**IN THE INCOME TAX APPELLATE TRIBUNAL**
**MUMBAI BENCH "I" MUMBAI**

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND**
**SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA Nos.2304 & 2305/MUM/2019**
**(Assessment Years: 2014-15 & 2015-16)**

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| Reliance Globalcom Limited, Bermuda, C/o Sunil V. Doshi, 602, Neelkanth Building, 98 Marine Drive, Next to ROC, Mumbai – 400 002 | Vs. | Dy. Commissioner of Income Tax (IT) – 4(1)(1), Room No. 1712, Air India Building, Nariman Point, Mumbai – 400 021 |

**PAN No. AAACF4015D**

**(Assessee)** **(Revenue)**

**&**

**ITA No.2335/MUM/2019**
**(Assessment Year: 2014-15)**

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| Dy. Commissioner of Income Tax (IT) – 4(1)(1), Room No. 1712, 17th Floor, Air India Building, Nariman Point, Mumbai – 400 021 | Vs. | Reliance Globalcom Limited, C/o S. V.Doshi & Company,602, E, Neelkanth Building, 98 Marine Lines, Mumbai – 400 021 |

**PAN No. AAACF4015D**

**(Revenue)** **(Assessee)**

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| Assessee by | : | Shri Jitendra Sanghavi & Shri Amit Khatiwala, A.Rs |
| Revenue by | : | Shri Vijay Kumar G. Subramanyam, D.R |
| Date of Hearing | : | 25/06/2021 |
| Date of pronouncement | : | 28/06/2021 |

## ORDER

**PER RAVISH SOOD, J.M:**

The captioned cross-appeals/appeal are directed against the respective orders passed by the CIT(A)-58, Mumbai, dated 25.01.2019 and 28.01.2019 for A.Y 2014-15 and A.Y 2015-16, which in turn arises from the respective orders passed by the A.O u/s 143(3) r.w.s 144C(3) of the Income Tax Act, 1961 (for short 'Act'). As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order. We shall first take up the cross-appeals for A.Y. 2014-15. The assessee has assailed the impugned order on the following grounds before us:

**"A. TAXABILITY OF RECEIPTS OF STANDBY MAINTENANCE CHARGES IN INDIA:**

1. On the facts and circumstances of the case and in law, the learned Commissioner of Income tax (Appeals) - 58, Mumbai ("the CIT(A)") erred in holding that the entire turnover (receipts) from the Indian Parties) is liable to be treated as turnover for the purpose of taxation in India.

   The Appellant submits that the said receipt of Standby Maintenance Charges from TCL cannot be treated as turnover for taxation purpose in India.

2. On the fact and circumstances of the case, the learned CIT(A) erred in holding that the entire turnover (receipts from the Indian parties) is to be treated as turnover for the purpose of taxation in India without giving any notice for enhancement or opportunity to the Appellant.

   The Appellant submits that the CIT(A) ought not to have held that the entire turnover (receipt from the Indian parties) is liable to be treated as turnover for the purpose of taxation in India.

3. On the fact and circumstances of the case and in law, the learned CIT(A) erred in holding that the entire turnover (receipts from Indian Parties) of Standby Maintenance Charges from TCL is liable to be treated as turnover for the purpose of taxation in India.

   The Appellant submits that the turnover (receipts) of Standby Maintenance Charges from TCL that is attributable to India has to be calculated on the basis of proportion of the cable length in India vis-a-vis worldwide cable length.

B. GENERAL:

4. The Appellant craves leave, to add, amend or alter the above grounds of appeal."

On the other hand the revenue has challenged the impugned order by raising the following grounds of appeal before us:

"1. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in concluding that the amount received by the assessee from Tata Communications Ltd. (erstwhile VSNL) as 'standby maintenance charges' was not in the nature of Tees for technical services' under section 9(1)(vii) of the Income tax Act, 1961 without appreciating the fundamental fact that the act of maintenance of infrastructure by the assessee by way of deploying cable ships, submersible equipment, keeping trained staff on standby and maintenance and operation of Network Operation Centre under the Construction and Maintenance Agreement dated 14.12.1995, is itself in the nature of rendering managerial and technical services under section 9(1)(vii) of the Act as the assessee is rendering services by way of constantly monitoring the under-sea cable systems?

2. Whether on the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in concluding that the amount received by assessee from Tata Communications Ltd (erstwhile VSNL) as standby maintenance charges was not in nature of Tee for technical services' under section 9(1)(vii) of the Income tax Act, 1961 without appreciating that as per the provisions of said section, any payment made or payable by entities identified in section 9(1)(vii)(a), (b) and (c) for the purpose of rendering managerial, consultancy and technical services is taxable in India?

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in concluding that the amount received by assessee as standby maintenance charges was not in nature of Tee for technical services' under section 9(1)(vii) of the Income tax Act, 1961 without appreciating the fact that the assessee rendered managerial and technical service by ensuring that the cable system was in a seamless operational condition at all times and in case of actual need for the repairs and maintenance, the same could be carried out within least time?

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in concluding that the amount received by assessee as standby Maintenance charges was not in the nature of 'fee for technical services' under section 9(1)(vii) of the Act on the ground that it was a mere collection of annual charge without appreciating that it cast a responsibility on the assessee to actually deploy personnel and maintain equipment to keep the submarine system in working condition?

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in concluding that the amount received by assessee as standby maintenance charges was not in the nature of 'Fee for technical services' under section 9(1)(vii) of the Act on the ground that it was in the nature of reimbursement without any profit element or mark up without appreciating that existence of a profit element or mark-up is not a criterion for determination of income by way of fees from technical services under section 9(1)(vii) of the Act?

6. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in ignoring that the Flag Network Operating Centre's activities as per the Construction & Maintenance Agreement, such as developing the routing plan, implementing, administering and maintaining the routing plan,

liaisoning during restoration activity, monitoring and reviewing capacity utilization assignments for optimum bandwidth utilization, identifying capacity requirement for restoration of facilities, coordinating arrangements for unassigned capacity and providing periodic reports for Assignment, Routing etc. are highly specialized activities which come under the purview of "management", "technical" as well as "consultancy" services for the purposes of section 9(1)(vii) of the IT Act?

7. The appellant prays that the order of the CIT(A) may be set aside on the above ground and that of the assessing officer restored.

8. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

2. As per the records, it is the claim of the revenue that the CIT(A) had erred in concluding that the amount received by the assessee from Tata Communications Ltd. (for short "TCL") as Standby Maintenance Charges was not in the nature of 'fees for technical services' (FTS) u/s 9(1)(vii) of the Income Tax Act, 1961. On the other hand, the assessee is aggrieved with the rejection by the CIT(A) of its claim that the Standby Maintenance Charges received from TCL only qua the portion thereof which was relatable to the length of cable in Indian territorial waters vis-a-vis the length of cable worldwide was to be taken as the total revenue deemed to accrue or arise in India from which relatable expenses were to be reduced for computing its income accruing or arising in India u/s 9(1)(i) of the Act.

3. Before us, the ld. Authorized Representative (for short 'A.R') for the assessee at the threshold submitted that the issues involved in the present appeal were squarely covered by the orders passed by the Tribunal in the assessee's own case for the preceding years. In order to drive home his aforesaid claim the ld. A.R took us through a 'Chart' (accompanied with the orders of the Tribunal), which read as under:

| A.Y. | ITA No. | Para no. of ITAT Order | Page No. of ITAT Order | Relevant Para & Page | Paper Book [Page No]. |
|---|---|---|---|---|---|
| 2010-11<br>2010-11 | 2804/M/2016<br>2805/M/2016 | 10 to 18 | 12 to 16 | Para 18 on Page 15 | 27 to 32 |
| 2009-10<br>2012-13 | CO.28/M/2018<br>CO. 29/M/2019 | 7 to 10 | 9 to 12 | Para 9 on Page 11 | 42 to 45 |
| 2013-14 | 5806/M/2017 | 3.4 | 7/8 | Para 5 on Page 13 | 59 to 61 |

The ld. A.R took us through relevant observations of the Tribunal in the aforementioned orders. It was, thus, submitted by the ld. A.R that the Tribunal in the assessee's own case had consistently been holding that the Standby Maintenance Charges received by the assessee from TCL could not be brought to tax as 'Fees for Technical Services' (for short 'FTS') and were liable to be taxed as its 'business income', and that too, to the extent of its reference to the "business connection" in India. Also, it was submitted by the ld. A.R that the Tribunal had observed that the turnover (receipts) of Standby Maintenance Charges from TCL i.e attributable to India had to be calculated on the basis of proportion of the cable length in India vis-a-vis worldwide cable length. In the backdrop of his aforesaid contention, it was submitted by the ld. A.R that though the CIT(A) had rightly concluded that the Standby Maintenance Charges could not be assessed as FTS in the hands of the assessee, however, he had wrongly observed that the entire turnover (receipts from the Indian parties) were liable to be treated as turnover for the purpose of taxation in India.

4. Per contra, the ld. Departmental Representative (for short 'D.R') assailed the order of the CIT(A), on the ground, that he had erred in vacating the view taken by the A.O that the Standby Maintenance Charges received by the assessee from TCL was liable to be assessed as FTS in the hands of the assessee.

5. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the ld. A.R to drive home his aforesaid contention. Admittedly, the issue involved in the cross appeals lies in a narrow compass, viz. (i) that as to whether the CIT(A) had rightly observed that the Standby Maintenance Charges received by the assessee from TCL was not liable to be taxed as FTS and was to be brought to tax as its 'business income'; and (ii) that as to whether the CIT(A) had rightly concluded that the entire amount of

turnover (receipts) of Standby Maintenance Charges received by the assessee from TCL was to be treated as its turnover for the purpose of taxation in India. As stated by the ld. A.R, and rightly so, we find that both the aforementioned issues involved in the present appeals are squarely covered by the orders passed by the Tribunal in the case of the assessee for the preceding years, viz. ITA Nos. 2804 & 2805/Mum/2016 for A.Y 2010-11 & A.Y. 2011-12; C.O. Nos. 28 & 29/Mum/2018 for A.Y 2009-10 & A.Y 2012-13; and ITA Nos. 5881 & 5806/Mum/2017 for A.Y. 2013-14. On a perusal of the latest order passed by the Tribunal while disposing off the cross-appeals in ITA No. 5881 &5806/Mum/2017, dated 27.03.2019 for A.Y 2013-14, we find that after exhaustive deliberations the Tribunal had concluded that the Standby Maintenance Charges received by the assessee from TCL could not be assessed as FTS and was its 'business income' that was taxable only to the extent of its reference to the "business connection" in India. Also, it was observed by the Tribunal that the turnover (receipts) of Standby Maintenance Charges from TCL i.e attributable to the operations carried out had to be calculated on the basis of apportionment of cable length in India vis-a-vis the worldwide cable length. For the sake clarity the relevant observations of the Tribunal in its aforesaid order are culled out as under:

> "5. We have heard rival submissions. We find that grounds raised by the revenue and the Ground Nos.1 to 5 raised by the assessee are adjudicated by this Tribunal under similar circumstances in assessee's own case in ITA No.2084 & 2085/Mum/2016 for A.Y. 2010-11 & 2011-12 dated 04/05/2018 wherein it was held as under:-
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> > "8. In this manner, the rival counsels have made their submissions. We find that the issue regarding the nature of services came-up before the Tribunal for the first time in Assessment Years 1998-99 to 2000-01, and vide order dated 06.02.2015 it was held that the same are not in the nature of „fee for technical services". Subsequently, for Assessment Years 2001-02 to 2008-09, the matter again came-up before the Tribunal, and vide order dated 15.06.2015, the amount has been held not to be in the nature of „fee for technical services" u/s 9(1)(vii) of the Act. The relevant discussion in the order of the Tribunal dated 06.02.2015 (supra) is as under :-
> >
> > > 68. The second issue relates to taxability of „standby maintenance charges" as fees for technical services u/s 9(1)(vii), as raised by the assessee in ground no. 4. As stated earlier, the assessee along with consortium of other parties has built the submarine fibre optic cable providing telecommunication link between UK and Japan. Under the terms of C&MA the FLAG cable system is to be jointly operated and maintained in efficient working condition or along with the founding signatory i.e. Flag and the landing party signatories. The operation and maintenance duties and rights has been elaborated in para 10 along with various sub clauses. The entire cable

system is to be operated and maintained by founding signatory in co-ordination with relevant landing party signatory. Flag Network Operation Centre (FNOC) has to provide overall network service surveillance and over all co-ordination of maintenance and repair operations of Flag cable system. The Flag has to co-ordinate the deployment of the vessels for repairs and maintenance operation in accordance with the procedure defined. Para 11 along with various sub clauses provides the responsibility for operation and maintenance cost. Clause 11.11 gives the details of activities, expenses and cost incurred. The relevant clause reads as under:-

> 11.1 The cost of standby maintenance of Segments S.X-1 and X-2, including, but not limited to, the maintenance of Segments S X-1 and X-2, the FNOC, the procurement of cable ship services covering, inter alia, ship depreciation, ship retrofit, crew, insurance (except insurance at sea), in-port expenses, the storage of submersible plant, remotely operated vehicles and other devices when included in the wet maintenance zone agreement standby charges, shall be recovered by the Founding Signatory through fixed charges payable by the Signatories and other holders of Assignable Capacity, in accordance with Schedules H1 through H-55 and J. adjusted to reflect inflation.
>
> 11.2 The cost of running charges, which shall be limited to recovery the direct incremental costs incurred in connection with a repair operation involving Segment S or Segment X-1 or Segment X-2, including, but not limited to, the cost of fuel, at sea insurance, additional crew at sea, crew overtime, victual ling, telecommunications, mobilization and de-mobilization expenses, consumables, replenished equipment, and remotely operated vehicles, the extent not included in the wet maintenance agreement standby charges, shall be apportioned among Signatories (excluding the Founding Signatory) and other holders of Assignable Capacity on the affected Segment S or Segment X-1 or Segment X-2 in accordance with Schedule F.

69. Thus, under the C&MA the responsibility of maintenance and repairs belongs to both, assessee and the landing parties. The maintenance activities under taken by the assessee for the purpose of standby maintenance which is the impugned issue, was for the arrangement for standby cover and maintenance and operation of FNOC. So far as standby maintenance charges is concerned, it is not in respect of any actual rendering of services but to maintain infrastructures for coordination and setting up conditions for efficient rendering of services in relation to maintenance and repairs of cable system. There is a separate charge for repair and maintenance under the C&MA whereby, the assessee is actually required to undertake repair and maintenance and for which the assessee separately charges. Such a repair and maintenance is separate from standby maintenance cost, which is in the nature of reimbursement of fixed cost. The standby maintenance is a fixed annual charge which is payable not for providing or rendering services but for arranging standby maintenance arrangement which is required for a situation whenever some repair work in the undersea cable or terrestrial cable is actually to be performed or rendered. It is a facility or infrastructure maintained for ready to use or render the technical services or repair services, if required. On these facts we have to examine whether assessee is providing any service to VSNL in respect of standby maintenance.

70. Explanation 2 to section 9(1)(vii) defines “fees for technical services” in the following manner:-

> “Explanation (2)- For the purpose of this clause, “fees for technical services” means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of service of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head “Salaries”.

From the above definition it is evident that if the income is to be characterized as FTS, then it has to be necessarily from the services provided for the following types, viz; “managerial”, “technical” or “consultancy”. Another very important phrase preceding the word managerial, technical and consultancy services is “rendering”. The word „rendering‟ qualifies the other terms used for the FTS. The word “rendering” connotes to “provide” or “deliver” or “to do something”. Thus, rendering services mean some kind of actual services is being provided or delivered which are in the nature of managerial technical or consultancy. The word „managerial‟ has to be understood in the context of running and managing the business of the client or one who is in charge for management and control of its business. Here the payment made by VSNL is not in the nature of managerial. Again the term consultancy‟ has to be understood as advisory services wherein necessary advice and consultation is given to the client for the purpose of clients business. It is act of consulting or giving advice or guidance. Again here-in-this case there is no consultancy services. The word “technical”

services connote services which are provided in technical field or by the person who has skill, knowledge expertise in the area of technical or science. Here-in-this case if the assessee is providing some kind of repair services in the cable system, then it can be termed as technical services, however, if there is no actual rendering of services, but mere collection of annual charge to recover the cost of standby facility, agreed by all the members of the consortium on proportionate cost basis, then it cannot be held that it is providing any kind of technical services. Here the most crucial point which has to be seen is firstly, whether there is any actual rendering of services; secondly, is there any mark up or element of profit in the charge received for standby maintenance; and lastly whether it is in the nature of fixed annual charge which is to be recovered as proportionate cost of maintain the standby facility ready for carrying out any maintenance or repair services. This charge is different from an annual maintenance contract, whereby repairs and maintenance is covered for a certain period or services. In the present case as evident from the clause 11.1, that so far as standby maintenance charges is concerned, it is in the form of fixed annual charge which is in the nature of reimbursement. It has been also brought on record that only actual cost incurred has been recovered from VSNL in providing the standby maintenance services. There is no profit element or mark up involved. The assessee has also provided the details of receipt and cost involved in providing standby maintenance services to VSNL for A.Ys. 1998- 99, 1999-2000 and 2000-01 which are as under:-

| | | | |
|---|---|---|---|
| | A.Y. 1998-99 | A.Y. 1999-00 | A.Y. 2000-01 |
| Revenues from standby maintenance charges | 512,955 | 1,226,860 | 2,072,453 |
| Total costs incurred (as per auditor's certificate) | (857,093) | (2,0,77,219) | (2,800,495) |
| Profit(Loss)from standby Maintenance activities | (344,138) | (850,359) | (728,042) |

It has been contended that there is a loss in this account.

71. Thus, on the facts and circumstances of the case as well as looking to the nature of standby maintenance cost, we hold that the receipts from standby maintenance charges from VSNL cannot be taxed as FTS, within the definition and meaning of section 9(1)(vii) as there is no rendering of services. However, whenever payment is received on account of actual repair or maintenance carried out, then same would definitely fall within the ambit of FTS chargeable to tax u/s 9(1)(vii). Accordingly the order of the CIT(A) is set aside and assessee"s ground on this score is allowed."

9. Therefore, following the decision of the Tribunal in assessee"s own case for the earlier years, so far as the Grounds raised by the Revenue are concerned, we find no reasons to interfere with the decision of the CIT(A), which is in line with the precedents in assessee"s own case by way of orders of the Tribunal (supra). At the time of hearing, it was also a common ground between the parties that the said decisions of the Tribunal continue to hold the field and have not been altered by any higher authority. Therefore, following the precedents, qua the Grounds raised by the Revenue, the order of CIT(A) is affirmed and Revenue fails in its appeal.

10. Insofar as the appeal of the assessee is concerned, it primarily relates to determination of business income taxable in India on account of standby maintenance charges received from the Indian landing party, i.e. TCL.

11. On this aspect, the stand of the assessee is that the turnover (receipts of standby maintenance charges from TCL) that is attributable to the operations carried out in India has to be calculated on the basis of apportionment of cable length in India vis-a-vis the worldwide cable length. On the contrary, the stand of the Revenue is that the turnover of the assessee derived from standby maintenance charges has no connection with the length of the cable laid in India. As per the Revenue, the standby maintenance charges relate to expenditure incurred by the assessee in maintaining the standby facility and Network Operating Centre (NOC) for a quick response to repair the interruptions and coordination of maintenance. The said facility is maintained and can be mobilised at short notice for rendering any repair work whatever and wherever needed. Therefore, as per the Revenue, the standby maintenance charges are relatable to the cable capacity assigned to various landing parties and not the length of the cable. In other words, as per the Revenue, once such

expenses on standby maintenance charges is allocated to TCL, i.e. the Indian landing party, with reference to the capacity used, it cannot be further apportioned based on the length of the cable so as to determine profit of the assessee attributable to the business connection in India.

12. The learned representative, however, pointed out that the income of the assessee, which is to be taxed in India, can be appropriately calculated only after apportioning the revenue on the basis of length of cable in the territorial waters of India for which the standby facility is being maintained by the assessee. Therefore, according to him, it is only such part of the total revenue received from TCL which is proportionate to the length of cable in the territorial waters of India which can be considered to compute assessee's income taxable in India and the same has been correctly done by the assessee in its return of income.

13. At this stage, we may also refer to the Additional Ground of appeal no. 2 which has been raised before us and which reads as under :-

> "2. On the facts and circumstances of the case and in law, the Learned CIT(A) erred in holding that the receipts from Indian parties is to be treated s turnover for the purpose of taxation in India ignoring the fact that no operations are carried out in India.
>
> The Appellant submits that considering clause (a) of Explanation 1 to section 9(1)(i) the receipts from Indian parties is not liable to tax in India."

14. By way of the said Additional Ground of appeal, assessee has sought to canvass that no part of the receipt from Indian landing party, i.e. TCL, is liable to be treated for the purpose of deducing assessee's income attributable to business connection in India because no such operations are indeed carried out in India. In other words, as per the assessee, the standby maintenance charges recovered from TCL are for maintenance of standby facility, i.e. the ships, which are not in the Indian territorial waters and, therefore, no part of the same can be treated as part of income taxable in India.

15. At the time of hearing, it was brought to the notice of the assessee that the aforesaid plea raised in the Additional Ground is directly contrary to the stand of the assessee taken in the return of income and, in response, the learned representative submitted that the said Ground be taken as withdrawn. We hold so.

16. Insofar as the other Additional Grounds of appeal nos. 1 & 3 are concerned, which read as under, the same are primarily in support of the original Grounds raised in the Memo of appeal.

> "1. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) – 58, Mumbai ("the CIT(A)") erred in holding that the entire turnover (receipts from the Indian Parties) is liable to be treated as turnover for the purpose of taxation in India.
>
> The Appellant submits that the said receipt of Standby Maintenance Charges from TCL cannot be treated as turnover for taxation purpose in India.
>
> 3. On the facts and circumstances of the case and in law, the Learned CIT(A) erred in holding that the entire turnover (receipts from the Indian parties) of Standby Maintenance Charges from TCL is turnover for the purpose of taxation in India without giving notice for enhancement or opportunity to the Appellant.
>
> The Appellant submits that the CIT(A) ought not to have held that the entire turnover (receipt from the Indian parties) is liable to be treated as turnover for the purpose of taxation in India.

17. On this aspect, the short dispute relates to the manner in which the income from standby maintenance charges taxable in India u/s 9(1)(i) of the Act is to be computed. Said charges have been received by the assessee from TCL and, as per the assessee, portion thereof which is relatable to the length of cable in Indian territorial waters vis-a-vis the length of cable worldwide be taken as the total revenue deemed to accrue or arise in India from which relatable expenses are to be reduced so as to compute the income accruing or arising in India u/s 9(1)(i) of the Act. On the contrary, the stand of the CIT(A) is that the entire amount of revenue received on this score from TCL should be considered.

> 18. As the aforesaid discussion shows, the dispute revolves around computation of the income from standby maintenance activities attributable in India. On this aspect, before proceeding further, we notice that in Assessment Years 2001-02 to 2008-09, the Tribunal vide order dated 15.06.2015 (supra) has dealt with similar issue, of course qua the revenues earned from "Restoration Services". On this aspect, the Tribunal held such receipts to be in the nature of „business income", and after holding so, the Tribunal went on to deduce the method in terms of which the revenue could be apportioned to India operations in order to determine the income taxable in India. On this aspect, the Tribunal deemed it fit to apportion the revenue on the basis of length of cable in the territorial waters of India. Though the decision has been rendered with respect to the restoration activity, so however, the methodology which has been found to be reasonable by the Tribunal is based on the fraction of length of entire cable system connected to India in its territorial waters. Drawing an analogy from the same, in the instant case too, we find that the standby maintenance charges recovered by the assessee from TCL only qua the length of cable in the territorial waters of India needs to be considered for computing the profits or income accruing to the assessee u/s 9(1)(i) of the Act. The reasoning advanced by the Revenue to the effect that the standby maintenance charges are linked to the cable capacity is of no consequence for the present inasmuch as what is required to be decided is the income attributable to the business connection in India, which possibly is the length of the cable in the territorial waters of India. Therefore, in our view, it is only the revenue from TCL which is on account of standby maintenance charges proportionate to the cable length in India that deserves to be considered for computing the profit or loss from standby maintenance activity ITA No.5881/Mum/2017 & 5806/Mum/2017 M/s. Reliance Globalcom Ltd., Bermuda 15 attributable to India in terms of Sec. 9(1)(i) of the Act. Therefore, on this aspect, we uphold the plea of the assessee and direct the Assessing Officer to verify the calculation made by the assessee in this regard in its computation of income and recompute the income accordingly. Thus, on this aspect, assessee succeeds as above."
>
> 5.1. The grounds raised by the revenue and ground Nos. 1 to 5 raised by the assessee are disposed off in line with the aforesaid findings of this Tribunal in assessee's own case."

On being confronted with the aforesaid view taken by the Tribunal in the case of the assessee for the aforementioned preceding years the ld. D.R could not rebut the same.

6. We have given a thoughtful consideration to the issue before us, and find, that as stated by the ld. A.R, and rightly so, both the issues in question involved in the present cross-appeals are squarely covered by the aforementioned orders passed by the Tribunal in the assessee's own case for the preceding years. As such, finding no reason to take a different view we therein respectfully follow the same. We, thus, in terms of our aforesaid observations uphold the view taken by the CIT(A) that the amounts received by the assessee towards Standby Maintenance Charges from TCL were not in the nature of FTS u/s 9(1)(vii) of the Act, and was to be assessed as its business income, and that too only to the extent of its reference to the "business connection" in India. At the same time, not finding favour with the

view taken by the CIT(A) that the entire turnover (receipts from the Indian parties) of Standby Maintenance Charges was liable to be treated as turnover for the purpose of taxation in India, we vacate the same.

7. Resultantly, the appeal filed by the assessee is allowed while for that filed by the revenue is dismissed.

**ITA No.2305/MUM/2019**
**(Assessment Year: 2015-16)**

8. We shall now take up the appeal filed by the assessee for A.Y 2015-16, wherein the impugned order has been assailed on the following grounds of appeal before us:

> **"A. TAXABILITY OF RECEIPTS OF STANDBY MAINTENANCE CHARGES IN INDIA:**
>
> 1. On the facts and circumstances of the case and in law, the learned Commissioner of Income tax (Appeals) - 58, Mumbai ("the CIT(A)") erred in holding that the entire turnover (receipts) from the Indian Parties) is liable to be treated as turnover for the purpose of taxation in India.
>
> The Appellant submits that the said receipt of Standby Maintenance Charges from TCL cannot be treated as turnover for taxation purpose in India.
>
> 2. On the fact and circumstances of the case, the learned CIT(A) erred in holding that the entire turnover (receipts from the Indian parties) is to be treated as turnover for the purpose of taxation in India without giving any notice for enhancement or opportunity to the Appellant.
>
> The Appellant submits that the CIT(A) ought not to have held that the entire turnover (receipt from the Indian parties) is liable to be treated as turnover for the purpose of taxation in India.
>
> 3. On the fact and circumstances of the case and in law, the learned CIT(A) erred in holding that the entire turnover (receipts from Indian Parties) of Standby Maintenance Charges from TCL is liable to be treated as turnover for the purpose of taxation in India.
>
> The Appellant submits that the turnover (receipts) of Standby Maintenance Charges from TCL that is attributable to India has to be calculated on the basis of proportion of the cable length in India vis-a-vis worldwide cable length.
>
> B. GENERAL:
>
> 4. The Appellant craves leave, to add, amend or alter the above grounds of appeal."

9. As the facts and the issue involved in the present appeal remains the same as were there before us in the appeal filed by the assessee for the immediately preceding year i.e A.Y 2014-15 in ITA No. 2304/Mum/2019, therefore, our order therein passed in context of the issue in question shall apply *mutatis mutandis* for the purpose of disposal of the present appeal for A.Y. 2015-16 in ITA No.2305/Mum/2019.

10. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

11. As a result, both the appeals of the assessee i.e ITA Nos. 2304 & 2305/Mum/2019 are allowed and the appeal of the revenue i.e ITA No.2335/Mum/2019 is dismissed.

Order pronounced in the open court on 28.06.2021

| | |
|---|---|
| Sd/- | Sd/- |
| (Pramod Kumar) | (Ravish Sood) |
| VICE PRESIDENT | JUDICIAL MEMBER |

Mumbai;
Dated: 28.06.2021
PS: Rohit

**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**