press interviews, personal appearances etc. However, no receipts were reflected by her during impugned AY on account of rendering of these services. Till the date of assessment, 6 seasons of IPL were held

and the assessee had started providing the stated services from IPL-2 season onwards.

3.3 It was observed that an entity namely Jaipur IPL Cricket Private Limited [JIPL], engaged in the business of sports and media, owned Rajasthan Royals IPL Cricket team. JIPL was stated to be 100% subsidiary of EMSHL, Mauritius, which in turn, was owned by several entities namely M/s. Kuki Investment Ltd. (Bahamas), Blue Water Estates Ltd. (Hong Kong), Tresco International Ltd. (British Island) & Emerging Media IPL Ltd. (UK) in certain proportions.

3.4 It was further observed that Shri Raj Kundra (Husband of the assessee) made a decision to buy shares of EMHSL, Mauritius through M/s Kuki Investments. Accordingly, a share purchase agreement [SPA] was entered into on 02/02/2009 between Shri Raj Kundra (Husband), the assessee, EMHSL (Mauritius) & M/s Kuki Investment Ltd. The relevant extract of the agreement has already been reproduced in the quantum assessment order. It was noted that although the assessee was neither a buyer nor a seller of shares but still she was a signatory to the agreement and the said agreement bind her to render certain services without any charge to 100% subsidiary of EMSHL, Mauritius i.e. JIPL by virtue of the fact that her husband, Shri Raj Kundra, through his intermediary company got the shares of EMSHL, Mauritius.

3.5 In the said background, Ld. AO formed an opinion that the assessee and EMHSL were Associated Enterprises [AE] within the meaning of Section 92A(1) and the services rendered by the assessee to JIPL was an

international transaction within the meaning of Section 92B which was to be benchmarked on the principle of Arm's Length Price [ALP] as envisaged by law.

3.6 The assessee defended her stand, *inter-alia,* by submitting that the assessee as well as JIPL were residents and therefore, the stated transaction of rendering of services could not be termed as an international transaction. However, rejecting the same, Ld. AO opined that whatever services were rendered by the assessee, originated by virtue of said agreement with EMHSL which was a non-resident company. Further, the services were rendered in India and in essence, the services were rendered to a non-resident entity by virtue of that agreement.

3.7 Since, the assessee had not benchmarked the said transaction. Ld. AO proceeded to compute the ALP of the same in terms of provisions of Section 92C(3). The number of days for which the services were rendered were 18 days. Applying comparable price with M/s Star India Pvt Ltd., being the price for 15 days @Rs.30 Lacs per day, the ALP of the same was determined at Rs.540 Lacs which was added to the income of the assessee as TP adjustment.

3.8 The Ld. first appellate authority, primarily relying upon the order of its predecessor in assessee's own case for AY 2010-11, confirmed the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us.

4. Upon careful consideration, we find that the assessee agitated the stand of Ld. first appellate authority with success before this Tribunal vide

ITA No. 2445/Mum/2014 order dated 21/08/2018. The matter has been concluded by co-ordinate bench in the following manner: -

"6. We have heard the counsels for both the parties and we have also perused the material placed on record, judgment cited by both the parties as well as orders passed by revenue authorities. We find that although, the powers of Ld. CIT(A) being wider than that of any other appellate authorities or Court is not disputed, but the Ld. CIT(A) cannot cure a jurisdictional defect, which the AO derives only by recording a satisfaction as has been held in the case of Vodafone India Services Pvt. Ltd. Vrs. Union of India and others 920140 361 ITR 531 (Bom HC). We have gone through the decision relied upon by Ld. DR, but the para materia contained in those judgments are not applicable to the facts of the present case as the same do not deal with exercise of Ld. CIT(A)'s powers to cure jurisdictional defect. In this respect, we rely upon the decision in the case of Hindustan Lever's case (supra) and Equitable Investment's case (supra).

7. As far as objection raised by assessee on AE relationship between the Assessee and Kuki u/s. 92A of the Act is concerned, in this respect, Ld. AR submitted that Ld. CIT(A) did not uphold AO's finding that the Assessee and EMSHL were AEs. The revenue has not challenged the order of Ld. CIT(A) and consequently, the issue before us is limited to examine AE relationship between the Assessee and Kuki. In this respect, Ld. AR submitted that Sec. 92A(1) of the Act cannot be applied in isolation to hold that the assessee and Kuki were AEs. It was submitted that in order to constitute a relationship between the AEs, the parameters laid down in both sub-sections (1) and (2) of section 92A of the Act should be fulfilled.

Ld. AR also relied upon the decision in the case of Page Industries Ltd. v. DCIT [2016] 159 ITD 680 (Bang. ITAT), Obulapuram Mining Co. (P.) Ltd. v. DCIT [2016] 76 taxmann.com 240 (Bang. ITAT) and ACIT v. Veer Gems [2017] 183 TTJ 588 (Ahd. ITAT) .

Ld. AR on the application of Sec. 92A submitted that sec. 92A(1)(a) does not apply to the Assessee's case, as neither Kuki, through /one or more intermediaries, controls the assessee nor the Assessee, through /one or more intermediaries, controls Kuki. It was also submitted that even sec. 92A(1)(b) is also not applicable as, though RK controls Kuki, but he cannot be said to have controlled the assessee.

Ld. AR also submitted that Sec. 92A(2)(J) deems the two 'enterprises' as AEs if one of the enterprises is controlled by an individual and the other 'enterprise' is also controlled by such individual or his relatives. It was submitted in Assessee‟s case, sec. 92A(2)(J) cannot be applied as neither RK nor Kuki cannot said to have controlled the Assessee.

It was also submitted that even as per sec. 92F(iii), an 'enterprise' means a 'person', engaged in activities etc. The Assessee's Profession cannot be considered as a person within the meaning of sec. 2(31), separate from her, as the Assessee's profession is not assessable separately from the Assessee. Therefore, the question of Assessee being an AE of Kuki, by holding that RK controlled Kuki and RK's relative, i.e. Assessee, controlled the 'enterprise' of assessee's profession, does not arise.

8. On the other hand, Ld. DR relied upon the orders passed by revenue authorities and submitted that assessee and Kuki were AE‟s u/s. 92A(2)(J) as:

a) the Assessee's husband, RK, controlled Kuki.

b) the Assessee is an individual and as such a 'person' within the meaning of sec. 2(31).
During the course of hearing, the Ld. DR also argued that Kuki had controlled the Assessee as Kuki had paid association fee on behalf of the Assessee to EMSHL.

9. We have heard the counsels for both the parties, we find that both the above stated facts by Ld.DR, i.e. RK controlling Kuki and Assessee being a "person" u/s. 2(31), are not in dispute at all. The Ld. DR's submission on AE relationship between the Assessee and Kuki is based on only one limb of sec. 92A(2)(J), i.e. an individual controlled one enterprise (RK controlled Kuki). Sec. 92A(2)(J) deems the two 'enterprises' as AE if one of the enterprises is controlled by an individual and the other 'enterprise' is controlled by such individual or his relatives. The Ld. DR did not submit as to how that individual (i.e. RK) or his relative controlled the other 'enterprise' (i.e. Assessee). Without satisfying the second limb, i.e. that individual or his relative controlled the other enterprise, provisions of sec. 92A(2)(j) cannot be applied.
We have further noticed that in order to satisfy the second limb of sec. 92A(2)(J), the Ld. CIT(A) presumed that Assessee's Profession (separate from her) was the other 'enterprise' and RK‟s relative, i.e. Assessee, controlled that other 'enterprise', i.e. her 'profession'. Against this presumption, it was submitted that her 'profession' cannot be separated from herself (the individual) to consider as an 'enterprise' u/s. 92F(iii) as the 'profession' (independent from individual) is not a 'person' within the meaning of sec. 2(31). The Ld. DR had not made any submissions against this stand taken by the assessee.
10. Now, as far as the arguments that Kuki controlled the Assessee by paying association fees is concerned, it was submitted that the association fee was nothing but earnest money which in fact got repaid to Kuki (by way of adjustment against the (consideration payable on subscription of shares to EMSHL) on share completion.
11. As far as the objection of assessee on the findings of Ld. CIT(A) on account of holding deemed "international transaction" between the Assessee and JICPL u/s. 92B of the Act is concerned, in this respect, Ld. AR submitted that Sec. 92B(2) deems a transaction between the two non-AEs as 'international transaction' if there exists a prior agreement in relation to the relevant transaction between one of the non-AE and the AE of an assessee. The Ld. CIT(A) considered the two non-AEs as the Assessee and JICPL and held a deemed "international transaction" without establishing as to with which AE of the Assessee had a prior agreement with JICPL.
It was also argued that Sec. 92B(2) of the Act cannot be applied to hold that transaction between Assessee and JICPL was an 'international transaction' as:
a) Neither any of the parties to the SPA (i.e. prior agreement) was an AE of the Assessee;
b) Nor JICPL entered into a prior agreement with the AE of the Assessee (JICPL was not a party to the SPA); and as such the pre-requisite of a prior agreement between a non-AE with the AE of an assessee is not fulfilled.
12. On the contrary, Ld. DR relied upon the orders of Ld. CIT(A).
13. After having considered the submission of both the parties, we find that Section 92B(2) of the Act cannot be applied to hold that transaction between assessee and JICPL was an „International transaction‟ as neither any of the parties to the SPA were an AE of the assessee nor JICPL entered into a prior agreement with the AE of the Assessee (JICPL was not a party

to the SPA); and as such the pre-requisite of a prior agreement between a non-AE with the AE of an assessee is not fulfilled.

14. Now, we proceed to deal with the objection of assessee on existence of "international transaction" and "price" is concerned, Ld. AR submitted that in order to apply Chapter X, existence of a 'transaction' is a pre-requisite. It was submitted that Sec. 92C(1) makes it clear that the transfer pricing adjustment substitutes the price of the transaction with ALP. Therefore, in order to constitute a 'transaction' there has to be a certain disclosed price. It was argued that existence of an „international transaction" cannot be presumed by assigning some price to it and then deducing that since it is not an arm's length price, an "adjustment" has to be made.

15. In this respect, Ld. AR relied upon the decision in the case of Maruti Suzuki India Ltd. CIT [2016] 381 ITR 117 (Del. HC) and Bausch & Lomb Eyecare (India) (P.) Ltd v. ACIT [2016] 381 ITR 227 (Del HC) It was also argued that the word "Price" had not been defined in the Act. It seems to have been used in its ordinary sense as meaning money only. In this respect, reliance was placed on the decision in the case of CIT v. Ganesh Builders [1979] 116 ITR 911 (BomHC). Ld. AR further submitted that in the Assessee's case, she was desirous to enhance her brand image and hence, she got associated with RR, for which Kuki had paid a deposit of USD 10,00,000/-to EMSHL as Association fee. With the conclusion of transactions of purchase and subscription of shares completing on February 13, 2009, in terms of Cl. 2.3 and Cl.5.2 of the SPA, the rights granted to the Assessee automatically terminated and the said deposit was adjusted against the consideration payable on subscription of shares to EMSHL. Therefore, the association fee was only earnest money and not monetary consideration which can be considered as 'price'.

It was argued that as the Assessee did not receive any consideration for the services rendered to JICPL, there was no 'price' which can be substituted with ALP. In the absence of any 'price', the provision of services could not be considered as an 'international transaction'. In absence of any 'international transaction', the provisions of sec. 92(1) cannot be applied and as such an adjustment on the basis of ALP cannot be made.

It was also submitted that if at all it is held that there was a 'price' and therefore there existed a 'transaction', then in that eventuality, since the services were provided to JICPL, the alleged transaction was between the Assessee and JICPL, both being residents, then in that eventuality even otherwise the alleged transaction cannot be considered as an "international transaction"

16. On the other hand, Ld. DR relied upon the orders passed by Ld. CIT(A) and also on the decision of Hon'ble Special Bench of Kolkata ITAT in case of Instrumentarium Corporation Ltd. [2016] 179 TTJ 665, to submit that, since no fee was charged by the Assessee, the price was Zero and as such the ALP has to be substituted with the same.

During the course of hearing, the Ld. DR had also relied on the decision of Hon'ble Delhi Tribunal in case of BMW India Pvt. Ltd. v. DOT [2017] ITA No. 1406/Del/2015, wherein, after considering Maruti Suzuki's case, determination of ALP was upheld. He also relied on the decision of Hon'ble Mumbai Tribunal in case of Sabre Asia Pacific Pte. Ltd. [2018] ITA No. 4882/M/2015, to submit that the Tribunal had upheld the transfer pricing adjustment on the basis of ALP determination in case of assessee advancing interest free loan to its AE, by considering the income offered as zero. After relying on these decisions, the Ld. DR contended

that in Assessee's case, the price was zero and therefore, the transaction is subjected to transfer pricing adjustment based on ALP determination.

17. We have heard the counsels for both the parties and we have also perused the material placed on record, judgments relied upon and orders passed by revenue authorities, we find that none of the 3 decisions cited by the Ld. DR can be applied in Assessee's case, as the facts of the cited cases are distinguishable from that of Assessee's case as under –

i) In BMW's case (supra), BMW India had incurred expenses on marketing and promotional activities on behalf of its foreign holding company, against which it had not offered any income. It was found by the Hon'ble ITAT that the agreement between the parties provided for re-imbursement of marketing and promotional expenses by foreign holding co. and certain amount was, in fact, reimbursed to the Indian Co. Therefore, it was not a case where the price of the transaction was not disclosed and the Department had assumed certain price to substitute it with the ALP, unlike the case of the Assessee.

ii. In Instrumentarium's case, the assessee had advanced an interest free loan to its AE. The Hon'ble Special Bench observed that "consideration of loan, i.e. interest, is inherently in the nature of income ". The Tribunal, then, held that

"when no income is reported in respect of an item in the nature of income, such as interest, but the substitution of transaction price by arm's length price results in an income, it can very well be brought to tax."

The transaction of services provided by the Assessee to JICPL, as against rights granted to her, cannot be equated with that of interest free loan to an AE. In Assessee's case, the deposit of money by Kuki was the price paid for shares to be issued by EMSHL. The Assessee obtained a right to appear against a reciprocal obligation to appear as and when matches were held. The deposit of money was not consideration for the right to appear.

Also, in this case the Hon'ble Special Bench did not consider Maruti Suzuki's decision (supra) and to that extent was per-incuriam.

iii. In Sabre Asia's case (supra), the counsel of the assessee had conceded the contention that the transaction of interest free loan is subjected to transfer pricing adjustments and as such the contentions raised by the Assessee before the Hon'ble Bench was not considered in that case.

18. As far as the objection of assessee with regard to the applicability of chapter 10, when no income has arisen is concerned. In this respect, the Ld. AR submitted that Chapter X pre-supposes existence of 'income' and lays down machinery provisions to compute ALP of such income, if it arises from an 'international transaction'. Sec. 92 is not an independent charging section to bring in a new head of income or to charge tax on income which is otherwise not chargeable under the Act. Accordingly, since no income had accrued to or received by the Assessee u/s. 5, no notional income can be brought to tax u/s. 92. In this regard, Ld. AR relied upon the following judgments:-

i. Dana Corporation [2010] 321 ITR 178 (AAR) - Pg. 192 & 193

ii. Amiantit International Holding Ltd [2010] 322 ITR 678 (AAR) - Pg. 682, 683 and 692 26 I.T.A. No. 2445/Mum/2014 Shilpa Shetty

iii. Praxair Pacific Ltd [2010] 326 ITR 276 (AAR) - Pg. 279 and 286

iv. Deere & Co [2011] 337 ITR 277 (AAR) - Pg. 280 & 284

v. Venenburg Group B.V [2007] 289 ITR 464 (AAR) - Para 15 at Pg. 472

vi. Goodyear Tire & Rubber Co. [2011] 334 ITR 69 (AAR) - Para 10 at Pg. 78

vii. Vodafone India Services (P.) Ltd. v. Union of India [2013] 361 ITR 531 (Born HC) - Para 32 at Pg. 564
viii. Vodafone India Services (P.) Ltd. v. Union of India [2014] 368 ITR 1 (Born HC) - Para 24 (Pg. 30), 40 (Pg. 37-38)
ix. Vodafone India Services (P.) Ltd. v. Union of India [2015] 369 ITR 511 (Born HC) - Para 8 at Pg. 515
x. Vodafone India Services (P.) Ltd. v. CIT [2016] 385 ITR 169 (Born HC) - Pg. 312 and 320
The Ld. AR further submitted that when the machinery provisions fail, then the charging provisions cannot be applied. In this respect, Ld. AR relied upon the decision in the case of CIT v. B.C. Srinivasa Setty [1981] 128 ITR 294 (SC) and CIT v. Official Liquidator, Palai Central Bank Ltd. [1979] 117 ITR 676 (Ker. HC)
19. On the other hand, Ld. DR relied upon the orders passed by revenue authorities and the decision in the case of Instrumentarium's case (supra) to contend that the price was zero and the provisions of Chapter X would apply accordingly.
20. After hearing both the parties at length, we find that since we have already rebutted the Ld. DR's reliance on Instrumentarium's case above in detail, therefore the same are not applicable to the facts of the present case and we are of the view that since chapter 10 pre-supposes the existence of 'income" and lays down machinery provision to compute ALP of such income, if it arises from an „International transaction". Section 92 is not an independent charging section to bring in a new head of income or to charge tax on income which is otherwise not chargeable under the Act. Accordingly, since no income had accrued to or received by the assessee u/s 5, no notional income can be brought to tax u/s 92 of the Act. We draw strength from the following judgments in the case of :-
i. Dana Corporation [2010] 321 ITR 178 (AAR) - Pg. 192 & 193
ii. Amiantit International Holding Ltd [2010] 322 ITR 678 (AAR) - Pg. 682, 683 and 692
iii. Praxair Pacific Ltd [2010] 326 ITR 276 (AAR) - Pg. 279 and 286
iv. Deere & Co [2011] 337 ITR 277 (AAR) - Pg. 280 & 284
v. Venenburg Group B.V [2007] 289 ITR 464 (AAR) - Para 15 at Pg. 472
vi. Goodyear Tire & Rubber Co. [2011] 334 ITR 69 (AAR) - Para 10 at Pg. 78
vii. Vodafone India Services (P.) Ltd. v. Union of India [2013] 361 ITR 531 (Born HC) - Para 32 at Pg. 564
viii. Vodafone India Services (P.) Ltd. v. Union of India [2014] 368 ITR 1 (Born HC) - Para 24 (Pg. 30), 40 (Pg. 37-38)
ix. Vodafone India Services (P.) Ltd. v. Union of India [2015] 369 ITR 511 (Born HC) - Para 8 at Pg. 515
x. Vodafone India Services (P.) Ltd. v. CIT [2016] 385 ITR 169 (Born HC) - Pg. 312 and 320
And keeping in view of our above finding, we allow these grounds and direct the AO to deleted the additions.
21. Since we have already deleted the additions by above reasoned order, therefore there is no need to adjudicate other grounds on merits in view of our above findings as the same become infructous."

Nothing has been brought on record to establish that the aforesaid ruling is not applicable to the facts of the present case before us. Facts and circumstances being *pari-materia* the same, respectfully following the binding judicial precedent, we direct for deletion of impugned TP adjustment. Ground No. 1 stands allowed which makes other Grounds II to IV infructuous.

5.1 The second disallowance u/s 14A stem from the fact that the assessee earned exempt dividend income of Rs.9.16 Lacs during the impugned AY and held investment of Rs.668.69 Lacs. Since no disallowance was offered by the assessee against the same, Ld. AO compute expense disallowance of Rs.3.21 Lacs, being 0.5% of average investments, in terms of Rule 8D(2)(iii). The same upon, confirmation by Ld. first appellate authority is under appeal before us. The Ld. CIT(A) has directed Ld. AO to exclude those investments which may not be capable of yielding exempt income to the assessee.

5.2 The Ld. AR, briefly submitted that keeping in view the decision of Delhi Tribunal (Special Bench) rendered in **ACIT Vs. Vireet Investment (P.) Ltd. [82 Taxmann.com 415],** Ld. AO may be directed to take into consideration only those investments which have actually yielded any exempt income during the year. Concurring with the same, we direct Ld. AO to take into consideration only those investments which have actually yielded any exempt income during the year. The assessee is directed to provide requisite information, in this regard. This ground stand partly allowed.

6. Resultantly, the appeal stands partly allowed.

*Order pronounced in the open court on 25th June, 2019.*

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| **Sd/-** | **Sd/-** |
| **(Saktijit Dey)** | **(Manoj Kumar Aggarwal)** |
| न्यायिक सदस्य / **Judicial Member** | लेखा सदस्य / **Accountant Member** |

मुंबई Mumbai; दिनांकDated : 25/06/2019
*Sr.PS:-Jaisy Varghese*

**आदेश की प्रतिलिपि  ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार**/ BY ORDER,

**उप/सहायकपंजीकार** (Dy./Asstt.Registrar)
**आयकरअपीलीयअधिकरण,** मुंबई / **ITAT, Mumbai.**