IN THE INCOME TAX APPELLATE TRIBUNAL 'I' BENCH, MUMBAI
BEFORE SHRI RAVISH SOOD, JM AND SHRI N.K. PRADHAN, AM

आयकर अपील सं./ I.T.A. No.664/Mum/2017
(**निर्धारण वर्ष /** Assessment Year:2012-13)

Sabre Asia Pacific Pte. Ltd. (Earlier Known as M/s Abacus International Pte Ltd.), Abacus Plaza, 3 Tampines Central I, # 08-01 Singapore 529540 C/o Deloitte Haskins & Sells LLP India Bulls Financial Centre Tower 3, 28th Floor, Senapati Bapat Marg, Elphinstone (W),Mumbai-400 013.	**बनाम/ Vs.**	Deputy Commissioner of Income Tax (International Taxation)- 1(1)(1), Room No. 117, 1st Floor, Scindia House, Ballard Estate, Mumbai 400 038.
स्थायीलेखासं./जीआइआरसं./ **PAN/GIR No.** AABCA6590M		
(अपीलार्थी**/Appellant)**	**:**	**(**प्रत्यर्थी /Respondent**)**

आयकर अपील सं./ I.T.A. No.7379/Mum/2018
(**निर्धारण वर्ष /** Assessment Year:2014-15)

Sabre Asia Pacific Pte. Ltd. (Earlier Known as M/s Abacus International Pte Ltd.), Abacus Plaza, 3 Tampines Central I, # 08-01 Singapore 529540 C/o Deloitte Haskins & Sells LLP India Bulls Financial Centre Tower 3, 28th Floor, Senapati Bapat Marg, Elphinstone (W),Mumbai-400 013.	**बनाम/ Vs.**	Deputy Commissioner of Income Tax (International Taxation)- 4(2)(1), Room No. 1708, 17th Floor, Air India Building, Nariman Point, Mumbai- 21.
स्थायीलेखासं./जीआइआरसं./ **PAN/GIR No.** AABCA6590M		
(अपीलार्थी**/Appellant)**	**:**	**(**प्रत्यर्थी /Respondent**)**

अपीलार्थी की ओर से/**Appellant by**	**:**	Shri Nitesh Joshi, A.R
प्रत्यर्थी की ओर से/ **Respondent by**	**:**	Shri Avaneesh Tiwari, D.R

सुनवाई की तारीख/ Date of Hearing	:	23.01.2020
घोषणा की तारीख Date of Pronouncement	**:**	17.02.2020

आदेश / **O R D E R**

PER RAVISH SOOD, JM :

The captioned appeals filed by the assessee are directed against the respective orders passed by the A.O under Sec. 143(3) r.w.s 144C(13) of the Income-tax Act, 1961 (for short 'Act') for A.Y 2012-13 and A.Y 2014-15. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order. We shall first take up the appeal of the assessee for A.Y 2012-13. The assessee has assailed the impugned order on the following grounds of appeal before us:

> "The appellant objects to the order under section 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 [Act] dated 25 November 2016 (received on 1 December 2016) passed by the Deputy Commissioner of Income-tax, (International Taxation) - 1(1)(1), Mumbai [DCIT] for the aforesaid assessment year on the following among other grounds:
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> 1. The learned DCIT erred in assessing the total income of the appellant at Rs. 12,50,23,923.
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> 1. **Business connection /permanent establishment in India**
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> 2.1 The learned DCIT erred in holding that the appellant had a business connection in India in terms of the Act and a permanent establishment [PE] in India in terms of the India-Singapore Double Taxation Avoidance Agreement [DTAA].
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> 2.2 The learned DCIT erred in holding that the appellant has a fixed place of business in India.
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> 2.3 The learned DCIT erred in holding that the appellant maintains telecommunication network in India through which all the messages are transmitted.
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> 2.4 The learned DCIT erred in observing that the appellant carries out its activities of Computerized Reservation System [CRS] through the Abacus Country Node located in India which is under the management and control of the appellant.
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> 2.5 The learned DCIT erred in observing that Sabre Travel Network (India) Private Limited (earlier known as Abacus Distribution Systems (India) Private Limited) [STNIPL] secures business for the appellant by entering into subscription agreement with the travel agents and this activity is habitually, wholly and exclusively performed by STNIPL for the appellant. The learned DCIT further erred in holding that STNIPL constitutes agency PE of the appellant in terms of India-Singapore DTAA.
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> 2.6 The learned DCIT erred in observing that STNIPL is dependent on the appellant for its financial existence and is performing only activities for the appellant and that STNIPL is not an independent agent.

3. Income attributable to PE

3.1 The learned DCIT erred in treating a sum of Rs. 10,04,80,445 as income attributable to the PE in India and computing the income liable to tax in India as Rs. 10,04,80,445 (10% of Rs. 1,00,48,04,450).

3.2 The learned DCIT erred in calculating the income of the appellant on presumptive basis by estimating the profit margin of the appellant as 10% of the receipts from Indian operations of Rs. 1,00,48,04,450 and treating a sum of Rs. 10,04,80,445 (10% of Rs. 1,00,48,04,450) as the taxable income of the appellant.

3.3 The learned DCIT erred in not deducting the commission of Rs. 24,78,07,734/- and marketing service fees of Rs. 54,13,02,872 paid to STNIPL in the attribution of income.

3.4 The learned Dispute Resolution Panel [DRP] erred in observing that the estimation of 10% of overall revenues from Indian operations as per Rule 10 of Income-tax Rules, 1962 as income of appellant has been upheld by Income-tax Appellate Tribunal [ITAT] without appreciating that while deciding the issue on attribution of income, ITAT has not relied on Rule 10.

3.5 The learned DCIT/DRP erred in observing that if any deduction of commission and marketing service fees paid to STNIPL can be claimed by the appellant, it can only be claimed against the revenue of Rs. 1,00,48,04,450 from Indian operations and not against the income estimated by the DCII at 10% of total revenue.

3.6 The learned DCIT/DRP erred in not following the ITAT decision in the appellant's own case for earlier years, Delhi High Court judgment in the case of Galileo International Inc. (336 ITR 264) and decision of the Delhi tribunal in case of Sabre Inc. (hA No. 2311 to 231 7/Del/2008) despite of no change in facts.

3. Reimbursement of expenses

4.1 The learned DCIT erred in holding that the reimbursement of expenses from STNIPL amounting to Rs. 3,51,92,700 are part of business income of the appellant and thereby taxing Rs. 35,19,270 (i.e. 10% of Rs. 3,51,92,700).

4.2 The learned DCIT erred in not appreciating that the reimbursement of expenses were towards expenses incurred by the appellant on airfare transaction charges, other expenses, and foreign travel and in the nature of pure reimbursement not having any element of income/service.

4.3 Without prejudice to the above, the learned DRP/DCIT erred in not following the decision of the ITAT in appellant's own case for AY 2004-05 wherein it is held that even if the reimbursement is considered as part of business income, there should not be any income chargeable to tax since the expenditure paid by the appellant (i.e. commission and marketing fees paid to STNIPL) is sufficient to absorb its income.

5. Transfer pricing adjustment

5.1 The learned DCIT/DRP erred in making a transfer pricing adjustment of Rs. 2,10,24,208 under section 92CA(4), in respect of the international transaction entered into by the appellant during the year ended 31 March 2012.

5.2 The learned DCIT/DRP while determining the arm's length interest rate erred in not appreciating the business and economic circumstances prevailing at the time of providing the interest free loan by the appellant to STNIPL in the proper perspective.

5.3 The learned DCIT/DRP erred in not appreciating / considering that in respect of the adjustment of Rs. 2,10,24,208 to the total income of the appellant representing alleged arm's length interest on the interest-free loan granted by the appellant to STNIPL, no corresponding deduction is allowed to ADSIL in its tax return or assessments, and accordingly amounts to double taxation of the same income.

5.4 Without prejudice to the above, the learned DCII erred by not allowing corresponding deduction of the interest free loan granted by the appellant in the hands of STNIPL.

5.5 Without prejudice to the above grounds, the learned DCIT/DRP erred in law by using prime lending rate instead of LIBOR for determining the arm's length interest amount.

5.6 The learned DCII erred in applying the rate of 40% on the interest income as against the rate prescribed in section 115A of the Act.

5.7 Without prejudice to the above, the learned DRP / DCIT erred in not appreciating that even if the interest income is considered as part of business income, there should not be any income chargeable to tax since the expenditure paid by the appellant (i.e. commission and marketing fees paid to STNIPL) is sufficient to absorb its income and accordingly there will be no loss to the revenue.

6. Initiation of penalty proceedings

6.1 The learned DCIT has erred in initiating penalty proceedings under section 271(1)(c) of the Act.

6.2 The learned DCIT has erred in initiating penalty proceedings under section 271A of the Act.

7. Levy of the interest under Section 234B

7.1 The ld. Learned DCIT erred in levying interest Rs.40,15,804 under Sec.234B of the Act.

7.2 The ld. DCIT erred in not following the judgment of the Bombay High Court in appellants own case for levy of interest under Section 234B of the Act.

8. Levy of interest under Section 234C

8.1 The ld. DCIT erred in levying interest of Rs.3,62,137 under section 234C of the Act.

9. Each one of the above grounds of appeal is without prejudice to the other.

10. The appellant reserves the right to amend, alter or add to the grounds of appeal.

2. Briefly stated, the facts of the case are that the assessee is a company resident of Singapore engaged in the business of promotion, development, operation, marketing and maintenance of a Computerized Reservation System (for short 'CRS'). The primary business of the assessee is to make airline reservations for and on behalf of the participating airlines by

using the CRS. The participating airlines provide the necessary information which is displayed to the travel agents throughout the world so that they could guide their customers to make the necessary requests for booking of tickets through the CRS. The assessee licenses the right to market the CRS to a company in each of the Asia Pacific Countries, i.e a National Marketing Company (for short 'NMC'), which in turn markets the CRS directly to the travel agents. The assessee also solicits the participation of the travel related vendors e.g airlines, tour operators, car rental agencies and hotels so as to list their services in the CRS in order to enable the travel agents to make booking for their services through the CRS. The airlines/travel-related vendors pay to the assessee a fee for each of the booking made by the travel agents. That for each of the booking made through the NMC's subscribers commission is paid by the assessee to the NMC. The assessee had licensed its wholly owned Indian subsidiary company, viz. Abacus Distribution System (India) Ltd. (for short 'ADSIL') as its NMC in India.

3. The assessee filed its return of income for the year under consideration, viz. A.Y 2012-13 on 29.11.2012, disclosing a total income of Rs. 59,43,889/-. During the course of the assessment proceedings it was submitted by the assessee that it had received total fees of Rs.1,00,48,04,450/- (USD 1,98,14,720 @ 50.71) in respect of its activity of providing airline reservations in India. The assessee further claimed to have paid an amount of Rs. 78,91,10,608/- to ADSIL by way of commission for the marketing services rendered by the said NMC.

4. On being called upon by the A.O to explain the reason for not offering the fees received from providing the airline reservations in India for tax, it was submitted by the assessee that as it did not have any Permanent Establishment (for short 'PE') in India within the meaning of Article 5 of the Double taxation Avoidance Agreement (DTAA) between India and Singapore, therefore, the income, if any, accruing or arising in India or deemed to accrue or arise in India could not be brought to tax in India. The assessee submitted before the A.O that there was no contractual or business relationship between the assessee and the customer who made the payment to the airlines through the travel agent which resulted to generation of revenue in the hands of the airlines and not that of the assessee. The assessee in order to fortify its aforesaid contention elaborated before the A.O the sequence of events involved in its business, viz. (i). the travel agents for raising of a query or requesting for a booking used the equipment owned

and provided by ADSIL; (ii). the message was transmitted through the MTNL lines to Societe Internationale Telecommunications Aeronautiques (for short 'SITA') network in all the cities from where it was transmitted via SITA network to Abacus host in USA; (iii). that on receiving the message the airlines computer would be consulted by the Abacus host for the latest position on seat availability and if a seat would be available the booking would be confirmed by the Abacus host computer and conveyed to the travel agent in India; (iv). the travel agent on receiving the message of confirmed booking from Abacus through the same communication channels which were used for its outgoing message, would receive the ticket image from the Abacus host which either would be printed by the printer in his office or issued manually to the customer. It was submitted by the assessee that it did not have a PE in India for the reason viz. (i). there was no contractual relationship between the assessee and the customer who makes the payment to the airline through the travel agent, as the revenue generated was of the airline and not of the assessee; (ii). the assessee had no PE in India in terms of Article 5(8) of the India-Singapore tax treaty; (iii). the fact that the Singapore entity controlled the company ADSIL would not by itself constitute a PE of the assessee in India; (iv). ADSIL may be an agent of the assessee but it was not carrying on any of the activities mentioned in Article 5(8) on the basis of which it could be held to be a PE of the assessee in India; and (v). ADSIL was even otherwise acting independently. The assessee in order to support its contention that it did not have a PE in India relied on the orders of the coordinate benches of the Tribunal, viz. ITAT Delhi 'B' bench in the case of Galileo International Inc. Vs. DCIT (2009) 116 ITD 1 and Amadeus Global Travel Distribution S.A Vs. DCIT & Anr. (2008) 113 TTJ 767.

5. The A.O after deliberating on the contentions which were advanced by the assessee in order to impress upon him that it did not have any PE in India was however not persuaded to accept the same. The A.O observed that the principal activities, viz. marketing, distribution, sales and revenue generation had taken place in India. The A.O after perusing the recitals in the 'distribution agreement' executed between the assessee and ADSIL observed that ADSIL was carrying on the business activities of the assessee in India. The A.O was of the view that ADSIL was functioning as a controlled subsidiary of the assessee and was exclusively performing the marketing and distribution of CRS for the assessee. The A.O observed that the assessee carried out its activities of CRS through the Abacus Country Node located in India

which remained under the management and control of the assessee. The A.O in the backdrop of his aforesaid observations concluded that the assessee had a fixed place of business in India which served as a distribution point for its services in India. The A.O further observed that as ADSIL was securing business for the assessee by entering into subscription agreements with the travel agents and as the said activity was habitually, wholly and exclusively performed by ADSIL for the assessee, therefore, it could safely be concluded that ADSIL constituted an Agency PE of the assessee in terms of Article 8(c) and 9 of the India-Singapore DTAA. The A.O fortified his aforesaid conviction by taking support of the fact that the inquiries made from Air India Ltd revealed that ADSIL which did not have any agreement with the airlines provided services and assistance to Air India to resolve problems relating to connectivity reservation system, accounting and billing, which thus proved that ADSIL was carrying on the activities of the assessee in India. The A.O further observed that the fact that the assessee had advanced interest free loans to ADSIL to boost its own business in India proved to the hilt that ADSIL was not an independent agent. The A.O further observed that the ITAT, Delhi in the case of M/s Galileo International Inc. Vs. DCIT (2009) 116 ITD 1 (Del) and Amadeus Global Travel Distribution Vs. DCIT (2008) 113 TTJ 767 (Del) had held that such activities through a Node and agent would constitute a PE under the DTAA. The A.O in the backdrop of his aforesaid deliberations concluded that the assessee had a PE in terms of Article 5 of the India-Singapore tax treaty. Accordingly, the A.O vide his draft assessment order passed under Sec. 143(3) r.w.s 144C(1), dated 07.03.2016 proposed to attribute income of Rs. 10,04,80,445/- to the assesses PE in India.

6. The A.O further during the course of the assessment proceedings observed that the assessee had received certain payments from ADSIL aggregating to Rs. 3,51,92,700/-.The assessee submitted that the aforesaid amounts were in the nature of reimbursement of expenses viz. (i). airfare transaction charges; (ii). other expenses; and (iii). foreign travel expenses which were incurred by it on behalf of ADSIL. The assessee explaining the nature of the expenses submitted that the line charges and services charges were incurred for providing the connectivity to the travel agents while for the service charges were the expenses incurred for accessing the CRS. It was submitted by the assessee that the connectivity globally provided by SITA was billed to the assessee which in turn had raised the bills on its Indian NMC, viz.

ADSIL for its share in the expense. In respect of the other expenses the assessee submitted that the same included courier charges, travel related expenses, marketing and consulting fees and fees for back office accounting packages. It was submitted by the assessee that after making the payments to the suppliers/service providers it would recharge the applicable cost to ADSIL. The assessee in order to drive home its contention that the aforesaid amounts received from ADSIL were in the nature of reimbursement of expenses submitted that the same could safely be gathered from the fact that no services were provided to ADSIL. However, the A.O observed that the DRP-1, Mumbai in the assesse's own case for A.Y 2006-07 had held that 10% of the reimbursements were to be treated as the income of the assessee. Accordingly, the A.O held 10% of the total amount of Rs. 3,51,92,700/- i.e Rs. 35,19,270/- as the business income of the assessee for the year under consideration.

7. In the course of the assessment proceedings the case was referred to the Transfer Pricing Officer (for short 'TPO'). Observing, that the assessee had advanced interest free loan to its AE viz. ADSIL, the TPO vide his order passed under Sec. 92CA(3), dated 25.01.2016 suggested a Transfer Pricing adjustment of Rs. 2,10,24,208/- by determining the arms length interest in respect of the aforesaid loan (interest free) as per Indian PLR of SBI of 14.25%.

8. On the basis of his aforesaid deliberations the A.O vide his draft assessment order passed u/s 143(3) r.w.s 144C(1), dated 07.03.2016 proposed to assess the income of the assessee company at Rs. 12,50,23,923/-.

9. Aggrieved, the assessee filed objections with the Dispute Resolution Panel-2, Mumbai (for short 'DRP'). The DRP after deliberating on the contention of the assessee that as it had no business connection/Permanent Establishment in India, therefore, no income was liable to be brought to tax in India, did not find favour with the same. Observing, that the issue of PE in India was covered against the assessee by the orders passed by the Tribunal in the assesse's own case for A.Y 1999-2000 to A.Y 2004-05, the DRP followed the aforesaid orders and concluded that the assessee during the year under consideration had a PE in India within the meaning of Article 5(1) and 5(8) of the India-Singapore treaty.

10. The DRP further adverting to the issue as to whether any income of the assessee was taxable in India for the reason that its marketing, distribution, sales and revenue generation

activities had taken place in India and whether 10% of the overall revenues generated from its Indian operations was to be treated as the income of the assessee, observed, that once it was held that the assessee had a PE in India, the revenues generated from its India operations were liable to be taxed in India as per law. The DRP observed that the said issue was also decided by the coordinate benches of the Tribunal in the assesses own case in the earlier years and the estimation of 10% of overall revenues from India operations as per Rule 10 of the Income tax Rules, 1962 as the income of the assessee was upheld by the Tribunal. Accordingly, the DRP in the backdrop of its aforesaid observations upheld the estimation of income of the PE of the assessee by the A.O.

11. The DRP adverting to the objection of the assessee as regards the working of the amount of fees received by the assessee from the airlines and the commission paid to its NMC in India, viz. ADSIL, observed, that if any deduction of the commission paid to NMC was to be claimed by the assessee the same could only be allowed against the revenues from the Indian operations and not against the income estimated by the A.O at 10% of the total revenues. Observing, that the DRP in the case of the assessee for the preceding had held that the estimation of the income of the assessee at 10% of total revenues would take care of all the deductions, the DRP was of the view that once the income of the assessee was estimated at a certain percentage of the turnover as per Rule 10 then no further deduction after the culmination of such estimation would be permissible. It was observed by the DRP that though the issue under consideration was decided in favour of the assessee by the Tribunal in the assesse's own case for A.Y 1999-2000 to A.Y 2004-05 but the revenue had carried the same in further appeal before the High Court and was pending disposal. In order to protect the interest of the revenue and to keep the matter alive the DRP upheld the view taken by the A.O and rejected the aforesaid objection of the assessee.

12. The DRP further deliberated on the transfer pricing adjustment of Rs. 2,10,24,208/- carried out by the A.O/TPO by determining the arms length interest as per Indian PLR of SBI of 14.25% of the loan (interest free) that was provided by the assessee to its AE viz. ADSIL. It was inter alia submitted by the assessee that for the purpose of computing the arm's length rate of interest in respect of the interest free loan given by the assessee to its AE, viz. ADSIL the LIBOR rate prevailing as on 31.03.2012 should have been considered and not the Indian PLR.

However, the DRP was not persuaded to be in agreement with the aforesaid claim of the assessee. Observing, that as the aforesaid issue had been adjudicated by the DRP against the assessee in A.Y 2011-12 and the facts of the case for the year under consideration were similar to those involved in the preceding year, the DRP rejected the aforesaid objection of the assessee.

13. On the basis of the order passed under Sec. 144C(5), dated 26.10.2016 by the DRP, the A.O vide his order passed u/s 143(3) r.w.s 144C(13), dated 25.11.2016 assessed the income of the assessee company at Rs. 12,50,23,923/-.

14. The assessee being aggrieved with the assessment framed by the A.O u/s 143(3) r.w.s 144C(13), dated 25.11.2016 has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that the issues involved in the present appeal were squarely covered by the consolidated order of the Tribunal in the assesses own case for A.Y 2005-06 to A.Y 2011-12, dated 16.02.2018 r.w its order dated 16.10.2019 that was passed on recall. Ld. Departmental representative did not controvert the claim of the assessee that the issues involved in the present appeal were covered by the aforesaid orders of the Tribunal in the assesse's own case. Accordingly, in the backdrop of the aforesaid factual position we shall deliberate upon the respective issues involved in the present appeal of the assessee before us.

15. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. We shall first advert to the contention of the ld. A.R that the assessee had no Permanent Establishment (PE) in India. We find that the issue as to whether the assessee had a PE in India, or not, had been deliberated upon at length by the Tribunal in the assesse's own case for A.Y 1999-2000 to A.Y 2004-05. The aforesaid order of the Tribunal was thereafter followed by it while disposing off the appeals of the assesee for A.Y 2005-06 to A.Y 2011-12, vide its order dated 16.02.2018. The Tribunal in the aforementioned appeals had upheld the orders of the lower authorities and had concluded that the assessee was having business connection and PE in India. We find that though the assessee had raised a ground of appeal assailing the observations of the DRP that the assessee had a PE in India

in terms of Article 5(1) and 5(8) of the India-Singapore DTAA but during the course of the hearing of the appeal no contention was advanced by the ld. A.R to support his aforesaid claim. We thus following the orders passed by the coordinate benches of the Tribunal in the assesses own case in A.Y 1999-2000 to A.Y 2004-05 and A.Y 2005-06 to 2011-12, uphold the order of the DRP that the assessee had a business connection/PE in India. The **Ground of appeal No. 2** raised by the assessee before us is dismissed.

16. We shall now advert to the issue as regards the amount of income that was attributable to the PE of the assessee in India. As regards the said issue the Tribunal while disposing off the appeals of the assessee for A.Y 2005-06 to A.Y 2011-12 had vide its consolidated order dated 16.02.2018 observed as under:

> "We find that the ld. A.R had submitted that as held by the coordinate benches of the Tribunal in the assesses own case for A.Ys 1999-2000 to 2004-05 15% of the gross receipts pertaining to India bookings were to be taken as the income attributable to the India operations of the assessee. The ld. A.R had further averred that as the assessee had paid a commission of 25% of the gross receipts pertaining to India bookings to its NMC, viz. ADSIL, which was higher than the income attributable to India, therefore, no income remained in the hands of the assessee which could be brought to tax in India. We find that to the contrary the ld. D.R had submitted that now when the Transfer pricing provisions and the related rules had been notified with effect from 01.04.2002, vide the finance Act, 2001, therefore, the adoption of the adhoc ALP of 15% of the gross receipts as the income of the assessee attributable to its India operations could not be sustained. We find that the ld. D.R had submitted that for fair determination of the income of the assessee attributable to its PE in India, the ALP was required to be determined after carrying out a FAR analysis. The ld. D.R had submitted before us that as the reliance placed by the assessee on the judicial pronouncements wherein it was held that ALP at 15% of the gross receipts in respect of CRS operation would be justified pertained to the era of pre-TP regulations, therefore, the same could not be adopted as a yardstick and transposed as such for determining the income of the assessee attributable to its PE in India for the year under consideration, viz. A.Y 2005-06. The ld. D.R on the basis of his aforesaid contentions had submitted that the issue was required to be set aside to the A.O/TPO for fair determination of the income of the assessee attributable to its PE in India. We have given a thoughtful consideration to the contentions of the authorized representatives for both the parties. We though would fairly concede that the contention raised by the ld. D.R in his attempt to seek a FAR analysis for fair determination of the income of the assessee attributable to its PE in India at the first blush appeared to be very convincing, but however, after deliberating on the same at length, we are unable to persuade ourselves to accept the same. We find that as averred by the ld. A.R the coordinate bench of the Tribunal in the assesses own case for A.Ys 1999-2000 to 2004-05 had consistently held that only 15% of the gross receipts of the assessee could be attributed as accruing or arising to the PE in India. We further find that the Tribunal in the aforementioned cases had also observed that as the assessee had incurred expenditure @ 25% of gross receipts on account of payment of commission to its NMC in India, viz. ADSIL, therefore, there remained no income in the hands of the assessee which could be brought to tax in India. We find that such observations were recorded by the Tribunal while disposing of

the appeals of the assessee for A.Y 1999-2000 (ITA No. 3903/Mum/2006), A.Y 2001-02 (ITA No.4789/Mum/2007) and A.Y 2002-03 (ITA No. 4790/Mum/2007) vide its consolidate order dated 20.08.2010. We find that the aforesaid orders had thereafter been followed by the Tribunal while disposing of the appeal of the assessee for A.Y 2000-01 (ITA No. 346/Mum/2007) and A.Y 2003-04 (ITA No. 1756/Mum/2007), vide its order dated 20.05.2011. We further find that the Tribunal while disposing of the appeal of the assessee for A.Y 2004-05 in ITA No. 1045/Mum/2008, dated 31.05.2013 had again followed its aforementioned orders. We are of the considered view that as the facts of the case had not witnessed any change as against those which were involved in the case of the assessee for the aforementioned earlier years, therefore, following the principle of consistency as had been emphasized by the **Hon'ble Supreme Court** in the case of **Radhsoami Satsang Vs. CIT (193 ITR 321) (SC)** and **Godrej & Boyce Manufacture Co. Ltd. Vs. DCIT (2017) (394 ITR 449) (SC)**, finding no reason to take a different view, follow the same. Before parting, we may herein observe that we are not persuaded to accept the contention of the ld. D.R that the adhoc adoption of 15% of the gross receipts of the assessee as its income attributable to India operations as observed by the Tribunal in the case of **Galileo International Inc. Vs. DCIT (2009)116 ITD 1 (Del)** for A.Ys 1995-96 to 1998-99, which thereafter had been approved by the **High Court of Delhi** in **CIT Vs. Galileo International Inc. (2011) (336 ITR 264)(Del)** would not be applicable to the case of the assessee for the year under consideration, viz. A.Y 2005-06, for the reason that the adjudication in the aforesaid cases was in respect of the years falling within the sweep of the era of pre-Transfer pricing provisions, which alongwith the related rules were notified in India with effect from 01.04.2002, vide the Finance Act, 2001. We are of the considered view that not only the ld. D.R by raising the aforesaid contention had tried to build up a new case before us which is not permissible in the eyes of law, but rather, while raising the aforesaid contention had also lost sight of the fact that the aforesaid view as regards adoption of 15% of the gross receipts of the assessee as its income attributable to India operations was also taken by the Tribunal in the assesses own case for A.Ys 2002-03 to 2004-05, which pertained to the period subsequent to the introduction of the Transfer pricing provisions. We further find that the High Court of Delhi while dismissing the appeal of the revenue in the case of CIT Vs. Galileo International Inc. (2011) (336 ITR 264) had observed that the determination of the income of the PE from the CRS activities in the said case was in conformity with the CBDT Circular No. 23, dated 23.07.1969 and the judgment of the Hon'ble Supreme Court in the case of DIT Vs. Morgan Stanley & Co. Inc. (2007) 292 ITR 416 (SC). We thus find ourselves persuaded to be in agreement with the contention of the ld. A.R that since the determination of 15% of the gross receipts as attributable to the CSR operations carried out by the assessee in India is already based on a FAR analysis, therefore, no purpose would be served by restoring the matter to the file of the A.O. We may at this stage also observe that in the case of Galileo Nederland BV (2014) 367 ITR 319 (Del), wherein similar facts were involved, the High Court following its order passed in the earlier years in the case of the assessee, had in the backdrop of the Principle of consistency reversed the order of the Tribunal which had set aside the matter to the file of the A.O for fresh determination of the income attributable to the CSR operations carried out by the assessee in India. We thus in the terms of our aforesaid observations and following the view taken by the coordinate bench of the Tribunal in the assesses own case for the preceding years, therefore, conclude that 15% of the gross receipts pertaining to India bookings shall be the income attributable to the India operations of the assessee. We may herein observe that we are also persuaded to be in agreement with the view taken by the Tribunal in the assesses own case for A.Ys 1999-2000 to 2004-05 that as the commission paid by the assessee to its NMC, viz. ADSIL at 25% of its gross receipts pertaining to India bookings was higher than the income attributable to India, therefore, no part of the aforesaid income would remain in the hands of the

assessee which could be brought to tax in India. We thus in terms of our aforesaid observations allow the Ground of appeal No. 2 raised by the assessee before us."

As the facts and the issue involved in the present appeal of the assessee before us remains the same, therefore, we respectfully follow the aforesaid view of the tribunal. Accordingly, we herein conclude that 15% of the gross receipts pertaining to India bookings shall be the income attributable to the India operations of the assessee. Also, we follow the view taken by the Tribunal in the aforesaid preceding years viz. A.Y 1999-2000 to A.Y 2004-05 and A.Y 2005-06 to A.Y 2011-12, that as the commission paid by the assessee to its NMC viz. ADSIL at 25% of its gross receipts pertaining to India bookings was higher than its income attributable to India, therefore, no part of the aforesaid income would remain in the hands of the assessee which could be brought to tax in India. As such, in terms of our aforesaid observations we allow the **Ground of appeal No. 3** raised by the assessee before us.

17. We shall now take up the claim of the ld. A.R that the DRP/A.O had erred in holding that 10% of the expenses reimbursed by ADSIL amounting to Rs. 3,51,92,700/- were to be held as the business income of the assessee. On a perusal of the order passed in the assesse's own case for the aforementioned preceding years viz. for A.Y 2005-06 to A.Y 2011-12 the Tribunal had in context of the issue pertaining to treatment of 10% of the expenses which were claimed by the assessee as reimbursements by ADSIL observed as under:

"We find that the assessee had submitted before the A.O that ADSIL had reimbursed the following expenses which were incurred by the assessee on its behalf:-

Particulars	Amount (Rs.)
Line charges [payments to SITA for Connectivity of travel agents (lease lines)	12,032,811/-
Installation charges (payments to SITA for one time installation cost of lease lines)	424,593/-
Service charges (payments to SITA and SABRE for the travel agent's accesses to the pricing module for doing the ticket booking)	4,100,034/-
Other expenses (courier charges, travel related expenses, marketing and consulting fees, fees for back office accounting packages, etc.	3,992,027/-
Total	**20,549,465/-**

We find that as the assessee had failed to substantiate its claim that the amount received from ADSIL was in the nature of reimbursement of expenses, therefore, the A.O had treated the

same as 'Fees for technical services' as per Article 12 of the India–Singapore DTAA. We find that on appeal the assessee had furnished with the CIT(A) additional evidence under Rule 46A of the Income Tax Rule, 1963, in its attempt to fortify its claim that the aforesaid receipts were in the nature of reimbursement of expenses by ADSIL. However, the CIT(A) being of the view that the assessee despite being afforded sufficient opportunity by the A.O had failed to substantiate its aforesaid contention and place on record the aforementioned documentary evidence, therefore, it could not be permitted to furnish the same by way of additional evidence before him. We have deliberated on the facts and are persuaded to be in agreement with the CIT(A) that as the assessee despite having been afforded sufficient opportunity by the A.O had however failed to furnish the said documentary evidence to substantiate its contention during the course of the assessment proceedings, therefore, it could not be permitted to undo the said lapse in the garb of filing of additional evidence before the first appellate authority. We thus finding no infirmity in the aforesaid observations of the CIT(A), therefore, uphold the declining of the admission of the additional evidence by him. We however find substantial force in the contention of the ld. A.R that now when the CIT(A) in line with the orders of the A.O and DRP in the case of the assessee for the subsequent years had observed that 10% of the aforesaid amount was to be brought to tax as the business income of the assessee, therefore, the same would be entitled for set off against the commission payment made by the assessee to its NMC, viz. ADSIL. The ld. A.R had submitted before us that if the amount of Rs.20,54,947/- was taken as the business income of the assessee, still there would be no income chargeable to tax in the hands of the assessee, because the amount of marketing fees paid by the assessee to ADSIL of Rs.10,30,00,287/-would absorb the said income element. We have given a thoughtful consideration to the contention advanced by the ld. A.R that 10% of the reimbursement amount as claimed by the assessee which had been characterized by the CIT(A) as the business income would justifiably be entitled for set off against the commission payment made by the assessee to ADSIL, merits acceptance. However, we may herein observe that as the quantification of the gross receipts and commission paid to ADSIL had been restored by the CIT(A) to A.O, therefore, the commission paid by the assessee to its NMC, viz. ADSIL would be that as determined by the A.O. The Ground of appeal No. 3 raised by the assessee is allowed in terms of our aforesaid observations."

As the facts and the issue involved in the present appeal of the assessee principally remains the same in context of treating of 10% of the amount that was claimed by the assessee to have been reimbursed by ADSIL, as was therein involved in the aforesaid case of the assessee before the Tribunal, therefore, finding no reason to take a different view we respectfully follow the same. Accordingly, we herein direct that 10% of the aforesaid amount of Rs. 3,51,92,700/- be brought to tax as the business income of the assessee. At the same time, the assessee would be entitled for claiming 'set off' of the aforesaid amount against the commission payment made by it to its NMC viz. ADSIL. The **Ground of appeal No. 4** raised by the assessee is partly allowed in terms of our aforesaid observations.

18. We shall now advert to the contention of the ld. A.R that the A.O/DRP had erred in upholding the transfer pricing adjustment in respect of USD denominated interest free ECB loan

that was advanced by the assessee to its wholly owned subsidiary company in India, viz. ADSIL. As is discernible from the orders of the lower authorities, the DRP had upheld the proposed Transfer pricing adjustment of Rs. 2,10,24,208/- as regards the ALP of the interest free advance that was granted by the assessee to its AE viz. ADSIL. On a perusal of the order passed in the assesses own case for the preceding years viz. A.Y 2005-06 to A.Y 2011-12, we find that the Tribunal had in context of the aforesaid issue under consideration observed as under:

> "We find that the interest free loan which was advanced by the assessee to its NMC, viz. ADSIL, was treated by the revenue as an international transaction whose arms length interest was worked out by applying the Indian PLR of 10.50%. The ld. A.R had submitted before us that as the aforesaid amount was advanced by the assessee to its WOS, viz. ADSIL with a view to financially strengthen the said company which was the National marketing company for the assessee in India, as the same would had facilitated garnering of more customers for the assessee in the India Market, therefore, the said advancing of interest free loan which was prompted by business prudence and commercial reasons, thus not liable to be subjected to a transfer pricing adjustment. We are unable to persuade ourselves to accept the aforesaid contention of the ld. A.R. We are of the considered view that as the advancing of the aforesaid loan by the assessee to ADSIL was an international transaction, therefore, the transfer pricing provisions stood invoked. We may herein observe that the ld. A.R had not drawn our attention to any judicial pronouncement which would go to support his aforesaid view. We find that though the ld. A.R had assailed the transfer pricing adjustment in respect of the aforesaid transaction for the reason that as the assessee had not charged any specified price, therefore, no transfer pricing adjustment in respect of the aforesaid transaction was permissible, but however, he had during the course of hearing of the appeal sbmitted that he was not pressing the said contention. We find that the ld. A.R had during the course of the hearing of the appeal focussed his contentions in respect of the transfer pricing adjustment, on the ground that the ALP interest rate should not have exceeded the LIBOR being the rate of interest applicable to USD. We find substantial force in the contention raised by the ld. A.R before us. We have given a thoughtful consideration and are unable to persuade ourselves to be in agreement with the contention of the ld. D.R that the Hon'ble High Court of Bombay in the case of CIT Vs. Tata Autocomp Systems ltd. (2015) 374 ITR 516 (Bom) had concluded that ALP in the case of loans advanced to AE was to be determined on the basis of rate of interest being charged in the country where the loan is received/consumed. We have perused the judgment of the Hon'ble High Court of Bombay in the case of Tata Autocomp Systems Ltd. (supra) and find that the Hon'ble High Court had as a matter of fact dismissed the appeal of the revenue, for the reason that as the Tribunal while passing the impugned order in the case of Tata Autocomp Systems Ltd. Vs. ACIT (2012) (21 taxmann.com 6) (Mum) had followed the view taken by the coordinate benches of the Tribunal in the case of V.V.F Ltd. Vs. Dy. CIT (ITA No. 673/Mum/2006) and Dy. CIT Vs. Tech Mahindra Ltd. (2011) 12 taxmann.ocm 132 (Mum), however, neither of the said orders were further assailed by the revenue. Thus, the High Court taking cognizance of the fact that the revenue had accepted the decision of the Tribunal in the case of V.V.F. Ltd. (supra) and Tech Mahindra Ltd. (supra), therefore, it would not be permitted on the part of the revenue to take a different view, as against the one which had been allowed to attain finality. We find that it was on the basis of the aforesaid observations that the Hon'ble High Court had declined

to entertain the appeal filed by the revenue. We thus are of the considered view that the contention of the ld. D.R that the Hon'ble High Court had observed that the ALP in respect of interest on the loans advanced to AE's is to be determined on the basis of rate of interest being charged in the country where the loans is received/consumed is absolutely misconceived. We are rather persuaded to be in agreement with the contention of the ld. A.R that the issue as regards the determination of the ALP in respect of interest on loan advanced to AE was looked into by the Hon'ble High Court of Bombay in the case of CIT-1 Vs. M/s VFS Global Services Pvt. Ltd. (ITA No. 336/Mum/2015, dated 19.01.2017), wherein the High Court dealing with the contention of the revenue that the Tribunal was not justified in directing the A.O/TPO to determine the ALP interest by considering the LIBOR plus 2%, as against the rates of the Indian Market, had observed that the view of the Tribunal as regards determination of the ALP interest at LIBOR plus 2% appeared to be in conformity with the earlier judgment of the High Court in the case of CIT-2 Vs. Tata Autocomp Systems Ltd. (ITA No. 1320/Mum/2012, dated 03.02.2015). We are of the considered view that the Hon'ble High Court of Bombay while disposing of the appeal filed by the revenue in the case of CIT-1 Vs. M/s V.F.S Global Services Pvt. Ltd. (ITA No. 336/Mum/2015, dated 19.07.2017) was not persuaded to be in agreement with the contention of the revenue that the Tribunal had erred in directing the A.O/TPO to determine the ALP interest by considering the LIBOR plus 2% and not the rates of the Indian Market. We further find that a coordinate bench of the Tribunal, ITAT, Pune Bench "B", Pune, had in the case of Tool Tech Global Engineering Pvt. Ltd. Vs. DCIT (ITA No. 273/PN/2014, dated 22.08.2014) had observed that in the case of a transaction in foreign currency between two cross border entities, the ALP should be computed in context of the prevailing lending practises in the international market. The Tribunal had further observed that in respect of such international transactions, the domestic bank rate would not be a sound basis and rather internationally accepted LIBOR rate would be the proper basis for benchmarking the ALP interest rate in respect of the said transactions. We further find that the Hon'ble High Court of Delhi in the case of Commissioner of Income Tax-1 Vs. M/s Cotton Naturals (I) Pvt. Ltd. (ITA No. 233/Mum/2014, dated 27.03.2015) had observed that the interest rate applicable should be that of the currency concerned in which the loan has to be repaid. The Hon'ble High Court had disagreed with the view that the interest rates were to be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. It was further observed by the High Court that the currency in which the loan is to be repaid normally determined the rate of interest. The aforesaid judgment of the Hon'ble High Court of Delhi in the case of M/s Cotton Naturals (I) Pvt. Ltd. (supra) had thereafter been followed by a coordinate bench of the Tribunal in the case of M/s Firestar International Pvt. Ltd. Vs. ACIT, Mumbai (ITA No. 488/Mum/2015, dated 31.07.2015). The Tribunal by taking support of the aforesaid judgment of the High Court of Delhi had concluded that the application of the State Bank of India PLR of 11.75% for determining the ALP of the interest on loan advanced in USD by the assessee to its AE, could not be approved. We have deliberated on the issue under consideration and finding ourselves to be in agreement with the view taken in the aforesaid judicial pronouncements, are thus of the considered view that the ALP of the interest on the loans advanced by the assessee to its subsidiary company, viz. ADSIL was to be determined on LIBOR and not as per the Indian PLR rate so adopted by the A.O/TPO. We thus in the backdrop of our aforesaid observations direct the A.O/TPO to take ALP of the interest on the loan advanced by the assessee to ADSIL as per the LIBOR rate plus 2%. We thus in terms of our aforesaid observations partly allow the Ground of appeal No. 5 raised by the assessee before us."

As the facts and the issue involved in the present appeal of the assessee in context of the TP adjustment as regards the ALP of the notional interest on the loans (interest free) granted by the assessee to its AE viz. ADSIL remains the same as was therein involved in the aforesaid preceding years in the assesse's own case for A.Y 2005-06 to A.Y 20-11-12, therefore, we respectfully follow the same. Accordingly, in conformity with the aforesaid view of the Tribunal, we herein direct the A.O/TPO to take the ALP of the notional interest on the loan advanced by the assessee to ADSIL as per the LIBOR rate plus 2%.

19. At the same time, we may herein observe that as the Tribunal while disposing off the appeals of the assessee for A.Y 2005-06 to A.Y 2011-12, vide its order dated 16.02.2018 had inadvertently omitted to adjudicate upon the alternative claim of the assessee that if the interest income (on interest free loan advanced to AE viz. ADSIL) was to be considered as part of its business income, there would not be any income chargeable to tax since the marketing fees paid by it to ADSIL would absorb the same. In the backdrop of the aforesaid facts, the Tribunal had on a miscellaneous application filed by the assessee, therein vide its order dated 10.05.2019 recalled its aforesaid order dated 16.02.2018, for the limited purpose of adjudicating the aforesaid alternative claim of the assessee. Subsequently, the Tribunal had vide its order dated 16.10.2019 adjudicated upon the aforesaid issue and had concluded as under:

> "We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the original order of the Tribunal, dated 16.02.2018, as well as the material available on record. As is discernible from the order of the Tribunal, dated 16.02.2018, the ld. A.R had in the course of the original appellate proceedings raised an alternative contention i.e in case a transfer pricing adjustment in respect of the interest on the ECB loan was to be carried out, then the interest income on the said loan could safely be held as an income which would be entitled to be adjusted against the marketing service fees paid by the assessee to its AE' viz. ADSIL. In fact, a perusal of the records reveals, that the assessee in the course of the original appellate proceedings before the Tribunal had filed 'charts' in support of its claim that if the interest income alongwith 10% of the reimbursement of expenses was to be considered as part of the assesse's business income, there would not be any income chargeable to tax, since the expenditure incurred by the assessee i.e marketing service fees that was paid to its AE viz. ADSIL would be sufficient to absorb its income. Similar charts had once again been filed by the ld. A.R in the course of the present proceedings before us. As is discernible from the aforesaid details filed by the assessee, it is claimed, that if ALP of interest on loans advanced to its AE viz. ADSIL is worked out at LIBOR + 200 points, and 10% of the reimbursement of expenses is treated as its income, then there would be a 'Loss' in the hands of the assessee for all the aforesaid years, as under:

A.Y	Loss

2005-06	(-) Rs. 3,66,91,140/-
2006-07	(-) Rs. 20,18,38,117/-
2007-08	(-) Rs. 18,19,34,123/-
2008-09	(-) Rs. 30,28,11,359/-
2009-10	(-) Rs. 35,28,72,303/-
2010-11	(-) Rs. 31,14,09,914/-
2011-12	(-) Rs. 39,70,52,993/-

8. We have given a thoughtful consideration to the aforesaid claim of the ld. A.R, and are persuaded to accept his claim. In our considered view, the notional interest income on the interest free loan advanced by the assessee to its AE viz. ADSIL would be assessable as the income of the assessee which has a business connection/PE in India. At the same time, we are in agreement with the claim of the ld. A.R, that the said notional interest income on the loans advanced by the assessee to its AE would be entitled to be adjusted against the expenditure incurred by the assessee by way of marketing service fees paid to its National Marketing Agency in India, i.e its AE viz. ADSIL. In fact, the said claim of the assessee had been accepted by the Tribunal in context of addition of 10% of reimbursement of expenses, vide its order dated 16.02.2018. Accordingly, we allow the claim of the assessee that the notional interest income would be entitled to be adjusted as against the expenditure incurred by it by way of marketing service paid to ADSIL during the aforesaid respective years. At the same time, we may herein observe, that as the quantification of the aforesaid claim as had been projected by the assessee before us cannot be summarily accepted on the very face of it, therefore, for the limited purpose of making verification as regards the veracity of such quantification the matter is restored to the file of the A.O/TPO. As the Ground of appeal No. 5.8 has been allowed by us as above, therefore, as per the concession of the ld. A.R the Ground of appeal No. 5.7 which is rendered as academic in nature is thus not being adverted to and adjudicated upon by us. Accordingly, the **Ground of appeal No. 5.8** is allowed in terms of our aforesaid observations. The view taken by us hereinabove would also be applicable to A.Y. 2006-07 to A.Y. 2009-10, wherein the said issue in the absence of a specific ground of appeal to the said effect was allowed to be raised with the leave of the Tribunal at the time of hearing of the appeal. Insofar, the **Ground of appeal No. 5.7** is concerned, the same as observed by us hereinabove, having been rendered as academic in nature is accordingly not being adjudicated upon and is left open."

As such, following the view taken by the Tribunal in the aforesaid preceding years viz. A.Y 2005-06 to A.Y 2011-12 in the assesse's own case, we herein conclude that the notional interest income on the loan (interest free) that was advanced by the assessee to its AE viz. ADSIL would be assessable as the income of the assessee which has a business connection/PE in India. At the same time, we are in agreement with the claim of the ld. A.R that the said notional interest income on the loans advanced by the assessee to its AE would be entitled to be adjusted against the expenditure incurred by the assessee by way of marketing service fees paid to its National Marketing Agency in India, i.e its NMC viz. ADSIL. The **Ground of appeal No. 5** raised by the assessee is disposed off in terms of our aforesaid observations.

20. The assessee has assailed before us the initiation of the penalty proceedings under Sec. 271(1)(c) by the A.O. As the aforesaid assailing of the initiation of penalty proceedings is found to be premature, therefore, the same is dismissed as such. The **Ground of appeal No. 6** is dismissed.

21. The assessee had further assailed before us the levy of interest under Sec. 234B of Rs.40,15,804/- and interest under Sec. 234C of Rs. 3,62,137/-. It was submitted by the ld. A.R that the Hon'ble High Court of Bombay in the assesses own case for A.Y 2003-04, viz. the Director of Income tax (International taxation) Vs. M/s Abacus International Pte. Ltd. (ITA (L) No. 2424/Mum/2010, dated 01.07.2011), by relying on its earlier order in the case of Director of Income Tax (International taxation) Vs. N.G.C Network Asia CCC (2009) 313 ITR 187 (Bom), had concluded that the Tribunal had rightly deleted the interest levied on the assessee under Sec. 234B of the Act. We thus in terms of the aforesaid observations of the Hon'ble High Court direct the A.O to delete the interest levied on the assessee under Sec. 234B and Sec. 234C. The **Grounds of appeal No. 7 & 8** raised by the assessee are allowed.

22. The **Grounds of appeal No. 1, 9 & 10** being general are dismissed as not pressed.

23. The appeal of the assessee is allowed in terms of our aforesaid observations.

ITA No. 7379/Mum/2018
A.Y. 2014-15

24. We shall now advert to the appeal of the assessee for A.Y 2014-15. The assessee has assailed the impugned order of the A.O on the following grounds of appeal before us:

> The appellant objects to the order under section 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 [Act] dated 26 October 2018 passed by the Deputy Commissioner of Income-tax, (International Taxation) - 4(2)(1), Mumbai [DCIT] for the aforesaid assessment year on the following among other grounds:
>
> 1. The learned DCIT erred in assessing the total income of the appellant at Rs.16,37,62,989.
>
> **2. Business connection/permanent establishment in India**
>
> 2.1 The learned DCIT erred in holding that the appellant had a business connection in India in terms of the Act and a permanent establishment [PE] in India in terms of the India-Singapore Double Taxation

Avoidance Agreement [DTAA].

2.2 The learned DCIT erred in holding that the appellant has a fixed place of business in India.

2.3 The learned DCIT erred in holding that the appellant maintains telecommunication network in India through which all the messages are transmitted.

2.4 The learned DCIT erred in observing that the appellant carries out its activities of Computerized Reservation System [CRS] through the Abacus Country Node located in India which is under the management and control of the appellant.

2.5 The learned DCIT erred in observing that Sabre Travel Network (India) Private Limited (earlier known as Abacus Distribution Systems (India) Private Limited) [STN] secures business for the appellant by entering into subscription agreement with the travel agents and this activity is habitually, wholly and exclusively performed by STN for the appellant. The learned DCIT further erred in holding that SIN constitutes agency PE of the appellant in terms of India-Singapore DTAA.

2.6 The learned DCIT erred in observing that STN is dependent on the appellant for its financial existence and is performing only activities for the appellant and that STN is not an independent agent.

3. Income attributable to PE

3.1 The learned DCIT erred in treating a sum of Rs. 1,49,45,49,185 as income attributable to the PE in India and computing the income liable to tax in India as Rs. 14,94,54,918 (10% of Rs. 1,49,45,49,185).

3.2 The learned DCIT erred in calculating the income of the appellant on presumptive basis by estimating the profit margin of the appellant as l0% of the receipts from Indian operations of Rs. 1,49,45,49,185 and treating a sum of Rs, 14,94,54,918 (10% of Rs. 1,49,45,49,185) as the taxable income of the appellant.

3.3 The learned DCIT erred in not deducting the commission and marketing service fees aggregating to Rs. 1,07,60,87,838 paid to STN in the attribution of income.

3.4 The learned Dispute Resolution Panel [DRP] erred in observing that the estimation of 10% of overall revenues from Indian operations as per Rule 10 of Income-tax Rules, 1962 as income of appellant has been upheld by the Hon'ble Income-tax Appellate Tribunal [ITAT] without appreciating that while deciding the issue on attribution of income, the Hon'ble ITAT has not relied on Rule 10.

3.5 The learned DCIT/DRP erred in observing that if any deduction of commission and marketing service fees paid to STN can be claimed by the appellant, it can only be claimed against the revenue of Rs.1,49,45,49,185

from Indian operations and not against the income estimated by the DCIT at l0% of total revenue.

3.6 The learned DCIT/DRP erred in not following the Hon'ble ITAT's decision in the appellant's own case for earlier years (i.e. AYs 1999-00 to 2011-12), Hon'ble Delhi High Court's judgment in the case of Galileo International Inc. (336 1TR 264) and decision of the Hon'ble Delhi ITAT in case of Sabre Inc. (ITA No. 2311 to 2317/Del/2008) despite no change in facts.

4. Reimbursement of expenses

4.1 The learned DCIT erred in holding that the reimbursement of expenses from STN amounting to Rs. 4,83,96,108 are part of business income of the appellant and thereby taxing Rs. 48,39,611 (i.e. 10% of Rs. 4,83,96,108).

4.2 The learned DCIT erred in not appreciating that the reimbursement of expenses were towards expenses incurred by the appellant on airfare transaction charges and other expenses towards courier charges, marketing and consulting fees, etc. and in the nature of pure reimbursement not having any element of income/service.

4.3 Without prejudice to the above, the learned DCIT/DRP erred in not following the decision of the Hon'ble ITAT in appellant's own case for AY 2004-05 wherein it is held that even if the reimbursement is considered as part of business income, there should not be any income chargeable to tax since the expenditure paid by the appellant (i.e. commission and marketing fees paid to STN) is sufficient to absorb its income.

Further, the learned DCIT erred in not following the decision of the Hon'ble ITAT in appellant's own case for AYs 2005-06 to 2011-12, wherein it is held that 10% of the reimbursement of expenses which is characterized as business income would justifiably entitled to set-off against the commission paid by the appellant to STN.

5. Transfer pricing adjustment

5.1 The learned DCIT/DRP erred in making a transfer pricing adjustment of Rs. 94,68,460 under section 92CA(4) of the Act, in respect of the international transaction in relation to an interest-free loan extended by the appellant to its Associated Enterprise, STN reported in the Accountant's Report in Form 3CEB.

5.2 The learned DCIT/DRP while determining the arm's length interest rate erred in not appreciating in the proper perspective the business and economic circumstances prevailing at the time of providing the interest free loan by the appellant to STN.

5.3 The learned DCIT/DRP not only erred in considering the interest free loan granted by the appellant to STN as Quasi-Equity but also erred in re-characterizing an interest free loan into an interest bearing one.

5.4 The learned DCIT/DRP erred in disregarding the commercial expediency of the interest free

loan and instead imputed notional interest thereon.

5.5 The learned DCIT/DRP erred in not appreciating/ considering that in respect of the adjustment of Rs. 94,68,460 to the total income of the appellant representing alleged arm's length interest on the interest-free loan granted by the appellant to STN, no corresponding deduction is allowed to STN in its tax return or assessments, and accordingly amounts to double taxation of the same income.

5.6 The learned DCIT erred in not considering the fact that if the appellant had charged interest instead of the loan being interest free there would be loss to the revenue of India, considering the deductibility of the interest expense in the hands of the borrower (i.e. STN) and low withholding tax in respect of interest due to the appellant and would not in line with the intent of the law as prescribed under section 92(3) of the Act.

5.7 Without prejudice to the above, the learned DCIT erred in not allowing corresponding deduction of the interest free loan granted by the appellant in the hands of STN.

5.8 The learned DCIT/DRP erred in not following the Hon'ble ITAT decision in the Appellant's own case for earlier years (i.e. AYs 2005-06 to 2011-12), wherein it was held that the ALP of the interest rate to benchmark the said ECB loan transaction should be LIBOR rate plus 2%.

5.9 The learned DCIT/DRP while passing its directions for AY 2014-15, erred in relying on the directions issued by the DRIP in the immediately preceding assessment year (i.e. AY 2013-14) instead of relying on the ITAT order as referred above.

5.10 Without prejudice to the above, the learned DRP/DCIT erred in not appreciating that even if the interest income is considered as part of business income, there should not be any income chargeable to tax since the expenditure paid by the appellant (i.e. commission and marketing fees paid to STN) is sufficient to absorb its income and accordingly there will be no loss to the revenue.

6. The learned DCIT has erred in initiating penalty proceedings under section 271(1)(c) of the Act

7. Each one of the above grounds of appeal is without prejudice to the other.

8. The appellant reserves the right to amend, alter or add to the grounds of appeal."

25. The assessee company had e-filed its return of income for the year under consideration, viz. A.Y 2014-15 on 27.11.2014, disclosing its total income at Rs. Nil. During the course of the assessment proceedings it was gathered by the assessee that the assessee had received a total fees of Rs.149,45,49,185/- (USD 2,50,59,510.14 @ 59.64) in respect of its

activity of providing airline reservations in India. The assessee had further claimed to have paid an amount of Rs. 107,60,87,838/- to its NMC viz. ADSIL by way of commission for the marketing services rendered by it.

26. The A.O while framing the assessment inter alia proposed certain additions viz. (i). business income attributable to the PE in India :Rs. 14,94,54,918/-.; (ii). Income on reimbursement :Rs. 48,39,611/-; and (iii). TP adjustment as regards notional interest on advances (interest free) granted to it's AE viz. ADSIL : Rs. 94,68,460/-. In the backdrop of the aforesaid additions the A.O vide his draft assessment order passed under Sec. 143(3) r.w.s 144C(1), dated 22.12.2017 proposed to assess the income of the assessee company at Rs. 16,37,62,989/-.

27. Objecting to the additions proposed by the A.O the assessee carried the matter before the DRP. The DRP vide its order passed u/s 144C(5), dated 12.09.2018 upheld the aforesaid additions proposed by the A.O/TPO.

28. On the basis of the order passed under Sec. 144C(5), dated 12.09.2018 by the DRP, the A.O vide his order passed u/s 143(3) r.w.s 144C(13), dated 26.10.2016 assessed the income of the assessee company at Rs. 16,37,62,989/-.

29. The assessee being aggrieved with the assessment framed by the A.O u/s 143(3) r.w.s 144C(13), dated 26.10.2016 has carried the matter in appeal before us.

30. It was submitted by the ld. A.R that the facts and the issues involved in the present appeal of the assessee for A.Y 2014-15 in ITA No. 7379/Mum/2018 remained the same as were there before us in the aforesaid appeal of the assessee for A.Y 2012-13 in ITA No. 664/Mum/2017. The aforesaid claim of the counsel for the assessee was not controverted by the ld. D.R. We have perused the orders of the lower authorities and find ourselves to be in agreement with the aforesaid claim of the ld. A.R. As the facts and the issues involved in the present appeal of the assessee for A.Y 2014-15 in ITA No. 7379/Mum/2018 remains the same as were there before us in its aforesaid appeal for A.Y 2012-13 in ITA No. 664/Mum/2017, therefore, our order therein passed shall apply mutatis mutandis for disposal of the present appeal of the assessee. Accordingly, the appeal of the assessee for A.Y 2014-15 in ITA No.

7379/Mum/2018 is partly allowed on the same terms.

31. Resultantly, the appeals of the assessee for A.Y 2012-13 in ITA No. 664/Mum/2017 and for A.Y 2014-15 in ITA No. 7379/Mum/2018 are partly allowed.

Order pronounced in the open court on 17/02/2020.

Sd/-	Sd/-
(N.K. Pradhan)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai;
Dated: 17/02/2020
Rohit, P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//
(Sr. Private Secretary)
ITAT, Mumbai