आयकर अपीलीय अधिकरण "के " न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"K" 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
(Hearing Through Video Conferencing Mode)

1. आयकर अपील सं./ I.T.A. No.7738/Mum/2012
(**निर्धारण वर्ष** / Assessment Year: 2008-09)
&
2. आयकर अपील सं./ I.T.A. No.4771/Mum/2015
(**निर्धारण वर्ष** / Assessment Year: 2009-10)

Addl. CIT-8(1) Room No.260A, 2nd Floor Aaykar Bhavan, M.K. Road Mumbai-400 020.	**बनाम**/ Vs.	**M/s Bunge India Pvt.Ltd.** 601 C & 601 D, 6th Floor The Capital, C-70, G-Block Bandra Kurla Complex, Bandra (E) Mumbai-400 051
PAN/GIR No. AAACG-7034-K		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

&
3. Cross Objection No.234/Mum/2014
(Arising out of ITA No.7738/Mum/2012)
(**निर्धारण वर्ष** / Assessment Year: 2008-09)
&
4. Cross Objection No.149/Mum/2015
(Arising out of I.T.A. No.4771/Mum/2015)
(**निर्धारण वर्ष** / Assessment Year: 2009-10)

Bunge India Pvt.Ltd. 601 C & 601 D, 6th Floor The Capital, C-70, G-Block Bandra Kurla Complex, Bandra (E) Mumbai-400 051.	**बनाम**/ Vs.	**Addl. CIT-8(1)** Room No.260A, 2nd Floor Aaykar Bhavan, M.K. Road Mumbai-400 020.
PAN/GIR No. AAACG-7034-K		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Assessee by	:	Shri Vispi T. Patel – Ld. AR
Revenue by	:	Shri Sunil Deshpande-Ld. Sr. DR

सुनवाई की तारीख/ **Date of Hearing**	:	23/03/2021
घोषणा की तारीख / **Date of Pronouncement**	:	08/04/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Years [in short referred to as 'AY'] 2008-09 and 2009-10 contest the orders of learned first appellate authority on common grounds of appeal. Therefore, the appeals were heard together and are now being disposed-off by way of this common order for the sake of convenience & brevity. The assessee has filed cross-objections against both the appeals. First we take up appeal as well as cross-objection for AY 2008-09.

2. The revenue's appeal for AY 2008-09 contest the order of Ld. Commissioner of Income-Tax (Appeals)-15, Mumbai, ['CIT(A)'] dated 16/10/2012 on following grounds : -

> 1. On facts and circumstances of the case and in law, the ld. CIT(A) erred in deleting the disallowance of Rs.10,81,45,504/- (114176586–6031082) out of Rs.11,41,76,586/- u/s. 92CA of the I.T. act, 1961, made by the Transfer Pricing Officer/Assessing Officer, ignoring the fact that the TPO had applied TNMM method in respect of international transaction as entered into by the assessee with its AE's.
> 2. The Ld. CIT(A) erred in treating market research expenses of Rs.58,03,853/- as revenue expenditure as against capital expenditure treated by the A.O.as the benefit of the survey report was for long-term benefit of the assessee's business.

The ground of assessee's cross-objection read as under: -

> On the facts and in the circumstances of the case, the ld. CIT(A) erred in not granting benefit of (+/-) 5 percent available under the Proviso to Section 92C(2) of the Income tax Act, 1961 (Act) to the international transaction of Import of Crude Degummed Soyabean Oil from the Associated Enterprise (AE), on the ground that the internal third party contract and the daily rate quoted in world Oil Market (WOM), which was used up as the Comparable Uncontrolled Price (CUP) for the purpose of benchmarking, is a 'single or one price'.

We have carefully heard the arguments, oral as well as written, as advanced by both the representatives and perused relevant material on record including documents placed in paper book. We have also

deliberated upon judicial pronouncements as cited before us during the course of hearing. The order of Tribunal in assessee's own case for AYs 2005-06 to 2007-08 (ITA Nos.4336/M/2009 & ors, common order dated 18/05/2016), dealing with similar issues, has also been placed before us. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

Assessment Proceedings

3.1 The material facts are that the assessee being resident corporate assessee is stated to be engaged in manufacturing and trading of various edible oils. An assessment was framed for the year u/s 143(3) on 23/12/2011 wherein the assessee was saddled with certain Transfer Pricing Adjustment of Rs.1141.76 Lacs. This was in view of the fact that the assessee carried out certain international transactions with its Associated Enterprises (AE). Accordingly, these transactions were referred to Ld. Transfer Pricing Officer (TPO) u/s 92CA(1) for determination of Arm's Length Price (ALP). The Ld. TPO proposed impugned adjustment of Rs.1141.76 Lacs vide its order u/s 92CA(3) on 20/11/2011 against import transactions of Rs.6571.86 Lacs. The assessee imported soyabean oil, Palm Oil from Singapore AEs and benchmarked the transactions using comparable uncontrolled price (CUP) method. For the said purpose, the price at which the imported products were sold by its AE (Bunge Singapore) to independent parties in India was compared to the import prices paid by the assessee.

3.2 Another set of transactions carried out by the assessee were merchanting trade of purchase and exports which were benchmarked using Transactional Net Margin Method (TNMM). Merchanting trading was said to be an activity of purchase and sale of commodities during its

voyage from port of loading to destination port. The assessee reflected operating profit of 0.99% as a % of total costs which were shown to be higher than comparable entities. However, after excluding interest income from FDR, the operating profit turned into operating loss of -1.89%. However, since both the workings were within tolerance range of ±5%, the merchanting transactions were accepted to be at arm's length.

3.3 However, dispute arose with respect to benchmarking of import transactions of crude degummed soyabean oil and sunflower seed oil. It was noted that the assessee imported crude oil for captive consumption in production of refined oil. It had also sold degummed soyabean oil to unrelated entities in India. Since no specific shipment could be indentified with consumption in manufacturing or resale in local market, Ld. TPO opined that CUP was not most appropriate method (MAM) but TNMM would be more appropriate to benchmark the transactions as done in earlier years. Accordingly, applying certain filters, Ld. TPO identified 33 comparable entities having mean margin of 3.02% on sales. The assessee opposed adoption of TNMM by submitting that except for AYs 2005-06 to 2007-08, these transactions were accepted using CUP method. The Ld. CIT(A) accepted CUP as MAM in AY 2006-07. However, the same could not convince Ld. TPO, who finally applied TNMM and reworked assessee's segmental accounts and arrived at operating margin of 2.07% as against 3.02% reflected by comparable entities. Accordingly, an adjustment of Rs.1141.76 Lacs was proposed which was incorporated by Ld. AO while framing assessment on 23/12/2011.

3.4 Another issue that arises out of assessment order is disallowance of market research expenses of Rs.58.07 Lacs paid by the assessee to M/s A.C.Neilson for providing the company data on market share of its

products on monthly basis. These expenses were state to be incurred for obtaining the data on a month-to-month basis and therefore, revenue in nature. However, Ld. AO rejected this plea by holding that the expenditure was capital in nature.

Appellate Proceedings

4.1 Before Ld. CIT(A), the assessee elaborated the benchmarking methodology adopted for three categories of import viz. (i) Import of Crude Degummed Soyabean Oil (6 contract with AEs); (ii) Import of Crude Degummed Soyabean Oil (4 contract with AEs); (iii) Import of sunflower seed oil. The same has been summarized by Ld. CIT(A) in para 5.3(iv) of the impugned order. On the basis of the same, the assessee contended that it had fulfilled the conditions prescribed in Transfer Pricing (TP) provisions while applying CUP. This method was most direct method as supported by various decisions of the Tribunal. Similar methodology was accepted by learned first appellate authority in AY 2007-08. The assessee also submitted that keeping in view the benefit of tolerance range of ±5%, all the three categories of transactions were at Arm's Length and therefore, no adjustment could be made.

4.2 The Ld. CIT(A), with respect to first category of transactions, observed that since valid internal CUP was available, this method would be most appropriate method (MAM). In respect of transactions nos. 1, 4 & 6, difference in rates were found. Since the benefit of tolerance range of ±5%, as per Section 92C(2) would apply only when more than one price was determined, the assessee would not be entitled for the same. Resultantly, the additions to the extent of Rs.59.33 Lacs were confirmed under this category of transactions.

Regarding second category, similar was the observation that valid external CUP existed and therefore, the same was to be adopted for benchmarking the transactions. However, the assessee would not be entitled for tolerance range of ±5%. Resultantly, the additions to the extent of Rs.0.90 Lacs were confirmed.

Regarding third category, it was again observed that valid internal as well as external CUP existed and therefore, it would be preferred over TNMM. However, the assessee would not be entitled for tolerance range of ±5%. Resultantly, the additions to the extent of Rs.60.31 Lacs were confirmed.

Aggrieved as aforesaid the revenue is in further appeal before us by way of ground no.1. On the other hand, the assessee, in its cross-objections, is seeking benefit of tolerance range of ±5% under CUP method since the benefit of the same has been denied by learned first appellate authority.

4.3 The expenditure of Rs.58.03 Lacs on market research, as disallowed by Ld. AO, was deleted by following appellate orders for AYs 2005-06 to 2007-08. Aggrieved, the revenue is before us by way of ground no.2.

Our findings and Adjudication

5. The learned AR supported the adoption of CUP method by submitting that this method has been accepted in earlier as well as subsequent Assessment. Further, the benchmarking analysis carried out by the company was in accordance with provisions of Section 92C(1) read with rule 10B(1)(a) and having regards to benefit of tolerance range as available under second proviso to Section 92C(2) of the Act. It was also submitted that since the assessee was in possession of valid internal as well as external CUP, the said methodology was most appropriate method to benchmark the transactions.

6. However, the Ld.AR was confronted with Tribunal order for AYs 2005-06 to 2007-08 which upheld the application of TNMM to benchmark these transactions. In that eventuality, Ld.AR alternatively assailed the benchmarking done by Ld. TPO using TNMM method. It was submitted that the adjustments, if any, was to be restricted to the extent of international transactions carried out by the assessee only and not to the entire segment of manufacturing activity. The Ld. AR submitted that it the adjustments were so restricted, the margin would be within permissible limit of ±5% and therefore, the additions would not be sustainable. The working of the same has been placed on record. The Ld. AR submitted that no adjustment shall remain as per the above calculation, duly following the Tribunal order in assessee's own case for AY 2005-06.

The Ld. DR, on the other hand, assailed the impugned order by supporting the benchmarking done by Ld. TPO by adoption TNMM method. The Ld. DR drew our attention to para-10 of the Tribunal order.

7. We find that the impugned issue is recurring in nature in assessee's case. The dispute as to adoption of most appropriate method as well as computation of margins etc. using TNMM method was the subject matter of revenue's appeals as well as assessee's cross-objections before this Tribunal in AYs 2005-06 to 2007-08 (ITA Nos.4336/M/2009 & ors. common order dated 18/05/2016). Upon perusal of the same, we find that this issue has been adjudicated by the Tribunal for AY 2005-06 in the following manner: -

> **7.** Next two grounds deal with deleting of additions by the FAA with regard to import of raw material and related issues including the treatment to be given to the segmental accounts. During the TP proceedings, the TPO found that the assessee had entered into International Transaction relating to import of soyabean oil, palm oil and Palmoline oil as well as export of soya bean meal and rapeseed meal, that it had used CUP method with regard to the international transactions. However TPO was of the opinion that CUP was not the MAM. So, he applied TNMM. He drew segmented

account and examined the performance of segment other than MTA and other incomes. According to the TPO's working operating profit of the assessee was (-)6.94%. For applying TNMM he took 26 comparables but later on excluded 5.In response to the show cause notice issued by TPO, the assessee contended that it had correctly used the CUP method, that in the earlier two years TPO had accepted the said method for determining the ALP, that the rates of CUP with regard to import of crude oil could not be compared to rates of merchanting trade of the same commodity. The TPO observed under the TP Regulation ALP of a transaction could vary year to year depending upon economic conditions and comparability of the provisions, that CUP rates, applied by the assessee, were not exactly identifiable, that the same commodity was transacted at different rates in MTA, that assessee was not able to provide the resale margin of the crude oil sold in the local market, that soyabean meal was sold at a different rate as compared to the export to the AEs.

8.During the appellate proceedings, the FAA directed the TPO to submit a remand report. The TPO issued a show cause notice and proposed operating profit margin of Rs.2.92 crores to be applied on the operating income of Rs.806.56 crores as against assessee's operating loss of Rs.56.01 crores. After considering the submission of the assessee, the TPO re-worked the operating margin of comparable companies@ 2.63%. After making adjustment to the operating expenses (unutilized capacity and non operating expenses) of the assessee, the operating loss was reduced to Rs.29.54 crore.Accordingly, the mean operating margin of the comparables, i.e. 2.36% was applied to the operating income of Rs.809.54 crore resulting in arms length profit of Rs.19.10 crore. He adjusted the loss, entered by the assessee, of Rs.29.54 crores and made an adjustment of Rs.48.65 crore to the import price. As a result there was an overall reduction in the import price of the assessee . As it was more than 5% (54.27%) allowable under the proviso to section 92C(2) of the Act, so, the assessee was not given the benefit.

Before the FAA, it was argued that CUP was MAM, that the imports made were for its own consumption, that it was not possible for the assessee to identify specific shipment with consumption in manufacturing or re-sale, that the TPO had failed in applying CUP, that he had not brought any evidence or document to reject other comparable transaction as provided by the assessee, that while applying the TNMM he had not accepted all the adjustment proposed by the assessee, that the unutilized capacity in respect of power, fuel etc, was considered at nil as against 20% claimed by the assessee, that it resulted in a higher operating loss by Rs.3.81crore, that factory, salary and wages on account of under utilisation capacity was also taken at nil by the TPO as against 70% claimed by the assessee, that it resulted in a higher operating loss by about Rs.5.46 crore, that the depreciation on tangible assets and under utilisation resulted in higher loss of Rs.2.20 crore, that the deferred revenue expenditure of Rs.1.05 crores resulted in a reduction of operating expenses by Rs.1.05 crores, that the claim made by the assessee to accept revised margin of 1.07% was not conceded by the TPO.

The FAA held that the computation of revised margin was not considered by the TPO, that TPO was not correct in his remand report that no reasons were given by the assessee for taking segmental results of six companies whereas whole company results for remaining 20 companies, that for rejecting the CUP method TPO had given valid reasons, that TNMM was more appropriate method with regard to adjustment to be made. The FAA held that the TPO in the remand report had summarily concluded that non operating expenses, resulting from abnormal items, were correctly accounted for, that the contention of the TPO was not factually correct, that the TPO

had allowed, while considering the claim for reduction of operating expenditure, due to unutilised capacity as abnormal depreciation on tangi-ble assets, that he had adopted 50% of the total expenditure, that he had considered the optimum capacity at 60% and not 100% that he had arrived at abnormal expense of 50% of total expenses by the assessee as against 70%. The FAA allowed Rs.3.81 crores under the head power and fuel, repairs and maintenance of building plant and machinery to the extent of 5/7th of the expenses and observed that the loss would be reduced by Rs.2.72crore.The FAA allowed Rs.5.46 crore under the heads salary and wages(5/7th of the expenses) further reducing the loss by Rs.3.90 crore. Deferred Revenue expenditure of Rs.1.05 crore was also allowed, increasing the loss by the same amount. The FAA re-worked the segment account to determine the ALP and arrived at the conclusion that there was a difference of Rs.43.07crore to the operating cost of the assessee. He observed that if the difference was to be allocated on import of goods from AEs, as done by the TPO, the adjustment would lead to an overall reduction of 31.15% to the import price of goods from the AEs. It was further observed by the FAA that while making adjustment to ALP of export vis-a-vis MTA the TPO had applied arithmetic mean of operating margin on cost on uncontrolled companies of 6.44%, that it was applied to international transaction of sale to the AEs, that same resulted in adjustment of 6.24% of the value, that the TPO had denied the benefit of proviso to section 92C(2),that when comparable trading companies 'operating margin on cost of 0.94%was applied it was clear that assessee's OPM was higher than comparable margin, that the export to AEs was at arm's length, that the ALP for export was lower than the export recorded in the books of account, that the TPO had made adjustment vis-a-viz only the import of goods from the AEs, that manufacturing operations had resulted in loss after the assessee acquired various businesses during the year under consideration. The assessee had requested that adjustment of Rs.43.07crore should be spared over the total operating cost of Rs.790.44 crore after giving effect to ± 5% range. Finally, the FAA concluded that the adjustment made by TPO resulted in overall reduction to the import price of goods by 54%, that even after providing additional relief there was only partial reduction in the TP adjustment, that it went against the very principle of profit based method, that the adjustment had no consonance to the reality of the situation, that the TPO had approached an incorrect method, that the application of CUP analysis showed that fluctuation in prices of agricultural commodities was at maximum 5%,that adjustment of high discount of 54% or lower could not be said to be in justifiable, that transfer pricing was not an exact science, that it was an art wherein principles of law, economics and business were applied to achieve equitable results, that application of CUP and TNMM gave very wide variation, that TNMM led to adjustment of 31.15% even after allowance of partial relief as compared to an adjustment under CUP of about 5%, that assessee was justified in claiming that while applying TNMM totality of the operations should be considered, that the exercise should not be centered on international transactions. After making above observations, the FAA reworked the ALP of international transaction of import of goods in manufacturing activity as under:

	Rupees
Adjusted operating expenses of the assessee shown in (E) above.	**7,90,44,26,285**
105% of the above (applying ± 5% as per Proviso to Section 92C(2)-Arms length operating cost-(F)	**8,29.96,47,599**
Total Operating expenses of the assessee as per (B) above	**8,33,51,92,616**

Difference to be adjusted towards international transctions of import of goods from AEs assessee (F-B)assesseeG	**(3,55,45,017)**
International transactions of goods imported from AEs – (H)	**138,28,94,614**
Arms length price of international transactions of goods imported from AEs assessee (H-G)assesseeI	**134,73,49,597**

On the basis of above adjustment, the import price of goods was determined at Rs.3.55 Crore as against Rs.48.65 Crores determined by the TPO.As a result, the assessee got a relief of Rs.45.09 Crores.

9.Before us,the DR relied upon the order of the TPO. The AR argued that the assessee had acquired DALDA brand from HLL, that the said acquisition would take some years to fructify, that the assessee had to be extra ordinary costs in that regard, that it had to incur significant start-up costs to establish the newly acquired brands in the initial years of acquisition, it was not able to fully utilise its manufacturing capacity, that there was extraordinary unutilised capacity, that it had calculated revised margin of 20 comparables selected by the TPO and had arrived at the arithmetic mean of 1.07% (page 222 of the paper book),that the same was not considered by the TPO, that though the FAA had stated that revised margin (1.07%) had to be taken he had erroneously, by oversight, took 2.36% while calculating the adjustment, that if the correct margin(1.07%) of comparables was taken then the international transactions of the assessee of import of oil would be within the permissible limit of +/-5%, that TP adjustment should have been made only on international transactions, that the FAA had calculated the amount of adjustment to Rs. 3.55 crores, that if the correct margin of 1.07% of the comparables was adapted then the assessee's international transaction of import of oil would be within the permissible limit of+/-5%.

10. We find that the TPO had made an adjustment of Rs. 48.65 crores to the entire segment of manufacturing activities instead of making the adjustment to only international transactions, that it had an effect of reducing the import price by 54.27%, that the FAA had reworked the adjustment after considering the extra ordinary items that would affect the profit margin of the assessee for the year under consideration, that the factors like underutilisation of capacity and non-operating expenditure was given due importance by the FAA, that the assessee had calculated revised margin of the 20 comparables selected by the TPO, that the arithmetic mean arrived at by the assessee was not considered by him, that FAA had held that TPO was incorrect in not considering the revised calculation of margins, that the FAA had objected to the treatment given to the six comparable where the TPO had not taken the segments based on their economy profile, that the FAA had mentioned that revised margin (1.07%) had to be adapted for determining adjustments and the resultant ALP.

In our opinion, the TPO was not justified in making adjustment to the entire segment of manufacturing activity and not restricting the same to the international transactions. We find that in the cases of Tara Jewels Exports Pvt. Ltd(ITA No.1814 of 2013) and Thyssen Krupp Industries India Pvt. Ltd.(ITA No. 2201 of 2013),the honorable Bombay High Court has held that for making adjustment as per the provisions of chapter X of the act transaction with AEs of an assessee had to be considered. We would like to reproduce the relevant portion of the judgement of Thyssen Krupp Industries India Pvt. Ltd. (supra)

"We find that in terms of chapter X of the Act, the determination of the consideration is to be done only with regard to income arising from international transactions on determination of ALP. The adjustment which is mandated is only in respect of international transaction and not transactions entered into by assessee with independent unrelated third parties. This is particularly so as there is no issue of avoidance of tax requiring adjustment in the valuation in respect of transactions entered into with independent third parties. The adjustment as proposed by the revenue if allowed would result in increasing the profit in respect of transactions entered into with non-AE. The adjustment is beyond the scope and ambit of chapter X of the Act.

We find that while reworking the adjustment, the FAA had taken the margin at the rate of 2.36%.We find that the assessee had not filed any application before the FAA pointing out the apparent mistake in adopting the revised margin i.e. adopting the rate of 2.36% instead of rate of 1.07%.Considering these facts, we are of the opinion that matter should be restored back to the file of the AO/TPO to verify the fact and decide the value of the adjustment by taking appropriate revised margin rate. Grounds No 2 and 3 are decided accordingly.

8. We find that revenue assailed the aforesaid adjudication of Tribunal before Hon'ble Bombay High Court vide ITA Nos.445 of 2017, AY 2005-06; dated 03/06/2019 wherein Hon'ble Court has refused to admit substantial question of law with following observations: -

2. The issues arise out of the Tribunal's judgment concerning the correct method to be applied for determining arm's length price of the international transaction between the assessee and the associated enterprise. The Transfer Pricing Officer ("TPO" for short) had made the adjustment to the entire segment of the manufacturing activity instead of making the adjustment for only international transaction. The Tribunal held that the TPO was not justified in making adjustment to the entire segment of manufacturing activity without restricting the same to the manufacturing transaction. The Tribunal in the process relied upon and referred to the decision of the Division Bench of this Court in case of **Commissioner of Income Tax Vs. Tara Jewels Exports P. Limited1**. The principles laid down in the said decision have been followed consistently in later decisions such as in cases of **Commissioner of Income Tax Vs. ThyssenKrupp Industries India P. Ltd. and Commissioner of Income Tax Vs. Alstom Projects India Ltd.**. In the result, do not find any error in view of the Tribunal. The appeal is dismissed.

Therefore, we find that the issue of adoption of TNMM and the issue of manner of TP adjustment which is to be done, as of now, has attained finality and the aforesaid decision is binding upon us.

9. Proceeding further, straightway going to the alternative plea of Ld. AR that even if TNMM method is accepted, the assessee's margin, after providing benefit of tolerance range of +5%, would be within Arm's Length Price. The working of the same has been placed in the paper-book. Keeping in view the earlier decision of Tribunal as referred to in paras 7 & 8, the bench is inclined to accept this plea. Therefore, without delving much deeper into the issue, we direct Ld. TPO to apply TNMM but restrict the adjustments only to the extent of international transactions carried out by the assessee and not to entire segment of manufacturing activity. The Ld. TPO is directed to verify the computations made by the assessee and decide accordingly. The benefit of tolerance range of +5%, as provided in law, would be available to the assessee.

Consequently, the revenue's ground, to that extent, stands allowed which would render assessee's cross-objection infructuous.

10. So far as the issue of market research expenses is concerned, we find that this issue is squarely covered in assessee's favor by the decision of this Tribunal for AYs 2005-06 to 2007-08 (ITA Nos.4336/M/2009 & ors, common order dated 18/05/2016). In view of this uncontroverted fact, this ground stand dismissed.

11. The revenue's appeal stands partly allowed. The assessee's cross-objection stand dismissed as being infructuous.

Assessment Year 2009-10

12. Similar are the facts in AY 2009-10. While benchmarking the import transactions under TNMM, Ld. TPO proposed an adjustment of Rs.4649.92 Lacs which was incorporated in assessment order dated 25/02/2013. Another disallowance was for Rs.116.91 Lacs on account of Market Research expenses. The Ld. CIT(A), on similar lines, applied CUP

method and allowed partial relief to the assessee. The market research disallowance was deleted by following earlier years. Aggrieved, the revenue is before us with similar grounds of appeal. The assessee has also filed cross-objection on similar lines.

13. It is admitted position that facts as well as issues are quite identical in this year. Therefore, our findings as well as adjudication as for AY 2008-09 shall *mutatis-mutandis* apply to this year.

14. Consequently, the revenue's appeal stands partly allowed. The assessee's cross-objection stand dismissed as being infructuous.

Conclusion

15. Both the appeals of the revenue stands partly allowed. The assessee's cross-objections stand dismissed as being infructuous.

Order pronounced on 08th April, 2021

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

मुंबई Mumbai; दिनांकDated : 08/04/2021
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि अग्रेषित/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.**