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

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER

ITA No. 7033/Mum/2012
Assessment year: - 2007-08

Aditya Birla Minacs Worldwide Ltd. Teritex Building, Saki Vihar Road, Saki Naka, Andheri (E) Mumbai – 400 072.	Vs.`	Dy. Commissioner of Income Tax 8(1), Room No. 210, 2nd floor, Aaykar Bhavan, M.K. Road, Mumbai – 400 020.
PAN:- AACCM7264H		
Appellant		Respondent

ITA No. 7142/Mum/2012
Assessment year: - 2007-08

Dy. Commissioner of Income Tax 8(1), Room No. 210, 2nd floor, Aaykar Bhavan, M.K. Road, Mumbai – 400 020.	Vs.`	Aditya Birla Minacs Worldwide Ltd. Teritex Building, Saki Vihar Road, Saki Naka, Andheri (E) Mumbai – 400 072.
PAN:- AACCM7264H		
Appellant		Respondent

Revenue By	Shri R.R. Vora
Assessee By	Shri. S. D. Srivastava

Date of hearing	11.02.2015
Date of pronouncement	25 .03.2015

ORDER

Per Vijay Pal Rao, JM

These cross appeals are directed against the order dated 24.09.2012 of CIT(A) for A.Y. 2007-08. The assessee has raised following grounds in this appeal:-

l. "The Deputy Commissioner of Income-tax -8(1) (hereinafter referred to as the DClT) / Additional Commissioner of Income-tax, Transfer Pricing – (I) Mumbai, [(hereinafter referred to as the TPO) erred and Hon'ble CIT (A) erred in confirming the adjustment of Rs. l,08,54,4OO/- by determining the arm's length price of the corporate guarantee given by the appellant for the appellant's Associated Enterprise [AE] AV TransWorks Limited, Canada [AVTL Canada].

Your appellant submits that on the facts and the circumstances of the case, the DClT / TPO and Hon'ble CIT(A) ought not to have made adjustment of Rs. l,08,54,4OO/- by determining the arm's length Price of the corporate guarantee at Rs. 1,08,54,4OO/-.

Your appellant prays that the DCIT be directed to delete the said addition made on account of adjustment of Rs. l,08,54,4OO/-.

2. The DCIT / TPO erred the adjustment of Rs. 143,38,197/- by erroneously determining the interest chargeable @ LlBOR plus 4.45% on loan given by the appellant to its AE AVTL Canada at Rs. 3,63,84,625/- in stead of Rs. 2,20,46,428/- charged by the appellant @ 6 month LlBOR + 1%. Hon'ble CIT (A) erred in partly allowing the interest rate and held that interest should be chargeable @ LlBOR plus 2%

Your appellant submits that on the facts and the circumstances of the case, the Hon'ble CIT(A) ought not to have made the said adjustment of LlBOR plus 2% on interest chargeable on loan given to AVTL Canada.

Your appellant prays that the DClT be directed to delete the said addition made on account of interest of LlBOR plus 2%.

3. The DCIT / TPO erred and Hon'ble CIT (A) erred in confirming the adjustment of Rs. 6,15,669/- by erroneously considering share application money of Rs. 4,48,01,190/- given to the appellant's AE Transworks BPO Philippines Ltd [TBPO Philippines] to be in the nature of loan and calculating the arm's length interest chargeable on the same at Rs. 6,15,669/- @10.09% being 6 month USD LlBOR + 4.45% .

Your appellant submits that on the facts and the circumstances of the case, the DCIT/ TPO and Hon'ble CIT(A) ought not to have made the said adjustment of Rs. 6,15,669/- by erroneously determining the interest on the amount of share application money given to Minacs Philippines.

Your appellant prays that the DClT be directed to delete the addition made on account of interest chargeable of Rs. 6,15,669/-.

4. The CIT(A) has erred in not adjudicating the ground relating to allowing depreciation on software expenses @ 60% in the assessment year 2007-08

2. Ground no. 1 is regarding TP adjustment in respect of corporate guarantee.

2.1 During the year under consideration, the assessee had acquired Minacs Canada, a Canadian company engaged in BPO operations, through its wholly owned subsidiary AVTL Canada. The subsidiary/AE of the assessee AVTL had availed a loan from DBS bank Singapore, for which, the assessee had given a corporate guarantee of Rs. 106.560 crores to the bank vide deed of guarantee dated 22.11.2006. In the TP study the assesses has not classified this transaction as international transaction. The TPO took the difference between the PLR rate and bank rate during the period as arm's length price of the corporate guarantee proved by the assessee at the rate of 3% and further added clerkage charges of 0.25% and thereby arrived at 3.25% as arm''s length guarantee charges in respect of corporate guarantee provided by the assessee. Accordingly, the TPO proposed the addition of Rs. 108,54,400/-.

2.2 On appeal, the CIT(A) confirmed the adjustment/addition made by AO/TPO in this respect.

2.3 Before us, the Ld. AR of the assesse has submitted that the transaction of giving corporate guarantee to the bank is not an international transaction . In support of his contention he has relied upon the decision of Delhi Benches of this Tribunal in the case of **Bharti Airtel Ltd (ITA No 5816/Del/201Z)** dated 11 March 2014. Alternatively, the Ld. AR has submitted that the arm's length guaranteed charges may be taken at

0.5% as held by this Tribunal in number of other decisions. He has relied upon the following decisions:-

(1) Everest Kanto Cylinder Ltd. (ITA No. 7073/Mum2012) dated 25 September 2014

(2) Everest Kanto Cylinder Limited (ITA NO. 542/Mum/2012) dated 23 November 2012(Mumbai Tribunal)

(3) Glenmark Pharmaceuticals Limited (ITA No. 5031/M/2012) dated 13 November 2013) (Mumbai Tribunal)

(4) M/s Godrej Household Products Ltd (ITA No. 7369/M/2010) (Mumbai Tribunal)

(5) Nimbus Communication Ltd (ITA No. 3664/M/2010) (Mumbai Tribunal) (dated 12 June 2013)

(6) Reliance Industries Limited (dated 13 September 2013) (Mumbai Tribunal)

(7) Prolific Corporation Limited (ITA No. 237/Hyd/2014 dated 31 December 2014 (Mumbai Tribunal).

2.4 On the other hand, the ld. DR has relied upon the orders of authorities below and submitted that the assessee has undertaken the risk by providing the guarantee for the loan obtained by the AE from the bank, therefore, the differential rate adopted by the TPO is justified.

2.5 Having considered the rival submissions as well as relevant material on record, we agree with the alternative plea of the Ld. AR that the arm's length guarantee commission charges can be considered at the rate of 0.5% as held by this Tribunal in a series of decisions referred above. In the case of Everest Kanto Cylinder Ltd (supra), the Tribunal while considering an identical issue has held in para 9 as under:-

*"**9**. Now, coming to the merit of the addition so made, we found that the issue has already been decided by the Tribunal in immediately preceding year in assessee's own case, wherein charging of 0.5% guarantee commission from AE was held to be quite near to 0.6%, where assessee has paid independently to the ICICI bank and charging of guarantee commission @0.5% from its AE was held to be at arm's length. The precise observation of the bench for the assessment year 2007-08 are as under :-*

> *"The universal application of rate of 3 percent for guarantee commission cannot be upheld in every case as it is largely dependent upon the terms and conditions, on which loan has been given, risk undertaken, relationship between the bank and the client, economic and business interest are some of the major factors which has to be taken into consideration. "*
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> *"….in this case, the assessee has itself charged 0.5% guarantee commission from its AE, therefore, it is not a case of not charging of any kind of commission from its AE. The only point which has to be seen in this case is whether the same is at ALP or not. We havealready come to a conclusion in the foregoing paras that the rate of 3% by taking external comparable by the TPO, cannot be sustained in facts of the present case. We also find that in an independenttransaction, the assessee has paid 0.6% guarantee commission to IGIGI Bank India for its credit arrangement. This could be a very good parameter and a comparable for taking it as internal GUP and comparing the same with the transaction with the AE. The charging of 0.5% guarantee commission from the AE is quite near to 0.6%, where the assessee has paid independently to the IGIGI Bank and charging of guarantee commission at the rate of 0.5% from its AE can be said to be at arms length. The difference of 0.1% can be ignored as the rate of interest on which IGIGI Bank, Bahrain Branchhas given loan to AE (i.e. subsidiary company) is at 5.5%, whereas the assessee is paying interest rate of more than 10% on its loan taken with IGIGI Bank in India. Thus, such a minor difference can be on account of differential rate of interest. Thus, on these facts, we do not find any reason to uphold any kind of upward adjustment in ALP in relation to charging of guarantee commission."*

As the facts and circumstances of the case during the year under consideration are pari materia, respectfully following the decision of the Tribunal in assessee's own case, we direct the AO to compute arm's length price of transaction as per the direction given by the Tribunal in the above order for A.Y. 2007-08.

2.6 Similar view has been taken by the Tribunal in all above referred decisions. Accordingly, following the earlier decisions of this Tribunal, we direct the AO/TPO to adopt 0.5% as arm's length guarantee commission charges in respect of the guarantee provided by the assessee for obtaining the loan by the AE.

3. Ground No. 2 is regarding TP adjustment in respect of interest on loan given to AE.

3.1 During the year, the assesse has advanced a loan, under automatic route, to its wholly owned subsidiary AVTL Canada in order to accomplish the acquisition of Minacs Canada. In the TP documentation, the assesse bench marked the said transaction of providing loan to AE by using internal CUP of LIBOR+0.65%. The internal CUP was stated to have been determined by the assesse based on the loan availed from the DBS Bank at the rate of LIBOR+0.45% plus 0.20% each year for a period of 5 years. The assesse charged the interest from the AE at the rate of CAD LIBOR+1% which is more than LIBOR+0.65% ALP adopted by the assesse being internal CUP and accordingly, the assesse claimed that the transaction is at arm's length. The TPO did not accept the ALP determined by the assesse and adopted the ALP rate of interest at LIBOR+4.45% which includes LIBOR+0.45% plus 1% fee plus 3% mark up as against CAD LIBOR+1% charged by the assesse. Accordingly, the TPO made an upward adjustment of Rs. 2,79,,53,572/-. Since there was some calculation mistake in computing the adjustment, therefore, the TPO passed rectification order u/s 154 of the ACT and reduced the interest adjustment to Rs. 1,43,38,197/-.

3.2 On appeal, the CIT(A) has determined the ALP rate of interest as 6 months LIBOR+200 basis point, thereby, reduced the adjustment from 1,43,38,197/- to Rs. 41,50,502/-.

3.3 Before us, the Ld. AR of the assesse has submitted that the assesse adopted the internal CUP being cost of the loan availed by the assesse and, therefore, no further adjustment is required.

3.4 On the other hand, the Ld. DR has relied upon the order of CIT(A)and submitted that LIBOR +2% is a reasonable interest rate to be adopted as ALP.

3.5 We have considered the rival submissions as well as relevant material record. At the outset, we note that this issue of arm's length interest in respect of the loan provided by the assessee to its AE has been considered by the Tribunal in the series of decisions relied upon by the assessee. The Tribunal in the case of Everest Kanto Cylinder Ltd. (supra), has considered this issue in para 11 and 12 as under:-

> "***11*** *. We had considered rival contentions and gone through the orders of lower authorities. As per our considered opinion, appropriate international rates should be used for the purpose of the comparability analysis. For this purpose, the London Inter Bank Offer Rate (LIBOR) is an internationally recognized rate for benchmarking loans denominated in foreign currency. For this purpose, reliance may be placed on the following decision of the coordinate bench :-*
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> *i) Great Eastern Shipping Co.Ltd (ITA No 397/M/2012) dated 10 January 2014;*
> *ii) Mahindra & Mahindra Limited (ITA No 7999/M/2011) dated 8 June 2012;*
> *iii) Hinduja Global Solutions Limited (ITA No 254/M/2013) dated 5 June 2013*

iv) Aurionpro Solutions Limited (ITA No 7872/M/2011) dated 12 April 2013;
v) Aurobindo Pharma Ltd (ITA No 1866/Hyd/2012) dated 29 November 2013;
vi) Cotton Naturals (I) Pvt. Limited (ITA No 5855/Del/2012) dated 8 February 2013;
vii) Siva Industries and Holdings Ltd. vs ACIT, IT Appeal No. 2148 (Mds.) of 2010;
viii) Bharti Airtel Ltd (ITA No 581 6/0el/201Z) dated 11 March 2014
ix) Infotech Enterprises Limited (ITA No 115/Hyd/2011) dated 16 January 2014;
x) Kohinoor Foods Ltd (ITA Nos 3688-3691/0el/2012 and ITA Nos 3868-3869/0el/2012) dated 21 July 2014; and
xi) Four Soft Ltd vs. OCIT, IT Appeal No. 1495 of 2011 (Hyderabad Tribunal)

***12**. In light of the above decisions, the rate to be used for undertaking an adjustment should be LIBOR and not the average yield rates considered by the learned TPO. The LIBOR rate for March 2008 was 2.6798%. However the assessee has charged 7% from its AE as per the internal CUP available. Thus, the assessee has charged interest to EKC Dubai and EKC China at the rate higher than existing LIBOR rates. Accordingly, the said transaction of providing loan to EKC Dubai and EKC China is at arm's length. Additions made by the AO are accordingly set aside."*

3.6 Following, the orders of this Tribunal, we confirm the impugned order of CIT(A) qua this issue.

4. Ground no. 3 is regarding the TP adjustment on account of interest on re-characterization of share application money as loan advanced to AE.

4.1 During the year, the assesse has advanced a sum of Rs. 4,48,01,190/- to its subsidiary, Transworks BPO Phillipines Ltd.. in the form of share application money. The TPO was of the view that although the said amount given by the assesse in the garb of share application money, however, this amount was actually in the nature of loan as the shares were not allotted till 2 subsequent years and AE continued to use these funds. Accordingly, the TPO determined the arm's length interest rate on the said transaction at LIBOR+4.45%.

4.2 On appeal, the CIT(A) confirmed the ALP adopted by the TPO at LIBOR+4.45%.

4.3 Before us, the Ld. AR of the assesse has submitted that the loan was given to its subsidiary at Phillipines as capital infusion in the form of fresh share capital. He has further submitted that the TBPO Phillipines was required to obtain approval regarding issue of shares from Securities and Exchange Commission, Phillipines. TBPO Phillipines received the approval from Securities and Exchange Commission Phillipines on 22.10.2007. Subsequent to the receipt of approval, the equity shares were issued on 28th May 2008. The Ld. AR has referred the share certificate issued by TBPO Phillipines and submitted that the same has been produced before the Tribunal as additional evidence vide letter dated 13.06.2014 with a prayer for admission of additional evidence. Thus the Ld. AR has submitted that the said transaction cannot be treated as loan given to the AE and, therefore, no TP adjustment is required in this respect. In support of his contention he has relied upon the following decisions:-

- *Bharati Airtel Ltd. (ITA No. 5816/Del/2012) dated 11 March 2014 (Delhi Tribunal)*
- *Parle Biscuits Pvt. Ltd. (ITA No. 9010/M/2010) dated 11 April 2014 (Mumbai Tribunal*
- *M/s All Cargo Global Logistics Ltd. (ITA No. 4909and 4910/M/2012) dated 11 June 2014 (Mumbai Tribunal)*
- *PMP Auto Components P. Ltd. (ITA No. 1484/Mum/2014) dated 22 August 2014*

4.4 On the other hand, the Ld. DR has relied upon the orders of authorities below and submitted that the TPO has specifically pointed out

that the money given by the assesse was enjoyed and used by the subsidiary without issuing the share for about more than two years, therefore, so long the money was lying with the AE without issuing the shares, the same will be deemed as loan.

4.5 We have considered the rival submissions as well as relevant material on record. Though there was a delay in issuing the shares against the share application money given by the assesse to its AE, however, the assesse has duly explained the cause of delay and it was not a deliberate delay for using the money by subsidiary in the garb of share application money or by providing the fund by the assesse in the garb of share application money. The delay was due to obtaining necessary approval from the Securities and Exchange Commission, Phillipines. Finally, the shares were issued as per the share certificate dated 25.05.2008 which has been produced by the assesse as additional evidence. Since the document of issuance of equity shares in the name of the assesse by the subsidiary/AE vide share certificate were not before the authorities below, therefore, to the extent of limited purpose of considering the said document, we set aside this issue to the record of AO/TPO to consider the same. As far as the re-characterization of the share application money as loan, we note that the Hon'ble Jurisdictional High Court in the case of DIT Vs. Besix Kier Dabhol S.A. vide its decision dated 30th August 2012 in ITA No. 776 of 2011 has considered an identical issue in para 6 to 8 as under:-

> *"**6.** In appeal, the Commissioner of Income Tax (Appeals) by an order dated 29/3/2007 upheld the order of the Assessing officer and disallowed the deduction on account of interest of Rs.5.73 crores paid to Joint Venture Partners. The Commissioner of Income Tax (Appeals) held that Article 7(3)(b) of the Double Taxation Avoidance Agreement forbids allowance of any interest paid to the head office by permanent establishment in India as a deduction.*

Further, the payment of interest also directly violates the conditions imposed by RBI in its letter dated 3/11/1998. Therefore, the order of the Assessing Officer was upheld.

7. *However, the Tribunal allowed the respondent-assessee's appeal. During the course of the proceedings before the Tribunal the revenue contended that the borrowings on which the interest has been claimed as a deduction are in fact capital of the assessee and brought only under the nomenclature of loan for tax consideration. It was the case of the appellant-revenue before the Tribunal that debt capital is required to be re-characterized as equity capital. However, the Tribunal held that in India as the law stands there were no rules with regard to thin capitalization so as to consider debt as an equity. It is only in the proposed Direct Tax Code Bill of 2010 that as a part of the General Anti Avoidance Rules it is proposed to introduce a provision by which a arrangement may be declared as an impermissible avoidance arrangement and may be determined by recharacterzing any equity into debt or vice versa.*

8. *We find no fault with the above observations of the Tribunal. There were at the relevant time and even today no thin capitalization rules in force. Consequently, the interest payment on debt capital cannot be disallowed. In view of the above, the question (i) raises no substantial question of law and is therefore, dismissed."*

4.6 We further note that a similar view has been taken by the Tribunal in a series of decisions as relied upon by the assesse. Accordingly, subject to verification of the share certificate by the AO, the share application money cannot be treated as loan amount merely because there is a delay in issuance of shares by the subsidiary in the name of the assesse, which was duly explained by the assesse. Accordingly, this ground of the assesse's appeal is allowed in above terms.

5. Ground no. 4 is regarding depreciation on software expenditure.

5.1 At the time of hearing the Ld. AR of the assesse has submitted that the assesse does not wish to press this ground as the CIT(A) has given the relief in the A.Y. 2006-07, and accordingly the same may be dismissed as not pressed.

5.2 Ld. DR raised no objection if the ground no. 4 of the assesse's appeal is dismissed as not pressed.

5.3 Accordingly, we dismiss the ground no. 4 of the assesse's appeal being not pressed.

6. The assesse has also raised an additional ground vide application/letter dated 23.06.2014 which reads as under:-

> *"1. On the facts and in the circumstances of the case and in law, if it is held in subsequent years (AY 2008-09 onwards) that expenditure on loan taken for Investment of USD 15.4 Million for the acquisition of Minacs Canada is capital in nature hence not allowable, the Income in relation to the same of Rs. 52,927,844/- must also be treated as capital receipt and not be taxable in the year under consideration."*

6.1 We have heard the Ld. AR as well as Ld. DR and considered the relevant material on record. This additional ground is only with respect to the treatment of the investment made by the assesse in its foreign subsidiary AVTL Canada which was treated as capital in nature and accordingly the interest and other cost of the loan obtained by the assesse for such acquisition was disallowed. By way of this additional ground the assesse is raising an alternative plea that if the said investment is treated as capital in nature and consequently the interest and other cost of the loan is disallowed then the foreign exchange gain arising on the said capital investment should also be treated as capital receipt. As it is clear from the additional ground raised by the assesse that the same pertains to subsequent assessment years when the assesse earned some foreign exchange gain, therefore, for the year under consideration, no such gain has arisen to the assesse on account of the said investment and, therefore, no adjudication of this ground is required for the year under consideration. Accordingly, we reject the additional ground raised by the

assesse being not arisen from the impugned orders of authorities below for the A.Y. under consideration. In any case, it is a consequential plea to be raised by the assesse in the subsequent years and not in this year. The assesse is at liberty to take the necessary steps for the subsequent assessment years in this regard.

7. The revenue in its appeal has raised following grounds:-

"1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the benchmark interest rate should be 6 months LIBOR + 200 basis points against the rate of 6 months LIBOR + 4.45% adopted by the TPO."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not upholding the deduction u/s.10A computed by the AO after setting off the losses of the non STPI unit against the profit of the STPI unit, ignoring the fact that deduction u/s lOA is allowable out of the assessee's total income and not out of the profits of the eligible undertaking."

3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to allow the assessee to carry forward the loss of the non STPI unit, ignoring the fact that no such loss remains to be carried forward as the entire loss was liable to be set off against the profits of the STPI unit."

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction u/s. lOA without setting off the brought forward business losses by placing reliance upon the decision of the Karnataka High Court in the case of CIT v/s, Yakogawa India Pvt. Ltd.(Kar) 341 ITR 385 ignoring the fact that the department has not accepted the ratio laid down in the said case and preferred a SLP against the said decision."

7.1 Ground No. 1 is regarding the arm's length interest rate adopted by the CIT(A) at LIBOR+ 2% instead of LIBOR+4.45% adopted by the TPO.

7.2 This ground is common to the ground no. 2 of the assesse's appeal, in view of our finding on this issue in ground no. 2 of assesse's appeal, this ground of revenue's appeal is dismissed.

8 Ground no. 2 to 4 are regarding the allowance of deduction u/s 10A.

8.1 During the year, the assesse had two STPI units eligible for claiming deduction u/s 10A of the Act. These units were set up in Mumbai and Bangalore. The assesse has set off total profit from Domestic business against the loss from the non STPI unit and the balance loss was claimed as carry forward at Rs. 4.66 crore. The AO observed that the deduction u/s 10Aof the Act, should be restricted to the profit of the unit eligible for deduction u/s 10A of the Act and the total income have been shown at nil instead of claiming of loss.

8.2 The assesse challenged the action of AO before the CIT(A). The CIT(A) has allowed the claim of loss of the assesse.

8.3 We have heard the Ld. DR as well as Ld. AR and considered the relevant material on record. At the outset, we note that this issue is covered by the Judgment of Hon'ble Jurisdictional High Court in the case of **Commissioner of Income-tax Vs. Black & Veatch Consulting (P.) Ltd (348 ITR 72)**, wherein the Hon'ble Jurisdictional High Court has held in para 3 as under:-

> *"**3.** Section 10A is a provision which is in the nature of a deduction and not an exemption. This was emphasised in a judgment of a Division Bench of this Court while construing the provisions of Section 10B in Hindustan Unilever Ltd v . Dy. CIT [2010] 325 ITR 102 / 191 Taxman 119 (Bom.). The submission of the Revenue placed its reliance on the literal reading of Section 10A under which a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive Assessment Years is to be allowed from the total income of the*

assessee. The deduction under Section 10A, in our view, has to be given effect to at the stage of computing the profits and gains of business. This is anterior to the application of the provisions of Section 72 which deals with the carry forward and set off of business losses. A distinction has been made by the Legislature while incorporating the provisions of Chapter VI-A. Section 80A(1) stipulates that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of the Chapter, the deductions specified in Sections 80C to 80U. Section 80B(5) defines for the purposes of Chapter VI-A "gross total income" to mean the total income computed in accordance with the provisions of the Act, before making any deduction under the Chapter. What the Revenue in essence seeks to attain is to telescope the provisions of Chapter VI-A in the context of the deduction which is allowable under Section 10A, which would not be permissible unless a specific statutory provision to that effect were to be made. In the absence thereof, such an approach cannot be accepted. In the circumstances, the decision of the Tribunal would have to be affirmed since it is plain and evident that the deduction under Section 10A has to be given at the stage when the profits and gains of business are computed in the first instance. So construed, the appeal by the Revenue would not give rise to any substantial question of law and shall accordingly stand dismissed. There shall be no order as to costs."

8.4 Following the Judgment of Hon'ble Jurisdictional High Court, we do not find any error or illegality in the order of CIT(A) qua this issue.

9.. In the result, the appeal of the assessee is partly allowed and that by the revenue is dismissed.

Order pronoucned in the open court on this 25th day of March 2015

Sd/-	Sd/-
(D. Karunakara Rao)	**(Vijay Pal Rao)**
(Accountant Member)	**(Judicial Member)**

Mumbai dated 25.03.2015
SKS Sr. P.S,

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The concerned CIT(A)*
4. *The concerned CIT*
5. *The DR, "K" Bench, ITAT, Mumbai*

By Order

Assistant Registrar
Income Tax Appellate Tribunal,
Mumbai Benches, MUMBAI