IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2" NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

I.T.As. No.3839/DEL/2007, 3247/DEL/2014, 1205/DEL/2015, 5167/DEL/2010 & 834/DEL/2014

Assessment Years: 2004-05, 2005-06, 2006-07, 2007-08 & 2009-10

Rolls Royce Plc., C/o Luthra & Luthra, Chartered Accountants, A-16/9, Vasant Vihar, New Delhi.	v.	Deputy Director of Income Tax, Circle-2(1), International Taxation, New Delhi.
TAN/PAN: AACCR6911L		
(Appellant)		(Respondent)

Appellant by:	Shri Percival Billimoria & Shri S.R. Patnaik, CA		
Respondent by:	Shri G.K. Dhall, CIT-D.R.		
Date of hearing:	12	04	2019
Date of pronouncement:		07	2019

O R D E R

PER AMIT SHUKLA, JM:-

The aforesaid appeals have been filed by the assesse, Rolls-Royce Plc., a company incorporated in the United Kingdom. The present appeals are for the A.Ys. 2004-05; 2005-06; 2007-08; & A.Y. 2009-10. Since issues involved in all the impugned appeals are common arising out of identical set of acts, therefore, same were heard together and are being disposed of by this consolidated order. The core issue involved in all the appeals is, whether the assesse company has a PE in India in the form of liaison office of M/s. Rolls Royce India Ltd., a separate entity for its sale of goods

in India and consequently the attribution of profits of the PE in India.

2. At the outset, it would relevant to mention here that, in assessee's own case this Tribunal in the appeals for the assessment years 1997-98 to 2000-01; and assessment years 2002-03 and 2003-04, the issue of PE has been decided against the assesse and also the issue of attribution of profit, which matter had also travelled up to the Hon'ble Delhi High Court and by and large the order of the Tribunal has been upheld. However, before us the learned counsel for the assesse, Mr. Percival Billimoria submitted that not only the facts and circumstances have changed but also now there are judicial principles laid down by the Hon'ble Supreme Court on the concept of PE. Before we discussed the arguments put forth by both the parties it would be relevant to capture the background and brief facts of the case.

3. Rolls Royce Plc (herein referred to as assessee or RRPL), is a UK based company, which has a wholly owned subsidiary, Rolls Royce International Ltd., which in turn has another wholly owned subsidiary, Rolls Royce India Ltd. (herein referred to as RRIL). Both these subsidiaries are also incorporated in UK, There exists a service agreement between Rolls Royce International Ltd. and Rolls Royce India Ltd. RRIL in turn had set up a liaison office (LO) in India to undertake the relevant services in India. The assessee RRPL was supplying aero-engines and spare parts to Indian customers mainly, to M/s. Hindustan Aeronautics Limited and also rendering services to HAL, Indian Navy and Indian Air force. Other group companies, namely, Rolls Royce India Ltd. is also resident of UK and has liaison office to carry out the activities on behalf of the assesse company RRPL. The Assessee-company being

a non-resident was not filing any return of income in India on the assumption that the income from sale of goods from outside India was not taxable in India. The AO noted that assesse had entered into an agreement with RRIL on 01.07.1979 for rendering certain services from India over the territory of India, Nepal, Bangladesh, Bhutan and Sri Lanka and as per the agreement, RRIL was required to perform the following services in lieu of compensation of 6% over the cost incurred:-

i) To obtain and report to Rolls Royce on a regular basis such marketing information as is considered to be relevant to Rolls Royce interest.

ii) To disseminate such marketing and commercial information relating to Rolls Royce's products as Rolls-Royce may require.

iii) To provide administrative and secretarial assistance locally for the services representative deployed in the territory.

iv) To provide a liaison service between Rolls Royce and relevant departments of India and other customers of Rolls Royce in the territory in all matters of supply of products and services.

v) To monitor the effectiveness of Rolls-Royce's commercial.

vi) To look after the Rolls Royce visitors in India and arrangement for stay and itinerary.

4. A survey u/s.133A was conducted at the liaison office of RRIL on 09.01.2006 at Delhi office and also certain statements were recorded. The AO on the basis of survey had noted the following facts:-

i) That office of RRIL is a fixed place of business at the disposal of the Rolls Royce PIc and its group companies in India through which the their business are carried on. There are various other project

offices and other companies belonging to RR Group being run from that premises.

ii) The activity of this fixed place is not a preparatory of auxiliary, but is a core activity of marketing, negotiating, selling of the product. This is a virtual extension/projection of its customer facing business unit, who has the responsibility to sell the products belonging to the group.

iii) RRIL acts like a sales office of RRPlc and its group companies.

iv) RRIL and its employees work wholly and exclusively for the Rolls Royce Pic and the Group.

v) RRIL and its employees are soliciting and receiving orders wholly and exclusively on behalf of the Rolls Royce Group.

vi) Employees of Rolls Royce Group are also present in various locations in India and they report to the Director of RRIL in India.

vii) RRIL and its employees are also service permanent establishment of Rolls Royce Plc and group.

viii) The personnel functioning from the premises of RRIL are in fact employees of Rolls Royce Plc. This has been admitted by the M.D. Mr. Tim Jones, G.M., Mr. Ajit Thosar and documents like terms of employment of G.Ms."

4.1 Thus, it was concluded that office of RRIL in India was PE of RRPL under Article 5(2)(f) of India-UK DTAA and also under Article 5(2)(k). Accordingly, Assessing Officer computed the total profits on the contract of the assesse-company in India as per Rule 10; and held that 75% of the profits should be attributed to PE in India. The same approach was adopted in the earlier years also which has been decided up to the stage of Hon'ble High Court.

5. Learned CIT (A) has followed the earlier years orders, and has confirmed the findings of the Assessing Officer including the profit attribution.

6. Before us, learned counsel for the assesse, Mr. Percival Billimoria, vehemently argued that there are various reasons as to why the assesse cannot be said to have PE in India; and since each assessment year is independent and the issue of PE is always fact based, therefore, this issue should be looked into independently for each assessment year. Now the entire facts has to be seen and construed in light of the legal principle settled by the Hon'ble Supreme Court in the cases of **Formula World Championship Ltd. v. Commissioner of Income-tax, (International Taxation)-3, Delhi, (2017) 394 ITR 80;** and **ADIT vs. E funds IT Solution Inc., (2014) 364 ITR 256**. He submitted that RRPL and RRIL are separate and distinct entities and the liaison office was set up by RRIL for its own activities and not by RRPL. None of the activities of the sales of spare parts, etc. of RRPL was carried out through the liaison office and there is absolutely no basis or material found during the course of survey that the liaison office of RRIL was in any manner at the disposal of RRPL or there was any kind of Dependent Agent PE. The Authorities below on the basis of survey conducted at liaison office of RRIL have alleged that activities undertaken by RRIL in India were much more than liaison activities and represent the PE of RRPL. Later on, the same activities of RRIL have been held to constitute PE of RRIL. Thus, liaison office has been treated to

be PE of both the entities, even though both these entities admittedly carried out two different set of activities. The same set of activities cannot give rise to attribution of income twice, once attribution of PE of RRIL in India and then again in the case of the assesse. Though, he admitted that this issue had come for consideration before the Tribunal in the earlier years, however, there is one change in the facts that on 1st April, 2013, the competent authorities of India and UK have agreed to attribution of income to this PE of RRIL under MAP in terms of treaty. Thus, when the same activities evidenced by the same set of facts cannot give rise to two separate PEs, and if any attribution has been finalized from that particular PE, then no profit should be attributed once again in the hands of the assesse also. In sum and substances, the crux of his argument is that, firstly, RRPL cannot be said to have PE in India as it is purely making sale from outside India; Secondly, LO was never at disposal of RRPL for any of its activities or for its employees; thirdly, there is no DAPE in the form of LO; fourthly, without prejudice, same activities arising from same set of facts cannot give rise to 2 PEs, i.e., one PE of RRPL and then other PE for RRIL; and lastly, attribution of PE of RRIL has already attained finality under MAP resolution for the same assessment years, therefore, the same PE cannot be taxed again in the hands of RRPL. He also laid emphasis to demonstrate that the alleged PE of RRPL has been considered PE of RRIL by the department from the orders of the Ld. CIT(A) in the case RRIL, who has independently recorded a

finding of PE of RRIL in India, based on the same activities, relying on the same set of averments contained in the same remand report. Whence the activities alleged to be within the scope of the PE of RRIL are the same, then same activities cannot be PE of RRPL, that is, sales and marketing and the activities PE of RRIL then further income cannot be attributed to RRPL from same PE as now PE stands assessed as being a complete marketing as well as sales operation and not just as a service provider. To prove his point, he has also pointed out certain observations and findings in the order of the ld. CIT (A) in various paras that activities were same and also drew our attention to various observations of the AO in the remand report. Thus, he submitted that profits of PE of RRIL got settled from the MAP order and once similar activities for PE and attribution have been made in the case of RRIL, then again further attribution cannot be made in the case of assesse.

7. Before us, the ld. CIT-DR, Mr. G.K. Dhall, pointed out that all those issues which has been raised by the AO and ld. CIT(A) have been discussed threadbare including the arguments taken by the Ld. Counsel by the Tribunal in the preceding assessment year which has now been upheld by the Hon'ble High Court. Even the ld. CIT (A) has followed the findings given in the earlier assessment years and assesse itself has submitted before the AO during the course of assessment proceedings for Assessment Year 2005-06 that the facts and circumstances prevailing during the financial

year 2003-04 has not changed during the financial year 2004-05 and there is no change in the business model or process. Thus, it was never the case of the assesse before the ld. CIT (A) and AO that the facts of the case for the year under consideration are separate and distinguishable from those of the earlier years. One of the arguments which was raised by the ld. Counsel that there are changes in domestic law, w.e.f., 2019-2020 in Section 9(1), but same cannot be applied retrospectively. Once, it is established by the Revenue during the earlier years, that there is a PE then no different view can be taken in this year. Thus, issue now stands covered by the decision of the Tribunal in assessee's own case which has been confirmed by the Hon'ble Delhi High Court also which has a binding precedence.

8. In so far as the setting-off the income attributed to RRIL from the income attributed to RRPL, he submitted that same cannot be accepted, because it was never the case of the Revenue that RRIL and RRPL are same or one entity and the attribution of profit of RRIL has nothing to do with RRIL. The facts and finding recorded by the Tribunal in the case of the assessee for attribution of profit of PE, has been highlighted by him in the following manner:

> "*A. Taxation in the hands of RRPIc* -
>
> *ITAT order dt.26/10/07 for RRPIc [p.76-10S of PB-2 for A.Y. 2004-05]*

• *The Support services requested by Rolls-Royce International [RRIL] & performed by Rolls Royce India Ltd. [RRIL]. [para-19, p.91]*

• *The activity of this fixed place is a core activity of marketing, negotiating, selling of the product belonging to the group. [p.102]*

• *35% of Global Profits in respect of sales effected in India attributed to PE [i.e. marketing activities only; p.105]*

ITAT order dt.30/01/09 for RRPIc [MA][p. 106-114 of PB-2 for A.Y. 2004-05]

• *Claim by assessee - Since agent of the assessee namely RRIL is remunerated in terms of agreement with it, and the AO/TPO has also attributed profit to the PE in the form of dependent agent, namely RRIL, no further income is taxable in the hands of the assessee in view of the decision of Hon'ble SC in the case of Morgan Stanley & Co Inc.[p.110]*

• *"The assessee carried on marketing activities in India/or which purpose its own employees as well as the employees of RRIL were employed. The agreement with RRIL as noted in Para 19 of the order was to render only support services but in fact the activities carried on by the assessee and with the assistance of RRIL were much more than that as per material found during survey and as noted in Para 19 of the order. This factual finding has not been challenged as perverse or otherwise not carved out from the material found during survey. Even the factual finding given in other paragraphs like 21, 22 & 23 are also not challenged. Therefore, the effect of this finding is that the appellant's sales to Indian customers are not secured entirely through services of the agent in India for which it was appointed but by deputing own personnel and also availing the services of RRIL which was not part of the agreement with RRIL. The extinguishment of assessment as*

envisaged in Para 6(c) of Circular No 23 of 1969 will not apply as in this ease the non-resident principal's business activities in India are not wholly channelled through his agent in India. The assessment in India will be on the sum total of the amount of profit attributed to his agents in India and the amount of profit attributable to his own activities in India. Since it is found that the appellant's business activities in India are not wholly channelled through his agent in India but because of the activities of the assessee itself as well as its agent and in respect of such services of agent, the agent has not been remunerated for the reason that such services are not part of agreement with the agent for which remuneration is actually paid. Therefore, it can be held that income is attributable to the PE in India." [para 5; p.112]

- *" ... assessment of non-resident will extinguish only where profit attributable to the P.E. is equal to the remuneration payable to the agent in India. However, the agent in India is remunerated only on the basis of cost plus 6% for the services that were to be rendered in terms of the agreement. But in the present case the remuneration to the agent does not take into account all the risk taking functions of the non-resident enterprise. For the functions performed by the assessee directly and also the risk assumed by the non- resident in India, no remuneration is payable to the agent in India. The services rendered by agent in India is much more than expected of it in terms of the agreement and obviously for which the agent is not remunerated. Therefore, even in terms of Hon'ble Supreme Court's decision in such, a case there would be need to attribute profits to the P.E. for those functions/risks that have not been considered. In the order, the Tribunal have also considered that the P.E. in India is not only because of the dependent agent's presence in India but also because of fixed place as per Article 5(1) and also in terms of Article 5(4)(c) of the Treaty. The extinguishment as*

propounded as per Circular 23 of 1969 or as held by the Hon'ble Supreme Court in Morgan Stanley & Co. Inc. (supra) will apply only where the profit attributable to the non-resident is only to the extent of remuneration payable by the non-resident to the agent. Therefore, the assessment in the present case will not extinguish and the income will be computed on the basis of finding given in Para 24 of the order."[para 5; p.l13]

As evident from the above-

the profit attributed to the PE of the assessee RRPlc is on the basis of the "profit attributable to his own activities in India" which"are not wholly channelled through his agent in India" .

Moreover, the profit is attributed "not only because of the dependent agent's presence in India but also because of fixed place as per Article 5(1) and also in terms of Article 5(4)(c) of the Treaty."it may also be remembered that the assessee does not maintain any books and thus, a part of its 'global profits' are attributed to its PE .

Another important fact that must be kept in mind is that the AO has not attributed or taxed any income in the hands of RRll for its alleged services to RRPIc.

What has been taxed in the hands of RRIL and which has been subjected to TP adjustments as well as MAP proceedings is the transaction between RRIL & RRlnt only.

Moreover, the functions carried on by RRIL as per Service agreement are completely different, distinct and independent from the activities of RRPlc .

The assessee has not paid or remunerated any amount to RRIL and as shown hereunder, RRIL is not working for RRPIc .

RRIL has filed its ROI disclosing the value of its international transactions with RRlntl which were subjected to TP adjustments and no part of the transactions relate to the assessee RRPIc .

The functions carried on by RRIL are for RRlntl and no further attribution/adjustments towards the services provided to RRPIc were made in the hands of RRll. In view of the above, there is no scope of double taxation of the same income or same functions both in the hands of RRPlc & RRIL as claimed by the assessee.

B. Taxation in the hands of RRIL-

Activities of RRIL-

The assessee is a LO of the Rolls Royce Group. It provides commercial information service and marketing support service to Rolls Royce International Ltd. (RRlnt) [TPO, p. 1 of PB-2 for A.Y. 2004-05]

The assessee is said to be in the liaison activities on behalf of its parent RRlnt in India. [AO, p. 10 of PB-2 for A.Y. 2004-05]

"The support services requested by RRlnt & performed by RRIL.. ... "[ITAT, para-19,p. 91 of PB-2 for A.Y. 2004-05]

RRIL is a fixed place of business at the disposal of RRPlc & its group companies. [HC, para16; p.122]

RRIL has the responsibility to sell the products belonging to the group. [HC, para16; p.122]

RRIL acts like a sales office of RRPlc & its group companies. [HC, para16; p.122]

RRIL and its employees work for RRPIc& the Group. [HC, para16; p.122]

RRIL solicit & receive orders on behalf of RR Group. [HC, para16; p.122]

Employees of RR Group are present and report to RRIL. [HC, para16; p.122]

RRIL is compensated on the basis of agreement between RRIL & RRlnt. [TPO, p. 2 of PB-2 for A.Y. 2004-05]

TP adjustment in respect of international transactions with RRlnt. [TPO, p. 2 of PB-2 for A.Y. 2004-05]

As can be seen, RRIL "provides commercial information service and marketing support service to Rolls Royce International Ltd." It is the functions carried on by RRIL vis-a-vis its service agreement with RRlntl which was the subject matter of TP adjustments. RRIL was never subjected to taxation w.r.t. any services it had provided to the assessee RRPlc."

9. In so far as the pleadings of the Ld. Counsel for the assessee that attribution of profit stands settled by MAP in the case of RRIL, he submitted MAP only takes care of relief or removes double taxation, if any and any income attributed through the process of MAP cannot be held to be "taxed not in accordance with the convention". In other words, neither the income in its entirety nor any part of it which was attributed through MAP represents an amount which has been subjected to double taxation. The entire income and profit is

only with regard to RRIL and it has no bearing whatsoever on the profit attributed to RRPL and there is no double taxation.

10. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material referred to before us. Ld. Counsel for the assesse had set out various reasons as to why RRPL cannot be said to having any PE in India mainly for the reason that, it was only supplying aero-engines and spare parts to the Indian customers on principal to principal basis. The service agreement for carrying out various other technical services was between RRIL and RR International and RRIL for has set up a liaison office in India to undertake the relevant service in India, for which was compensated on mark up basis. Thus, the activities of the all the three entities were entirely different. The liaison office of RRIL was neither negotiating any contract for sales nor was carrying out any activity relating to sales. Neither the LO was in any manner at the disposal of RRPL even for its employees. Thus, in view of the judgment of Hon'ble Supreme Court in the case of **Formula World Championship Ltd. v. Commissioner of Income-tax, (International Taxation)-3, Delhi, (supra)** and **ADIT vs. E funds IT Solution Inc., (supra),** there cannot be any PE in form of LO. Even though we may slightly feel persuaded by his argument that PE has to be seen *qua* the activities carried by a foreign enterprise in India through a fixed place business or any such place which is at its disposal, however, precisely the same issue had come up for consideration in assessee's

own case before this Tribunal on similar set of facts, wherein Tribunal after detailed reasoning and finding has held that the liaison office of RRIL also constitutes a PE for the assesse, i.e., RRPL in India. The Hon'ble Delhi High Court though has upheld the order of the Tribunal, however has noted that the issue of PE was not pressed or argued. Now that this matter is pending before the Hon'ble Supreme Court as informed by the Ld. Counsel, therefore, as a matter of judicial precedence, we cannot take a different view and decide the issue a fresh taking any other view. Another set of argument placed by the ld. counsel before us is that the PE of assessee was in fact liaison office of RRIL in India, which is separately assessed to tax in India and its profit and taxability now has attained finality in the form of agreement under MAP. It was also submitted that notwithstanding whether there is any independent PE of assessee in India or not, but the same activities arising from the same set of facts as alleged by the Revenue cannot give rise to two PEs, i.e., one PE for the assesse and another PE for RRIL. To canvass this point the ld. counsel has drawn our attention to the various findings of ld. CIT(A) in the case of RRIL and remand report of AO as contained in the appellate order dated 15.02.2009. He has pointed out that in the said order the ld. CIT(A) has relied upon same contents of report of survey conducted at the LO office of RRIL and exactly the same material has again been used in the case of the assessee also; and therefore, for the same activity there cannot be two PEs for two different

entities. As culled out from the records, the survey of RRIL office in India had revealed certain facts which has been used by the Revenue authorities for holding that Rolls Royce Group has a PE in India. The contents of the survey have been discussed by this Tribunal in its order and have reached to the following conclusion:-

"It can, therefore, be summarized that in the light of the facts as well as document mentioned above, RRIL's presence in India is a permanent establishment of appellant because:

(a) It is a fixed place of business at the disposal of the Rolls Royce Plc and its group companies in India through which their business are carried on.

(b) The activity of this fixed place is not a preparatory or auxiliary, but is a core activity of marketing, negotiating, selling of the product. This is a virtual extension/projection of its customer facing business unit, who has the responsibility to sell the products belonging to the group.

(c) RRIL acts almost like a sales office of RR Plc and its group companies.

(d) RRIL and its employees work wholly and exclusively for the Roll Royce Plc and the Group.

(e) RRIL and its employees are soliciting and receiving orders wholly and exclusively on behalf of the Rolls Royce Group.

(f) Employees of Rolls Royce Group are also present in various locations in India and they report to the Director of RRIL in India.

(g) The personnel functioning from the premises of RRIl are in fact employees of Rolly Royce Plc. This has been admitted by the MD. Mr. Tim Jones, GM, and can be discerned from statement of Mr. Ajit Thosar and documents like terms of employment of GMs.

Thus, the appellant can be said to have a PE in India within the meaning of Article 5(1), 5(2) and 5(4) of the Indo UK DTAA. Since we have found that the appellant has a business connection in India as well as PE in India the income arising from its operation in India are chargeable to tax in India."

11. Since the finding of fact has been arrived on the basis of same documents, we cannot subscribe to a different view and accordingly, respectfully following the same, we hold that assesse did have a PE in India.

12. Lastly, in so far argument of the Ld. Counsel of the assessee that no further profit attribution of PE should be made once for the same activity, profit attribution has been agreed upon in MAP, therefore, no separate attribution can be made in the hands of the assesse, we are unable to accept the contention of the ld. Counsel, because there is huge difference between the activities of RRIL and RRPL. Though, same set of material and documents have led the revenue for holding LO as PE of RRIL and also of RRPL. But, if there is no interlacing of activities of two entities, then activity of one entity cannot result into PE of another entity, because to establish a PE the business carried out by a foreign entity alone should be taken into consideration. Here in this case if it has been found by

the Tribunal that independently also the activity of assessee was somehow linked with LO, therefore, no interference can be made and since this issue has been decided against the assesse we do not find any reason to go into further deep analysis and form a different view, because there is no material change in facts and circumstances. RRIL activities was carrying out sales and marketing in India for RR International and nothing has been produced before us to show that these activities were also assessed as business PE on a profit split or appropriate method. The record shows that RRIL was assessed only as a dependent agent and a service PE on the cost plus margin basis and therefore, it cannot be concluded that the attribution of PE in India is fully exhausted by the assessment of RRIL or nothing remained to be assessed in the hands of the assessee. Once there is a finding that activities of LO have resulted in PE in India, then tax attributable to such activity must be brought to tax in India. If activities give rise to PE which undertakes marketing and sales in India then tax attribution of the PE must be made. Here the attribution in the hands of RRIL was only limited to cost plus basis, whereas in the case of the assesse the profit which has been attributed relates to purely sales of engines and parts. Further, nothing has been brought before us that under the MAP agreement the profit attribution of sales of RRPL were also subject matter of consideration or discussion and there cannot be any assumption that the

quantum of tax agreed in the case of RRIL exhausts the contribution of profit to the PE of assesse in India.

13. In so far as attribution of profit is concerned, we are of the opinion that such a blanket attribution as done by the authorities below does not seems to be on a sound footing, especially when they have alleged that common activities were carried out from the LO. Then in that case, it would not possible to distinguish as to which activities of LO pertains to RRIL or activities of LO were undertaken on behalf of the assessee and what part of activities at the LO which assessee itself was executing for its sale. That being so, then ostensibly attribution of the profit to the activities in India of the assessee logically should be deducted by the amount attributed to RRIL. But we do not wish to give any finding or direction in this regard and we still persuaded by the earlier years precedence, wherein the Tribunal has separately attributed profits in the hands of the assesse company wherein they have adopted 35% of the profit as against 75% of the global profit in respect of sales affected in India as done by AO.

14. Before us, the ld. counsel has also pointed out some error in computation, which we are agree needs to be taken into account while determining the taxable profit, which is summarized as below:

(i) In the application of the tax rates pertaining to royalty and interest income for the AY 2006-07, the rate of 20% has been

applied erroneously instead of the applicable rate of 15% as per the provisions of the Treaty.

(ii) Since the assessee is a tax resident of the UK and is entitled to claim the benefits, if any, available under the Treaty, the applicable rate should be 15%. AO has erred in charging the same @ 20% instead of 15% and the DRP have erred in concurring with the same.

(iii) The AO had incorrectly charged surcharge @3% instead of applying the correct rate of 2% in the order for AY 2006-07. This being an inadvertent error by the AO, the same is to be rectified.

15. Accordingly, we hold that the profits to be taxed in the hands of the assessee in the assessment years impugned before us, should be attributed at 35%, instead of 75% subject to rectification as stated above in para 14, which should be made in the computation of tax for each of the assessment years. Further, tax actually paid by the assesse for these years should be credited from the tax liability to determine the final amount to be paid or refunded to the assessee as the case may be.

16. Since in all the appeals this is the only issue, therefore our finding will apply mutatis mutandis for all the years. Accordingly, the appeals of the assessee are partly allowed.

Order pronounced in the open Court on 28th May, 2019.

Sd/-	Sd/-
[L.P. SAHU]	**[AMIT SHUKLA]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

DATED: 28.05.2019