IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'D' : NEW DELHI)

BEFORE SH. G.S.PANNU, HON'BLE VICE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 216/Del/2016, A.Y. 2012-13
ITA No. 559/Del/2017, A.Y. 2013-14
ITA No. 4838/Del/2017, A.Y. 2014-15
ITA No. 7724/Del/2018, A.Y. 2015-16
ITA No. 6040/Del/2019, A.Y. 2016-17

Sabre GLBL Inc. Mr. Tarandeep Singh, Adv. C/o. MS Associates, F-99, Lajpat Nagar-II, New Delhi PAN : AAACT7216Q	Vs.	Asstt. Commissioner of Income Tax, Circle-3(1)(2), International Tax New Delhi
(APPELLANT)		**(RESPONDENT)**

ITA No. 6731/Del/2015
(Assessment Year : 2012-13)

Deputy Commissioner of Income Tax, International Taxation, New Delhi	Vs.	Sabre GLBL Inc. Mr. Tarandeep Singh, Adv. C/o. MS Associates, F-99, Lajpat Nagar-II, New Delhi-110024 PAN : AAACT7216Q
(APPELLANT)		**(RESPONDENT)**

Assessee by	Sh. Tarandeep Singh, Adv.
Revenue by	Sh. Vizay B. Vasanta, CIT-DR

Date of hearing:	10.11.2023
Date of Pronouncement:	09.02.2024

ORDER

PER ANUBHAV SHARMA, JM:

Assessee has come in appeal challenging the final assessment order dated 29.10.2015 in A.Y. 2012-13, dated 08.11.2016 in A.Y. 2013-14, dated 26.05.2017 in A.Y. 2014-15 dated 27.09.2018 in A.Y. 2015-16, dated 16.05.2019 in A.Y. 2016-17 respectively and Revenue has come in appeal against the final assessment order dated 29.10.2015 in A.Y. 2012-13 u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') coupled with challenging the DRP findings in observations. As the appeals are based on common set of facts and legal aspects, the appeal ITA No. 216/Del/2016, A.Y. 2012-13, is taken as the lead case and facts, wherever relevant to be reproduced, shall be from AY 2012-13 and findings shall apply *pari materia* to other AYs.

2. The brief facts of the case are that Sabre GLBL Inc. ('the assessee' or 'Sabre') (earlier known as Sabre GLBL Inc.) is a company incorporated in USA. The assessee is a tax resident of USA. The Primary business activity of Sabre in India is Sabre Travel Network which facilitates the booking of airline reservations for and on behalf of participating airlines. Another set of services rendered by Sabre Hospitality Solutions is relating to Hotel bookings instead of Airlines. As per the case of assessee, Sabre has entered into a participating carrier distribution and service agreement (hereinafter referred as 'the agreement') with various airlines wherein the assessee through its computer reservation system (CRS) has agreed to facilitate booking of tickets and provide other related services. Sabre also entered into subscriber agreements with travel agencies in countries outside India (Global Subcribers) who have locations in multiple countries which may also include India, who are allowed to access the Sabre

CRS. These global subscriber agreements are generally entered into by the Sabre in the country in which the global subscriber has its headquarters.

2.1 The case of assessee is that under the participating carrier distribution and service agreement, the assessee earns booking fees from various participating airlines when travel reservations are made using its CRS. Activities in India are about providing end to end flight booking services through Indian travel agent via CRS for the Airlines concerned. It was submitted that the asseessee does not have any office / place of business in India nor does it have any employees based in India. It only avails of certain marketing support from branch office of its group company in India. Hence, the assessee does not constitute a Permanent Establishment (PE) in India. In absence of a PE of the assessee in India, business income earned by assessee from its three business segments also cannot be subject to tax in India under Article 7 of the DTAA between India and US (referred herein after as 'Treaty')

2.2 Assessee has claimed that in view of the belief that the assessee did not have any PE in India, it electronically filed its return of income for Assessment Year 2012-13 adopting a position that revenues derived by Assessee were not taxable in India.

3. The return of income was selected for scrutiny and notice under Section 143(2) of the Act was issued to the assessee. A detailed questionnaire in this regard was later issued asking for various information and explanations. The draft assessment order dated February 23, 2015 for AY 2010-11 under Section 144C(1) / 143(3) of the Act by Deputy Commissioner of Income Tax, Circle 3(1)(2), International Taxation, New Delhi was served on the assessee proposing to assessee the total income at INR 28,941,670 holding that Sabre constitutes a

permanent establishment (PE) in India and attributing total profits earned from booking fee originating from India to the PE.

4. Assessee went before DRP and filed Objections. The assessee had objected to the proposed adjustments on 4 counts which were dealt by DRP as follows;

4.1 First objections was challenging the allegation of assessee having (1) a fixed place Permanent Establishment (“PE”) under Article 5(1) of the Treaty; (2) and constitutes a Dependent Agent Permanent Establishment ("DAPE") under Article 5(4) of the DTAA. Further that AO erred in proposing to hold that the assessee has a business connection in India under Section 9(1) of the Act.

4.2 In this context the primary objection of the asseessee was that in proposing to hold so, the AO has erred in following the assessment order for earlier years without appreciating that facts of the assessee's case for the year under consideration are materially different from the one in earlier years (ie. AY 2005-06 and before) in context of which orders for those years were passed.

5. The second objection of assessee was that AO has erred in proposing to hold that 100 percent of profits from fee earned by the assessee from customers in India are attributable to the alleged PE of assessee in India.

5.1 In this context it was submitted to DRP that in holding to propose so, the A.O. has erred in not appreciating the provisions of Section 9 of the Act which provides that in case of a business of which all operations are not carried in India, only such part of the income shall be deemed to accrue or arise in India as is reasonable attributable to the operations in India. Furhter that the AO has erred law in not following the ratio of order of the Hon'ble High Court in assessee's

own case for AY 1997-98 to 2005- 06 wherein it was held that fee earned by the assessee is not chargeable to tax in India.

6. DRP having considered the submissions and law gave a composite finding on these two objections. DRP observed that the AO has come to the finding in para 3 of the draft order that the assessee earned booking fees from various Airlines when travel agents/ airlines make ticket bookings using the assessee, CRS. The CRS gateway is nothing but a business vehicle. In the virtual business setting such a gateway is the fixed place of business as revenues accrue out of it and also the interests and stakes reside here. Article 5(1) of the Treaty provides that the term 'PE' means a fixed place of business through which the business of the enterprise is wholly or partly carried on. The usage permission to access specific CRS of the assessee by the travel agents for booking tickets of the airlines would constitute a PE of the assessee. It has to be viewed in the context of redefined business models where the conventional shopping/ticket purchases by ‘touch and feel mechanisms' is absent. It is the perusal of various traits/features of the item to be acquired- ticket in this case- where the class, the price and date airline etc are selected and the item is then acquired. Further, Article 5(4) of the Treaty provides that notwithstanding the provisions of paragraphs 1 and 2 above, where a person other than an agent of an independent status to whom paragraph 5 applies is acting in a contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a PE in the first-mentioned state subject to fulfillment of certain conditions specified therein.

7. The case of assessee was that Post Feb 2005, access to the Sabre CRS was no longer directly distributed to Indian travel agencies after the SITAR agreement was canceled. Instead, Sabre entered into subscriber agreements with

travel agencies in countries outside India (referred to internally as Global Subscribers) who have locations in multiple countries which may also include India, who are allowed to access the Sabre CRS. These global subscriber agreements are generally entered into by the Sabre in the country in which the global subscriber has its headquarters. For example, Sabre has a global subscriber agreement with American Express ("AMEX") in the US which allows the AMEX affiliates worldwide, including in India, to access the Sabre system. Sabre pays an incentive fee to the global subscribers for each booking their agents make in the system under an incentive based addendum to their global subscriber agreement. So, for example, Sabre may charge an airline a booking fee of $4.00 per booking and pay an incentive fee to the global subscriber of $2.00 per booking. These incentive fees are generally paid directly by Sabre to the global subscriber and nothing is paid directly to Indian based affiliates of the global subscriber.

7.1 It is submitted that under this arrangement that neither a computer nor a printer is installed at the premises of travel agents in India or is funded in any way by the assessee. The agent is only allowed to access Sabre CRS main frame of appellant in USA through nodes and network which are independently sourced by these travel agents on their own and Sabre in no way assists or provides or facilitates in providing such communication link.

8. However the DRP was of the view that the business model of the assessee has undergone some specific changes, is not tenable when the whole picture is considered. It observed that the notional alterations in view of winding up of the NMD do not materially alter the business model of the assessee and hence the AO was not wrong in following the prior period conclusions. DRP concluded that the travel agents are not exclusive to the assessee but the gateway of assessee,

once accessed makes them agents of the assessee for the set of transactions then in process resulting thereby in a PE.

9. DRP relied Tribunal order in case of **Galileo International Inc vs DCIT (2008) 19 SOT 257 (Delhi)** and concluded that while examining identical issue of existence of fixed place of PE in case of a CRS company and has held that a fixed place of PE was in existence. It will be appropriate here to reproduce below as what part of this order was relied by the DRP;

> *"17.1. In the present case it is seen that the CRS, which is the source of revenue is partially existent in the machines namely various computers installed at the premises of the subscribers. In some cases, the appellant itself has placed those computers and in all the cases the connectivity in the form of nodes leased from SITA are installed by the appellant through its agent. The computers so connected and configured which can perform the function of reservation and ticketing is a part and parcel of the entire CRS. The computers so installed require further approval from appellant/Interglobe who allows the use of such computers for reservation and ticketing. Without the authority of appellant such computers are not capable of performing the reservation and ticketing part of the CRS system. The computer so installed cannot be shifted from one place to another even within the premises of the subcriber, leave apart the shifting of such computer from one person to another. Thus, the appellant exercises complete control over the computers installed at the premises of the subscribers. In view of our discussion in the immediately preceding paragraph, this amounts to a fixed place of business for carrying on the*

business of the enterprise in India, But for the supply of computers, the configuration of computers and connectivity which are provided by the appellant either directly or through its agent Interglobe will amount to operating part of its CRS system through such subscribers in India and accordingly PE in the nature of a fixed place of business in India. Thus the appellant can be said to have established a PE within the meaning of paragraph I of article 5 of Indo-Spain treaty."

10. In view of the above discussion, DRP did not find any error in the action of the AO and also upheld it in view of provisions of section 9 of the Act.

11. Taking third objection on attribution. It has been submitted on behalf of the assessee, before the panel, that that assessee's business operations in India are only limited to generation of the booking fee for the tickets/hotels booked by independent travel agents using assessee's CRS system location in US. Apart from this activity, no other business activity -sales, marketing research, development etc. is carried out by assessee in India. Hence, if at all there is a need to attribute profits to the alleged PE of the assessee in India, the same shall be limited to the activity relating to origination of booking fee by the travel agent in India.

11.1 In this regard, the attention of Panel was invited to decision of Jurisdictional Delhi Tribunal in the assessee's own case for AY 1997-98 to AY 2005-06 wherein under the facts of old business operation model applicable till February 2005, the Tribunal had upheld a 15% attribution of profits resulting from booking fee generated from India to the PE. Additionally, since assessee had remunerated its PE i.e. NMD at 60% of total booking fee originating from

India, there was no need to attribute further profits to such PE in India. Accordingly, Tribunal had held that that no further income from the booking fees from bookings generated from customers in India are taxable in India, even though assessee constituted a PE in India. It was submitted that Hon'ble Delhi High Court in the assessee's case for AY 1997-98 to AY 2005-06 has affirmed the above mentioned order of Delhi Tribunal. It was submitted that the above position had also been upheld by Hon'ble Delhi High Court in the case of Galileo International Inc. v. DCIT 19 SOT 257 and Mumbai Tribunal in the case of Amadeus Global Travel Distribution S.A. v. DCIT 113 TTJ 767, the facts of which are similar to assessee's old business operation model applicable till February 2005.

12. Accordingly, in deference to the view of the Hon'ble High Court & Tribunal, the DRP directed the AO to follow suit. It directed that the AO shall carry out the attribution as directed by the Tribunal in case of the assessee for the prior period following the directions accordingly. DRP also directed the Assessee to provide financial data to the AO to facilitate the compliance.

13. Dealing with fourth objection about the AO proposing to initiate the penalty proceedings under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income without appreciating the facts of the case and in proposing to levy interest under Section 234A, 234B, 234C and 234D of the Act.

14. The DRP held these objections are premature and consequential. DRP, however, laid that the obligation to pay advance tax remained in view of the appellate findings for the prior periods. The assessee shall be liable for the same. However the AO may correct any computational errors in view of the attribution as per directions here above.

15. Accordingly DRP issued directions to the AO to complete the assessment and consequently AO passed the final assessment order against which the Revenue and assessee both are in appeals.

15.1 The grounds raised by assessee in appeal ITA no. 216/Del./2016 for A.Y. 2012-13 ;

> *"1. That on facts and in law the AO erred in assessing the total income of the appellant at Rs. 1,40,27,290/- as against a returned total income of Rs. Nil.*
>
> *2. That on facts and in law the AO/ DRP erred in holding / upholding that the appellant has a :*
>
> *(a) Permanent Establishment in India in accordance with Article 5 of the India-USA Double Taxation Avoidance Agreement.*
>
> *(b) Business Connection in India in accordance with section 9 of the Income Tax Act.*
>
> *2.1 That on facts and in law the AO/ DRP erred in not appreciating that judicial precedents in appellant's own case of earlier assessment years are not relevant post termination of Marketing and Data Processing Services Agreement {i.e. "SITAR Agreement"} w.e.f. 31st January, 2005.*
>
> *3. Without prejudice, that on facts and in law the AO/ DRP erred in upholding taxability of appellant in India with an attribution of profits @ 15% of revenues earned as booking fee generated in India.*
>
> *4. That on facts and in law the AO erred in not allowing deduction for the expenses incurred in earning the revenue allegedly attributable to the PE.*
>
> *5. That on facts and in law the AO erred in levying interest u/s 234B of the Income Tax Act.*
>
> *6. That on facts and in law the AO erred in allowing credit for TDS at Rs. 31,87,274/- as against a credit of Rs. 33,75,629/- claimed by the appellant vide letter dated 30th September, 2015.*
>
> *7. That on facts and in law the order passed by Assessing Officer {hereinabove referred to as the "AO"} and Dispute Resolution Panel {hereinabove referred to as the "DRP"} are bad in law and void ab-initio.*
>
> *That the appellant prays for leave to add, alter, amend and / or vary the grounds of appeal at or before the time of hearing."*

15.2 The grounds raised by the Revenue in appeal ITA no. 6731/Del/2015 for A.Y. 2012-13 ;

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in directing the Assessing Officer to follow the decision of the Hon'ble ITAT and Hon'ble High Court in assessee's own case for the AYS 1997-98 to 2005-06 when the said decisions were rendered on totally different facts.*
> *(ii) Whether on the facts and in the circumstances of the case and in law, the DRP has erred in directing the Assessing Officer to follow the decision of the Hon'ble ITAT and Hon'ble High Court in assessee's own case for the AYs 1997-98 to 2005-06 when the DRP itself has noted the submissions of the assessee that the old business operation model was applicable till Feb 2005.*
> *(iii) Whether on the facts and in the circumstances of the case and in law, the DRP has erred in ignoring the vital fact that unlike in the past upto AY 2005-06, there were no commission expenses paid or other expenses incurred by the assessee after AY 2005-06 against the income originating from India.*
> *(iv) Whether on the facts and in the circumstances of the case and in law, the DRP has erred in placing reliance on the decision of the Hon'ble ITAT in assessee's own case for AYS 1997-98 to 2005-06 in attributing only 15% of total Booking fees to the Indian PE, when the assessee itself has acquiesced in the taxation of the entire receipts originating from India as income for the AYS 2006-07 to 2011-12.*
> *(v) The appellant prays for leave to add, amend, modify or alter any grounds of appeal at the time or before the hearing of the appeal."*

16. **Heard and perused the record.** The ground no. 1 as raised is general and the ground no. 2 which is sub ground is the foundation of remaining grounds. Therefore, we proceed to first determine ground no. 2 with sub ground as follows.

17. Ld. AR has primarily reasserted the submissions which were raised before the AO or DRP. His stress was on the assertion that there was change in the manner of operations in India as compared to earlier years. He had submitted

that in the earlier years i.e. prior to 2005 the computers and peripherals were at the cost of NMD but subsequently, the NMD was no more in the picture and the assessee then entered into the subscriber agreements with travel agencies in countries outside India who were bringing business to the assessee by assess to Sabre CRS mainframe of assessee in USA through notes and networks which were independently sourced by these travel agents on their own and Sabre played no role in providing such communication link.

17.1 He has submitted that the reliance by the DRP on the judgment of **Galileo (Supra)** was erroneous as in that case the Galileo had business connection and fixed places PE in India on the basis that the subscribers who were enrolled through the efforts of NMC to engage in the services of various participating airlines and Hotels through Galileo system were situated in India. The computers in some of the cases as well as connectivity and configuration of the computer were provided by Galileo. The booking took place in India on the basis of presence of such seamless SRA system and therefore there was a fixed place PE. Ld. AR submitted that when the change in the business module has not been disputed then following the earlier years findings of the Tribunal about the fixed place PE was not justified. It is submitted that the AO alleges fixed place PE on the basis of income stream from India but that would have been relevant only for the purpose of Section 9(1)(i) to ascertain if the income accrued areas in India but not for determining existence of fixed places of PE for which conditions stipulated in article 5(1) of DTAA must be satisfied.

17.2 Referring to Hon'ble Supreme Court decision in **Formula One World Championship Ltd. reported in 394 ITR 80 (SC)** it was submitted that one must clearly demarcate the distinction between the concept of "trading with India" v/s "trading in India" and that for existence of Fixed Place PE an assessee

must have a "place" in India which must be "at the disposal" of that assessee. That this "place" can only be tangible connected with soil. That mere use of an intangible property will not give rise to existence of a Fixed Place PE.

17.3 Then referring to Tribunal decision in **Western Union Financial Services Inc. reported in 104 ITD 34 (Delhi)** it was submitted that in this case, it is held that when a software installed in India grants access to taxpayer's mainframe located outside India, such use/ access of software will not constitute PE of the taxpayer in India. He specifically referred to following observations;

> *"26. The department has made out a case that the software, which affords access to the agents to the assessee's mainframe, computers in USA for the purpose of finding out the matching of the MTCN numbers, has been installed in the premises of the agents and hence taken together with the premises constitutes the PE. The premises of the agents are either owned or hired by them. There is no evidence to show that the assessee can as a matter of right enter and make use of the premises for the purpose of its business. The software is the property of the assessee and it has not parted with its copyright therein in favour of the agents. The agents have only been allowed the use of the software in order to gain access to the mainframe computers in the USA.* ***Mere use of the software for the purpose from the premises of the agents cannot in our opinion lead to the decision that the premises-cum-software will be the PE of the assessee in India.*** *Under article 5.2(j) and installation may amount to a PE provided it is used for the exploration of natural resources. Therefore, even if the software is to be considered as an installation, since it is not used for exploration or exploitation of natural resources it cannot per se be treated as a PE".*

18. In regard to the agency PE it was submitted that subsequent to 2005 there is no role of NMD who was sole distributor and there is no Sitar arrangement. Referring to the provisions of Article 5 of the DTAA between India and USA, he submitted that as per Article 5(4) of the DTAA, where a person, other than an agent of an independent status to whom Para 5

applies, is acting in a contracting state on behalf of an enterprise of the other contracting state, that enterprise shall be deemed to have a PE in the first-mentioned State, if such agent (a) has and habitually exercises in the first-mentioned State an authority to conclude contracts on behalf of the enterprise; or (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ; or (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise. Then as per Article 5(5) of the DTAA, the agent should not be an independent agent. A person would be an independent agent if such person is acting in the ordinary course of its business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise and the transactions between the agent and the enterprise are not made under arm's length conditions, it shall not be considered as an agent of independent status. It is only when the agent is not independent as per Article 5(5) that the aspect of dependent agent under Article 5(4) would become relevant.

19. It was submitted by Ld. AR that during the year under consideration, assessee had executed Global Subscriber Agreements. Once such global agreement is with American Express in USA. Now when facts of the case are examined from the perspective of Article 5(5) it is apparent that:

- A' and American Express are unrelated and therefore, they are acting in ordinary course of business.
- In Galileo's case, its agent M/s Interglobe was held to be wholly dependent upon Galileo for CRS business however in assessee's case, DRP accepts that travel agents are not exclusive to 'A'.

19.1 It was also submitted that moreover, none of the lower authorities have doubted the fact that 'A' and American Express who are unrelated have transacted otherwise than at ALP. ALP violation is a mandatory condition which revenue must prove to show that the agent is not independent. Reliance for this was placed on **Western Union's case (supra).**

20. As with regard to the query raised as to why assessee had not challenged the holding of PE in relevant AYs after 2005, it was submitted that first thing is there is no res-judicata in income tax proceedings. So if the assessee has accepted assessment orders for AY 2008-09, 2009-10 & 2011-12 findings of which are identical to the impugned order of assessment will not act as a res judicata for challenging similar findings of the AO in the year under consideration. Further, vide a letter dated 09-08-2023 (filed during the course of hearing on 10-08-2023), assessee had duly narrated the facts and circumstances wherein though aggrieved, in order to buy peace and avoid protracted litigation on account of low financial impact, it did not file appeals against assessment orders for AYs 2009-09, 2009-10 and 2011-12 before CIT(A).

20.1 Here itself, we are inclined to observe that there is force in the aforesaid submissions of Ld. AR, that for quite valid reasons the assessee had not challenged the assessment orders for AY 2008-09, 2009-10 & 2011-12. Even otherwise, Assessee is best judge of its interest and is not precluded or devoid of its rights to challenge the alleged adverse order in this year with consequences to follow from this year.

21. Further, it was submitted that it is also well settled that burden is on revenue to demonstrate existence of PE for which reliance was placed on **E-**

funds It Solutions Inc reported in 399 ITR 34(SC). Further it was submitted that it is now well established that merely because PE has been upheld in one year based on set of facts for that year, it will not ipso facto give power to AO to hold PE in subsequent year when facts are different. Reliance was placed on Delhi bench order in **Nova Pignone International ITA 999/Del/2022 order dated 13-06-2023.**

22. Then without prejudice to aforesaid on attribution it is submitted that Revenue has challenged the directions of DRP allowing 15% attribution. DRP's directions are on basis of orders passed by Tribunal in case of assessee for earlier years which are further premised upon Hon'ble Delhi High Court decision in case of Galileo (supra). Apex Court has now in case of Travelport and others in Civil Appeal 6511/2010 and order, vide order dated 19-04-2023 upheld Delhi High Court decision in case of Galileo.

22.1 Further if at all an attribution is required to be made to the alleged PE, the same should be lower than that of 15% as held in appellant's own case for earlier years as owing to the change in business model post 2005, the activities carried out by the appellant in India until 2005 were relatively more that the activity of origination of booking request currently undertaken by unrelated and independent travel agents in India.

23. Ld. DR however, supported the findings of DRP qua issue of PE and submitted that same gateway was being used so there is no change in the circumstances. It was submitted that provision of hardware is not of much relevance when same interface is being used. He thus submitted there is not much difference in the model of operations. He submitted that as bookings were in India there was a business connection. It was also submitted that

DRP has not examined the Agency PE.

24. **Findings;** Now giving thoughtful consideration to the submissions and the matter on record. The bench is of considered view that the vital question to be determined is if the Ld. AO and the DRP were justified to follow the Tribunal orders in case of assessee for A.Y. 1999-2000 and 2004-5 to hold that there was a fixed place PE of assessee in India and an agency PE of assessee in India. In order to determine this question we first need to go through the history of litigation of assessee. In A.Y. 1997-98 to 2005-06 vide ITA no. 2311 to 2317/Del/2018 and ITA no. 2493 to 2499/Del/2018 following decision of Hon'ble Delhi High Court in case of **M/s. Galileo International reported in 336 ITR 264 (Del)** fixed place PE and Agency PE were found to be in existence. The copy of this order is available in paper book II at page no. 120 to 131 show that the Co-ordinate bench following the judgment of Hon'ble Delhi High Court in the case of Galileo International Corporation order dated 25.02.2009 considered the facts of the case of assessee identical and accordingly holding that there was fixed place PE and Agency PE followed the order of Hon'ble High Court in term of attribution of profit also. Subsequently, by order dated 10.07.2009 for A.Y. 1999-2000 and 2005-06 following the order passed for A.Y. 1997-98 the appeals were allowed.

25. In High Court as Revenue went in appeal, the two appeals were disposed of in terms of the decision of Hon'ble Delhi High in the case of **Galileo International Inc. (supra).** Thus, the order of Tribunal and Hon'ble Delhi High Court in the case of Galileo are relevant for giving any factual and legal finding qua the case of assessee and ld. AR has heavily relied on the findings of the Tribunal and Hon'ble Delhi High Court to submit that the

case of assessee after 2005 is on a different pedestal as there is change of business model.

26. Thus when we examine the business model of assessee prior to 2005 and thereafter, it comes up from the submissions of ld. AR, which factually are not rebutted by any efforts of Ld. Tax authority below, that before 2005 for which there are decisions of Tribunal and Hon'ble High Court and which have been followed as a precedent in the present year also Sabre entered into Participating Carrier Agreement (PCA) with various airlines etc. for providing distribution services through its CRS for which Sabre received booking fees. Then, Sabre entered into marketing and distribution agreement with an incorporated Joint Venture of two Indian Airlines i.e. Indian Airlines and Air India which was known as NMD. This agreement with NMD was termed as "SITAR". NMD in turn entered into subscriber agreements with various Indian Travel Agent to provide them with access to the Sabre CRS including access equipment, communication link and support services. NMD also installed computers, printers etc. at travel agent premises in India and the title of ownership of such equipments remain with NMD. Sabre remunerated NMD for providing distribution and marketing services @ 60% of booking fees. Further cost of computer and printers etc. installed by NMD at the premises of agent was also partially reimbursed by Sabre to NMD. The cost of communication links was however borne by NMD.

27. However, after March, 2005 Sabre entered into Participating Carrier Distribution and services agreements with various airlines etc. for facilitating booking of tickets and providing related services through CRS. Sabre earns booking fees from various participating Airlines for such services. Sabre entered into the subscriber agreements with global travel

agencies such as Ammtex who have presence / affiliates in multiple countries including India and grant them access to Sabre CRS. Sabre incorporation is not responsible for providing of any computer, printers, communication lines etc. to Indian subsidiary of Global Travel Agents like Amm/ Travel agents.

28. Now when we take the case of M/s. Galileo International Inc. it comes up that the Tribunal in its order dated 30.11.2007 had extensively reproduced various clauses and recitals from the Participating Carrier Agreement or PCA entered into by Galileo International Inc. with various participants. The Tribunal has taken into consideration and reproduced various clauses and recitals of the distribution agreement between Galileo international Inc. with Interglobe Enterprises Pvt. Ltd. (Interglobe) an unrelated company to market and distribute CRS services to the travel agent in India. Pertinent to mention is that Galileo International appointed Interglobe as the sole and exclusive distributor of Glileo international CRS Services in the market region and it was agreed Interglobe shall establish the Indian NDC with the name Galileo India. Further Interglobe had undertaken to Galileo International that it will accept Air India and Indian airlines as participant, associate or shareholder Indian NDC.

28.1 It will be beneficial to reproduce certain clauses of the distribution agreement between Galileo International with Interglobe from the order of Tribunal.

> *"2.1 Except as provided herein, Galileo International hereby appoints Interglobe as the sole and exclusive distributor of Galileo International's CRS Services in the Market Region and Interglobe hereby agrees to act in that capacity, subject to the terms and conditions of this agreement.*

2.2 Interglobe shall establish the Indian NDC, the name of which shall be "Galileo India ". Galileo India shall be, at Interglobe's discretion, either a division or a subsidiary of Interglobe. In the event that the Indian NDC established as or is converted into a subsidiary of Inter globe, it shall by a amendment to this agreement be added as a party to this agreement. Notwithstanding any such amendment, Interglobe shall at all times ensure that the Indian NDC has sufficient share capital and/or funding (a appropriate) to enable it to acquire the necessary resources and personnel in order for it to fulfil its obligations under this agreement.

4.2 "Interglobe shall at its own cost and responsibility provide Galileo International's CRS Services without alteration, except as may be mutually agreed, from the Node or Router to Subscribers in the Market Region and shall either provide equipment to Subscriber or facilitate the connection of equipment to access Galileo International's CRS Services. Galileo International shall provide to Interglobe details of the hardware and software specifications approved from time to time by Galileo International for use in conjunction with Galileo International's CRS Services and including, but not limited to, operating, performance or other parameter. Interglobe shall use its best endeavours to ensure that all hardware and software used to access Galileo International's CRS Services in the Market Region comply with such specifications and including, but not limited to, any operating, performance or other parameter imposed by Galileo International".

6.5 All computer hardware for use by Subscribers in the Market Region which is required by Interglobe during the first two years hereof in order for Subscribers to use the Galileo System shall be provided by Galileo International at no cost to Interglobe. For the avoidance of doubt, it is the intention of the parties that the costs herein born by Galileo International are the cost of the hardware and the costs associated with delivery to Interglobe in India inclusive of freight and duty (duty to be initially paid by Interglobe and reimbursed by Galileo International) and that all costs incurred after delivery including but not limited to installation, testing, maintenance and post customs warehousing shall be the responsibility of Interglobe. Galileo International will retain title to all computer hardware supplied to Interglobe as contemplated in this Clause 6.5."

28.2 Then the Tribunal in the case of Galileo International reproduced and considered various clauses and recitals of the subscriber agreement which Interglobe had entered into with various travel agent to provide the travel agents with access code, equipment, communications link and support services. It will be again relevant to reproduce some of the clauses of this subscriber agreement which was taken into consideration by the Tribunal in the case of Galileo International.

> *"Interglobe in turn enters into Subscriber Agreements with various TAs to provide the TAs with access codes, equipment, communications link and support services. The TAs may chose to obtain access to the Appellant's CRS through the access code provided by the Interglobe or they may chose to independently access the CRS of the Appellant's competitor. A model subscriber agreement is prescribed as part of DA; As in Clause 6.3 is the DA, Interglobe enters into Subscriber agreement with the subscribers. Relevant Clauses of said Agreement are extracted herein:*
>
> *4.1 Galileo will, at no cost to Subscriber, liaise with and provide information to Subscriber in relation to the preparation of the Location and the installation an operation of the Apparatus.*
>
> *4.4 Relocation of any installed Equipment or any part of the Communications Link (including any relocation at the same premises) may only be undertaken by Galileo or its agent for this purpose, at Subscriber's expense, unless Galileo's prior written consent (which will not be unreasonably withheld or delayed) is obtained.*
>
> *6.5 Subscriber will not remove or obscure any identifying marks from the Rented Equipment, the communications Links, the Software Products or the Media or subject any of them to any lien or encumbrance.*
>
> *10.1 Subscriber shall allow representative of Galileo to enter the Location during the normal business hours of Subscriber for the*

purposes of installing, inspecting and viewing the Apparatus and its operation."

28.3 Based on various clauses of the agreements between participants and the Tribunal had made following conclusion about the mode of operations and providing services;

"The MCS is connected to TAs in India through a communications network arranged by Society International de Telecommunications Aeronautiques (SITA) under an agreement between the appellant and SITA. SITA is unrelated to the appellant and is an independent service provider SITA has nodes in Indian which it owns and the appellant's CRS connected to those nodes through communication links. The appellant at its own cost, has obtained connectivity services from its Data Centre in USa to, inter alia the nodes of SITA in India. SITA does not own local communication lines within India and, therefore, contracts with the local telephone companies for the appropriate circuits."

28.4 Thereupon the Tribunal analyzing these agreement and there is consequences reached a conclusion that there was a business connection in India arising from the agreements entered into by various parties. Para 8.2 of the Tribunals order in that regard is relevant to reproduce here as under :

"8.2 In light of the above provisions in the Income-tax Act and the judicial pronouncements, we may appreciate the facts and deal with the issue. The appellant has developed a fully automatic reservation and distribution system known as Galieleo system with ability to perform comprehensive information, communication, reservation, ticketing, distribution and related functions on a worldwide basis. Through this Galileo system, the appellant provides service to various participants i.e. Airlines and hotels etc. whereby the subscribers who are enrolled through the efforts of NMC can perform the functions of reservations and ticketing etc. Thus the Galieleo system or the CRS is capable not only processing the information of various Airlines for display at one place but also enables the subscribers to book tickets in a way which is a seamless system originating from the desk of the subscriber's computer which may or may not be provided by the

appellant but which in all cases are configured and connected to such an extent that such computers can initiate or generate a request for reservation and also receive the information in this regard so as to enable the subscriber to book the Airlines seat or hotel room. The request which originated from the subscriber's computer ended at the subscriber's computer and on the basis of information made available to the subscriber, reservations were also possible. It is to be noted that all the subscribers in respect of which income is held taxable are situated in India. The equipment i.e. computer in some cases and the connectivity as well as configuration of the computer in all the cases are provided by the appellant. The booking takes place in India on the basis of the presence of such seamless CRS system. On the basis of booking made by the travel agent in India, the income generates to the appellant. But for the booking no income accrues to the appellant. Time and again it is contended that the whole of the processing work is carried out at host computer situated at Denver in Colorado, USA and only the display of information is in India for the proposition that there is no business connection in India. We are unable to agree with such proposition. The CRS extends to Indian territory also in the form of connectivity in India. But for the request generated from the subscriber's computer's situate in India, the booking is not possible which is the source of revenue to the appellant. The assessee is not to receive the payment only for display of information but the income will accrue only when the booking is completed at the desk of the subscriber's computer. In such a situation, there is a continuous seamless process involved, at least part of which is in India and hence, there is a business connection in India. The computers at the subscriber's desk are not dumb or are in the nature of kiosk incapable of performing any function. The computers along with the configuration has been supplied either by the appellant or through its agent Interglobe and the connectivity being provided by the appellant enables the subscribers to access the CRS and perform the ticketing and booking functions. The existence of business connection can be summarised thus:

1) Assessee hires SITA nodes in most major cities in India together 800 land lines for maintaining telecommunication network in India as evident at page Nos. 278 to 281 of the assessee's paper book No. 1.

2) Assessee secures the provision of the operation of the

communication network from SITA node to travel agent as evident at page 281 of assessee's paper book No. 1

3) By Clause 15.3 of the Distribution Agreement, the assessee specifically authorises Interglobe (Galileo India) to conclude agreements with the Travel agents in India in accordance with the model Subscriber Agreement which forms an annexure to the said Agreement.

4) Assessee lays down targets and closely supervise and reviews the performance of Galileo India on day today basis in accordance with the Annual Plan and the service manual prescribed by it as per Clause 14 of Distribution Agreement.

5) Assessee allots access code to the travel agents for using the CRS.

6) The assessee's business comprises of:

a) Maintenance and running of CRS;

b) Providing computer modem and software to the travel agents in India so that they can use the CRS for making the bookings which generate charge on the airlines;

c) Assessee hires from SITA and maintains and operates telecommunication network in India so that travel agents could make the bookings.

All these activities are integral part of the core business carried on by the assessee and these are not auxiliary or preparatory in nature.

The contention of Shri Vyas regarding reliance on the decision in the case of Fisher v. Bells (supra) in this case is misplaced. Whether the contract for sale of ticket is completed in India or outside is irrelevant for the purpose of present discussion as we are not to determine the taxability of income of various airlines accruing as a result of sale of tickets through the CRS in India. Thus, the availability of the tickets displayed through the CRS at the desk of travel agents in India is whether offer for sale or an invitation to an offer is not a deciding factor. What we find is that part of the Galileo system exists in India

in the form of configuration and connectivity of such system through which booking activities can be performed in India. The decision of ITAT, Bangalore Bench in the case of Wipro Ltd. (supra) is also misplaced as in that case no part of the data processing facility was performed in India but wholly outside India. In the present case, the appellant operates the Galileo system which is the source of revenue and part of such system exists in India. Thus there is a direct business connection established in India and hence in terms of Section 9(1)(i) of the Act, the income in respect of the booking which takes place from the equipment in India can be deemed to accrue or arise in India and hence taxable in India."

28.5 Thereafter in the light of DTAA held the existence of PE by following observations in para 17.2 as follows ;

"17.2 The next question to be considered is if there is a permanent establishment, whether the exception provided in paragraph 3 of Article 5 applies so as to hold that there is no permanent establishment in India. The case of the appellant is that the existence of such computers are merely for the purpose of advertising and the activities are preparatory or auxiliary in character and hence there is no fixed place PE in India in view of the Exception provided in paragraph 3 of Article 5. We are unable to accept such a contention. The function of the PE in India is not to advertise its products. The activity of the appellant is developing and maintaining a fully automatic reservation and distribution system with the ability to perform comprehensive information, communication, reservation, ticketing, distribution and related function on a worldwide basis. The computers installed at the premises of the subscribers are connected to the global CRS owned and operated by the appellant. Using part of the CRS System, the subscribers are capable of reserving and booking a ticket. Thus it cannot be considered as "solely for the purpose of advertisingn" of such CRS system. Similarly it is not in the nature of 'preparatory or auxiliary' character. It is difficult to distinguish between the activities which are 'preparatory or auxiliary' character and those which are not. The decisive criteria is whether or not the activity of the fixed place of business in itself forms an essential and significant part of the activity of the enterprise as a whole. Since part of the function is operated in India which directly contributes to the

earning of revenue, the activities as narrated above carried out in India is in no way of 'preparatory or auxiliary' character. Thus the exception provided in Paragraph 3 of Article 5 will not apply and hence as stated above, the assessee shall be deemed to have a permanent establishment in India."

28.6 The Tribunal next examined the question of existence of dependent agent PE and made following observations in para 17.3 and 17.4 ;

"17.3 The next question arises is whether the assesee has a PE in India in the form of a dependent agent. It is commonly accepted principle that an enterprise should be treated as having a PE in a state if there is under it a person acting for it, even though the enterprise may not have a fixed place of business. Thus there can be two forms of permanent establishment, (i) fixed place or (ii) through the dependent agent. An agent is a person employed to do any act for another or to represent another in dealing with third person. What an enterprise can do directly but if not so done directly but done through an agent appointed for the purpose, it will be deemed to have been done indirectly. Even in such a situation it can be said that the enterprise carrying on the business through the efforts of such agent and hence can be said to have established a PE. In the present case the appellant avails the services of Interglobe to promote the use or CRS in India and for that purpose, to appoint subscribers in India. Interglobe is authorized to enter into contract with the subscribers in terms of authority generated under Distribution Agreement (DA). The appellant binds itself in respect of booking made by subscriber using the CRS. Thus what could have been done directly by appellant is achieved through the service of Interglobe. Hence, Interglobe is to be treated as agent of appellant in India. Even though in the agreement between appellant and Interglobe, the existence of agency is denied, yet that will not be conclusive if on facts it is found to be agency. That will be relevant only for the limited purpose of agreement between these two parties but not relevant for third parties if on facts the existence of agency is found. However, all the persons other than agent of an independent status cannot be deemed to be a PE of the enterprise. The agents can be considered as PE only and only if when a person other than agent of an independent status, (i) has and habitually exercise in that state an authority to conclude contract or

(ii) though he has no such authority but habitually maintains stock of goods from which he regularly delivers goods on behalf of the enterprise. Thus the first question to be decided is whether the agent is of a dependent status or of an independent status. In the present case we find that Interglobe is totally dependent on the appellant in respect of rendering services to subscribers in India. Thus that part of Interglobe's activities which earns its revenue by rendering services to the subscribers is earned on solely for the appellant. Though Interglobe might be carrying on any other activities, like a full fledge travel agency business, yet in respect of activity relating to installing CRS system of appellant at Subscribers Computers Provide connectivity, configuring the computers to enable it to access CRS, train the subscribers etc. is only and only for the appellant. Such type of activities are not carried on for any other person. Hence, the appellant and Interglobe are interdependent in this regard. The business of Interglobe is to provide data processing and software development services together with relative distribution of Galileo System' to the subscribers in India. Interglobe has also an authority to enter into agreements with the subscribers. Interglobe installs the computers, configures the computers for accessing the CRS and also provides connectivity through SITA notes. Thus functionally as well as financially it is dependent entirely on the appellant. It can therefore, be said that Integlobe is a dependent agent of the appellant.

17.4 The next question to be decided is whether Interglobe is habitually exercising an authority to conclude contracts on behalf of the appellant. Under the distribution agreement entered into by the appellant with Interglobe, it is responsible for effecting and contracting with subscribers in the Indian territory and is to use reasonable efforts to provide access to all the 'Galileo System' out of Indian territory. Though the appellant and even the participating airlines are not party to the agreement entered into by Interglobe with the subscribers, yet the appellant through the PCA has ensured that the subscribers were authorized to use 'Galileo System'. Under an authority granted to them, subscribers use such products. The reservations and ticketing done using the CRS product are being honoured by the participants and for which the remuneration will be payable by the participants to the appellant. Thus Interglobe can be said to have and having exercised an authority to conclude contracts on behalf of the appellant. What the appellant could have done

directly by entering into an agreement with the subscribers, was done through Intetglobe. The subscribers agreement were entered into by Interglobe under an authority available to it in view of the distribution agreement. What could have been done directly is now done indirectly through the offices of Interglobe under an authority granted to it. The phrase "authority to conclude contracts on behalf of the enterprise" does not confine to application of paragraph 4 to an agent who enters into contract literally m the name of enterprise. The paragraph applies equally to an agent who concludes contracts which are binding on the enterprise even if those contracts are not actually in the name of enterprise. Lack of activity involved by enterprise in the transactions may suggest of an authority being granted to the agent. It is contended on behalf of the appellant that the agent to be called dependent agent should have an authority to conclude such contract which contributes to the income of appellant and no other ancillary contract. It is contended on behalf of the appellant that the contracts which generates revenue are the contracts with participating airlines and since the dependent agent has no authority to conclude contracts with such participants, Interglobe cannot be branded as a dependent agent within the meaning of paragraph 4 of Article 5 of the Treaty. On the other hand, the learned DR has submitted that on the plain reading of Treaty, there is no such provision that the contract to be habitually concluded should contribute to the revenue. In our opinion, what is relevant is that such contract shall have a nexus with the business operations as such and not merely contracts for hiring employees, premises etc. What is taxable in the contracting state is the income accruing to such enterprise and the activities are carried on either through the PE namely fixed place or through a dependent agent. The dependent agent is not Ho be considered as PE unless he has authority to conclude contract on behalf of such enterprise. The authority to conclude contracts must be in respect of contracts relating to operations, which constitute the business proper of the enterprise. The appellant in the present case in order to enhance its business operations has appointed Interglobe as its agent who promote the 'Galileo System' in India. Interglobe m its turn has appointed various subscribers for use of 'Galileo System'. Though the revenue flows only from participants who have entered into PCA with the appellant, yet the revenue could not have been generated but for the subscribers using the "Galileo System'. In a way the revenue is generated from the participants but only-on the basis of use of CRS by

the subscribers. But for such use no revenue would accrue to the appellant. Thus the agreements entered into by the Interglobe with the subscribers under an authority granted to it, are contracts relating to operations which constitute business proper and not merely in the nature of internal operations. Such contracts are habitually exercised and there is nothing on record to suggest that such authority was cancelled at any point of time. We, therefore, hold that Interglobe is dependent agent of the appellant who has habitually exercised the authority to conclude contracts on behalf of the appellant. To that extent the appellant has a PE in India. Since we have held that Interglobe is a dependent agent of appellant in India, we need not discuss para (5) of Article 5 of the treaty regarding independent agent form of PE."

28.7 Then the Tribunal proceeded to determine and the such income is chargeable to tax in India to attribute 15% of the Revenue occurring to the assessee in respect of booking made in India as income occurring or arising in India as chargeable u/s 5(2) r.w.s. 9(1)(i) of the Act.

28.8 Then to examine the question whether there exist to permanent establishment of Galileo International India in taking into consideration the test with regard to place of business, right , use and business activity in context to various clauses of recitals of the agreements entered into by the participants the Tribunal concluded in para 17.1 to 17.4 as to how the Galileo International Incorporation has PE in India in two forms namely fixed place PE under paragraph 1 of article 5 and 2nd Agency PE under clause (a) of paragraph 4 of Article 5. The Tribunal then examined as to what is the profit attributable to PE in terms of Article 7 of DTAA between India and USA.

28.9 It comes up that when the matter reached Hon'ble High Court by way of appeal filed by Galileo in paragraph 2 Hon'ble High Court gave a specific finding that Hon'ble High Court was merely examining the question relating to

profit attribution to Indian operations on the assumption that assessee Galileo International had a PE in India. Hon'ble High Court specifically mentioned that Hon'ble High Court was not required and is not pronouncing any opinion or finding on whether the assessee Galileo International had PE in India and other related issues.

29. Thus, based upon the aforesaid facts arising out of various agreements entered between various participants in the case of Galileo when the case of assessee after 2005 is examined there is substantial difference in the operations as compared to earlier years. The access to Sabre CRS was no longer directly distributed to Indian Travel Agencies after the SITAR agreement was cancelled. nstead, Sabre entered into subscriber agreement with travel agencies in countries outside India referred as Global Subscribers with whom Global subscriber agreement were entered. These global subscribers have locations in multiple countries including India and they were allowed to access the Sabre CRS. These Global Subscriber agreement were entered into Sabre in the country in which the global subscriber has its head quarters.

29.1 Assessee has provided a copy of one of such agreements with American Express available at page no. 76 – 116 of the paper book Volume II. As we compare the recitals of this agreement with one which has been taken into consideration and reproduced in the case of Galileo incorporation by the Tribunal. There is apparent distinction in the modus operandi. No longer there is any arrangement to provide any computer or printer or a software installed in the computer at the premises of travel agent in India. Nor there is any financing of such equipment. The agent is allowed to access Sabre CRS mainframe located in USA through Nodes and network which are independently sourced by these

travel agents on their own and Sabre in no way insists, assists, provides or facilitates in providing such communication link. Sabre has no office or employee in India.

30. Thus, we have no hesitation to hold that having regard to various clauses and recitals of the agreements of the participants in the case of Galileo as the Tribunal has reached the finding of fixed place PE, the changed model in case of assessee dilutes all those reasons. No more computers of travel agents are found to be installed or configured under any agreement of the assessee with any of its participant global subscribers. Galileo through Interglobe was exercising complete control over the computers installed at the premises of the travel agents which may have been the case of the assessee also prior to 2005 when it was working through intermediary NMD. At presently after 2005 the agent codes access to Sabre CRS is through global subscribers and the agents themselves arrange for the communication link which was also earlier provided in case of Galileo by Interglobe.

31. Thus, we are of the considered view that Ld. Tax Authorities below having failed to examine the Sabre's Participating Carrier Distribution and Service Agreement or Service Provider Agreement with entities like American Express Travel and thus have fallen in error to follow the earlier years orders in case of assessee which themselves were completely based on the factual matrix examined in case of Galileo. As rightly pointed by the Ld. AR that principles of Res judicata are not applicable in assessment and the burden is all the way is on the Revenue to establish the existence of a PE. In the case in hand the Ld. Tax authorities have utterly failed in discharging the burden. Not even by rebutting the case of assessee on the basis of changed model of business. Rather a very

mundane approach was adopted by DRP by holding that gateway is business vehicle. No doubt about it but what is to be seen is if the same is functional by way of some auxiliary purposes of assessee being performed by alleged PE.

32. Now with regard to the alleged Agency PE, as we have concluded that the business model post 2005 does not have an intermediary in the form of NMD and as in the case of **Galileo International Inc. (supra)** there was active intermediary, as Interglobe, so there is no question of existence of Agency PE. In case of **Galileo International Inc. (supra),** the terms of agreement provided that Galileo International had appointed Interglobe as a sole and exclusive distributor of Galileo International CRS Services for the Indian market and in those circumstances, the Tribunal had held that Interglobe was authorized to enter into contract with the subscribers in terms of authority generated under the distribution agreement. This authorization to bind Galileo gave an agent status to Interglobe. In the case in hand, there is no such intermediary. Further, there is no exclusiveness of the entities like American Express who have entered into global subscriber agreements. They are unrelated parties acting in their ordinary course of business with no exclusiveness to each other. Ld. DRP has appreciated this aspect by holding that the travel agents in India are not exclusive to the assessee while considering the question of fixed place PE but that somehow goes against the concept of Agency PE and for that reasons, nothing specific was held with regard to the Agency PE by DRP. This itself was sufficient to conclude that there was no entity which was habitually procuring contracts for the assessee or to bind the assessee for the contracts to be entered by that entity independently. Thus, we are inclined to hold there was no Agency PE, also.

33. Consequent to aforesaid discussion the ground no 2 with it's sub-grounds in ITA No. 216/Del/2016, A.Y. 2012-13 are decided in favor of assessee and the

consequently the remaining grounds of challenge become academic and accordingly decided in favor of assessee for statistical purposes. **Thus all the appeals of assesses are allowed and that of Revenue stands dismissed.**

34. In the result, all the appeals of the assessee are allowed and that of the Revenue stands dismissed.

Order pronounced in the open court on 9th February, 2024.

Sd/-	**Sd/-**
(G.S.PANNU)	**(ANUBHAV SHARMA)**
VICE PRESIDENT	**JUDICIAL MEMBER**

dk

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

AR, ITAT
New Delhi