

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : D : NEW DELHI  
(Through Virtual Court Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.7715/Del/2017  
Assessment Year: 2008-09

ITA No.545/Del/2017  
Assessment Year : 2009-10

Posco Engineering and  
Construction Company,  
5<sup>th</sup> Floor, Park Centra Building,  
Tower-A, Sector-30, NH-8,  
Gurgaon.  
PAN : AAIECP2664A

Vs DCIT,  
International Taxation,  
Civic Centre,  
Gurgaon.

(Appellant)

(Respondent)

Assessee by	:	Shri Ravi Sharma, Advocate & Shri Rishabh Malhotra, AR
Revenue by	:	Shri Satpal Gulati, CIT-DR
Date of Hearing	:	29.06.2021
Date of Pronouncement	:	27.09.2021

ORDER

PER R.K. PANDA, AM:

The above two appeals filed by the assessee are directed against the separate orders passed u/s 143(3) r.w.s. 144C(5) and 144C(13) of the IT Act, 1961 for assessment years 2008-09 and 2009-10, respectively.

2. Since common issues are involved in both these appeals, therefore, these were heard together and are being disposed of by this common order.

ITA No.7715/Del/2017 (A.Y. 2008-09)

3. This is the second round of litigation before the Tribunal. Facts of the case, in brief, are that the assessee is a company incorporated under the laws of Korea and is engaged in the business of construction, design and engineering of steel mill facilities. It filed its return of income on 29<sup>th</sup> August, 2008 declaring nil income. This return was revised by the assessee a number of times and finally the same was revised on 21.05.2009 declaring a loss of Rs.84,04,207/- and value of fringe benefit of Rs.2,35,261/-. In the original draft assessment order passed u/s 144C(1) of the Act the AO proposed to attribute revenues earned from offshore supply of equipment made by the assessee from Korea to the PE of the assessee in India. The tax payer filed objections before the DRP and after receipt of directions from the DRP, the final assessment order was passed by the AO on 27<sup>th</sup> September, 2013 determining the total income at Rs.24,48,85,181/-. The income of the tax payer was assessed as under:-

Sr. No.	Particulars	Amount (Rs.)	Amount (Rs.)	Remarks
1.	Loss as per revised return dated 21.05.2009	---	(-) Rs. 84,04,207/-	Hon'ble ITAT has set side certain issues to be decided afresh by the A.O. Hon'ble ITAT has deleted the other additions except the set side issues.
2.	Additions on account of adjustment made by TPO	Rs. 2,15,27,090/-		
3.	Additions on account of 5% receipt against 1 <sup>st</sup> Milestone (onshore activities)	Rs. 15,03,47,944/-		
4.	Additions on account of Foreign Supervision charges	Rs. 1,37,77,320/-		
5.	Additions on account of offshore Design and Engineering and Offshore Supply	Rs. 6,76,37,014/-	Rs. 25,32,89,368/-	
	<b>Total Income</b>		<b>Rs. 24,48,85,161/-</b>	

4. The tax payer filed appeal before the Tribunal and the Tribunal, vide order dated 26<sup>th</sup> February, 2014 in ITA No.5787/Del/2013 set aside certain issues to be decided afresh by the AO. The Tribunal has deleted the other additions except the set aside issues for which the Revenue is in appeal before the Honøble High Court and we are not concerned with the same.

5. Similarly, for A.Y. 2009-10, after receipt of the directions from the DRP, the final assessment order was passed by the AO on 21.01.2014 by determining the income of the assessee as under:-

Sr. No.	Particulars	Amount (Rs.)	Amount (Rs.)
1.	Loss as per revised return dated 21.05.2009	---	64,01,941
2.	Additions on account of 5% receipt against 1 <sup>st</sup> Milestone (Onshore activities)	15,03,47,944	
3.	Additions on account of foreign Supervision Charges	1,48,07,400	
4.	Additions on account of offshore Design and Engineering and Offshore Supply	4,98,21,640	
	<b>Total Income</b>		<b>20,85,75,043/-</b>

6. The assessee filed appeal before the Tribunal and the Tribunal, vide order dated 2<sup>nd</sup> April, 2014 in ITA No.1140/Del/2014, set aside certain issues to be decided afresh by the AO. While doing so, the Tribunal followed its earlier order for A.Y. 2008-09.

7. So far as assessment year 2008-09 is concerned, the Tribunal, while restoring the issue to the file of the AO, held that the title of goods in respect of the offshore supply of equipments was transferred outside India against which the Revenue is in appeal before the Honøble High Court. The Tribunal also examined

in detail the issue as to whether the sale price of the offshore supply of equipment includes some consideration for services rendered or to be rendered by the assessee in India. In so far as training charges are concerned, the Tribunal held that these are surely included in the sale price but the question of consideration for other factors such as tests and inspection, liquidated damages and defect liability requires examination at the level of the AO. The relevant observations of the Tribunal read as under:-

2. Whether sale price includes any consideration for services rendered or to be rendered in India ?

2.a. Having held that supply of such equipments was offshore, now we espouse the next argument of the ld. DR that the sale price also includes some consideration for services rendered or to be rendered in India. The ld. DR vehemently argued that certain costs for doing of some activities in India in relation to offshore supply of equipments were not specifically charged and hence were inbuilt in the price so charged. This was contradicted by the ld. AR by stating that consideration for the supply of equipments and refractory was exclusively towards the price of goods and no part of it was towards rendering of any services in India. It was shown that there was a distinct charge of `Foreign Supervision charges` in the Summary of prices at Euro 4440000, which the assessee also considered as chargeable to tax in India. This amount was claimed to be towards rendering of all services in India in connection with the supply of offshore equipments.

2.b. We find from Table 1B, whose copy is available on page 1023 of the Paper book, which is an integral part of the Contract agreement and has been captioned as `Summary of Prices` that there is a charge for supply of offshore equipment and also there is a separate charge towards `Foreign supervision charges` to the tune of Euro 444000. The description of such foreign supervision charges has been given in Table 13B, a copy of which is available on page 1036 of the paper book. When we turn to such Table, the description of `Foreign supervision charges` is found as : `Foreign supervision charges in India during Erection, Start up, Commissioning and Performance Guarantee tests.` Getting a separate charge for foreign supervision charges for the setting up of plant makes it clear that such supervision charges are not part and parcel of the price of equipment as referred to in columns 3, 5 and 7 of Table 1B. It implies that there was distinct charge for foreign supervision charges which has been construed by the assessee itself as onshore services chargeable to tax

in the relevant year. To this extent, it is manifested that foreign supervision charges do not form part of sale consideration of the equipment supplied offshore.

2.c. However, we find from Summary of Prices on Table 1B, as was rightly pointed out by the Id. DR, that "Training charges" have been separately set out at Sr. No. 13 and under the Price column, it has been mentioned as "Not Quoted". Then there is reference of Table 14B to give the portrayal of "Training" on page 1037 of the paper book. Under the Description column it has been mentioned as : "Providing training to Employer's Technical personnel in Plant Operation and Maintenance in similar operating plants, etc." Under the next column of Price for training in India, it has been mentioned as "Included".

2.d. When we consider Table 1B (Summary of prices) in juxtaposition to Table no. 13B (Foreign supervision charges) on one hand and Table no. 14B (Training charges) on the other, the following three points emerge. First is that the training is exclusively in India. It can be seen from Table 14B that after the Description column, the next column is "Estimated Man days for Employer's Personnel for Training in India". Then the next column is "Price for Training in India". From these columns, it is proved beyond any shadow of doubt that the training was to be given in India. Second point is that charges for "Foreign supervision charges" are certainly distinct from "Training charges" in their connotation as well as ambit. Whereas the former are towards Foreign supervision charges in India during Erection, Start up, Commissioning and Performance Guarantee tests, the later are towards providing training to Employer's Technical personnel in Plant Operation and Maintenance in similar operating plants, etc. These two things are distinct from each other also becomes obvious from the Working Consortium Agreement dated 25.1.2008 which divides the works/activities between the assessee and NCC. As per this chart, which has been reproduced on page 15 of the assessment order, there is broader heading of "Services" under which two separate categories, viz., "Supervision of erection" and "Training" have been mentioned. When we proceed to the next column of this Table, it emerges that both these services are the responsibility of the assessee alone and NCC is not liable to render such services. Thus it is clear that "training" is distinct from "foreign supervision". Third point, which assumes great significance, is that whereas there is a separate charge for the "Foreign supervision charges", the consideration for the "Training charges" is "Not quoted" and the same is "Included", obviously in the price of equipment. The reason for our conclusion that the training charges are included in the "Price" of the equipment is that the only other charge as per the Summary of Price for the onshore services is "Foreign supervision charges". When we consider the detail of such charges on page 1036 of the paper book, it transpires that there is no ad hoc consideration. In fact, it has been calculated by estimating 7400 man days for rendering such foreign supervision and there is a specific rate per man day, culminating into

the calculation of total charge on this account at Euro 4440000. On having a glance at the detail of `training charges` on page 1037, it comes out that against the column `Estimated Man days for Employer's Personnel for Training in India`, it has been mentioned as `Included`. Similarly against the next column of `Price for Training in India`, again it has been mentioned as `Included`. Once the foreign supervision is found to have been exclusively charged and our attention has not been drawn towards any material to indicate that the charge for training was embedded in any other component of price charged, the natural corollary which follows is that the Training charges are `Included` in the sale price of equipments. It is simple and plain that if a seller has to incur training expenses or repair cost during the warranty period, then either there is a specific consideration for the same and if it is not there, then such costs are to be considered as in-built in the price of equipment. Ordinarily, when any product is sold with warranty, the price charged by the seller always includes compensation for the repairs cost to be incurred during the warranty period. In contrast to that, if there is no warranty clause and similar product is sold by another seller, the sale price is bound to be at a lower level vis-a-vis the seller who sells its products with warranty. This leads us to the irresistible conclusion that when the assessee has undertaken to bear training costs at its own and there is no separate compensation for that, which is `Included`, then such compensation is included in the sale price charged for offshore supply of equipments. In such a case, the sale price so charged is required to be split towards the price of goods simpliciter and compensation for training and other charges which the seller has undertaken to bear.

2.e. Apart from training charges, there are also other costs incurred by the assessee in connection with supply of such offshore equipments. `General Conditions of Contract` which is part of the Contract Agreement contains Clause no. 30 which has been referred to as Defect Liability clause on page 1145 of the Paper Book. First para of clause clause 30.2 states that the defect liability period shall be twelve (12) months from the date of commissioning mentioned in the commissioning certificate. Second para of this clause reads as under : `If during the Defect Liability Period any defect is found in the design, engineering, materials and workmanship of the plant and equipment -----the contractor shall promptly in consultation with and agreement with the employer and at its cost, repair, replace or otherwise, make good such defect sales any damage to the facilities caused by such defect.`

2.f. Again, Clause No.23 of the `General Conditions of Contract` on page 1135 of the Paper book has been named as `Test and Inspection`. Para 1 of this clause reads as under : - `The contractor shall at its own expense carry out at the place of manufacture and/or on the site of such tests and/or inspections of the plant and equipment and in part of the facilities as are specified in the contract.`

2.g. There are certain other clauses also which show that the assessee has undertaken to bear expenses in connection with the supply of goods.

2.h. The above discussed clauses indicate that the assessee undertook to incur some expenses towards test and inspection at site that is in India; conduct repair during defect liability period again in India etc. These expenses are to be borne by the assessee. Though the mention of words "at its own expense" for test and inspection in Clause 23.1 and the words "at its cost" for defect liability prima facie indicate that compensation for such liability is included in the sale price of the offshore supply of equipment, but it cannot be so concluded outrightly. The possibility of compensation for such things being included in Foreign supervision charges cannot be ruled out without verification. In fact, our attention has not been drawn towards the further break-up of total Man days under "Foreign supervision charges" for reaching a positive conclusion as to whether or not the compensation for such charges is included therein. With this truncated information, we cannot reach a sure conclusion. It is palpable that if the charges for such things are not included in any other component of price, then these have to be considered as part and parcel of the sale price, which would require its splitting up to determine the amount attributable to such testing charges etc. in India. As such details are not readily available, we are of the considered opinion that it would be in the fitness of things if the impugned order on this issue is set aside and the matter is restored to the file of the Assessing Officer. He will examine as to whether the costs for tests and inspection, liquidated damages and defect liability along with any such other costs are specifically charged distinct from the sale consideration of offshore supply of equipment. If on such an analysis, he comes to the conclusion that there is no separate charge in respect of all or any of these items, then, a portion of sale price of offshore supply of equipment needs to be attributed to such activities performed in India.

2.i. It is, therefore, held that the sale price of offshore supply of equipment also includes some consideration for services rendered or to be rendered by the assessee in India. In so far as training charges are concerned, these are surely included in the sale price, but the question of consideration for other factors, such as tests and inspection, liquidated damages and defect liability, requires examination at the end of the Assessing Officer.

8. So far as the issue regarding the taxability of the price of offshore supply of equipment and compensation for the services rendered in India, the Tribunal held that the price shown towards offshore supply of equipments has two components viz., one is the price for offshore supply of equipments simplicitor and second is

the consideration for some services rendered in India. The relevant observations of the Tribunal is as under:-

“ it is palpable that that the second component of the sale price of offshore equipments, which is quid pro quo for services rendered in India is chargeable to tax in India.”

9. So far as the issue regarding attribution of income to the services rendered in India (from the sale price of offshore equipments), the Tribunal, vide para 4d. and 4e. of its order has held as under:-

“4.d. í .it can be easily deduced that the Revenue has proved beyond doubt that the price charged by the assessee for supply of offshore equipment also includes consideration for certain services rendered in India. This makes it clear that the price for such services is liable to be considered for taxation as per Sec. 9(1)(i) of the Act and also Article 7(1) of the DTAA.

4.e. Reverting to the issue of apportionment of profit to the services rendered in India, we find that such attribution cannot be done in an arbitrary manner. It is a question of fact which varies from case to case. In a given case, the nature of services to be rendered may be quite cost or labour intensive, while in another case, it may not be so. There cannot be any straitjacket sacrosanct formula for such attribution. As we have restored a part of this issue to the file of the AO as per point 2 above for determining as to whether the testing charges in India and repair charges during the defect liability period etc. were included in sale price of goods, it would be appropriate if the AO after such determination gives value to such services if these are included in the sale price of offshore supply of equipments. As regards training expenses, we have already held that compensation for such training in India is part and parcel of the sale price of offshore supply of equipments. The value to such training is directed to be assigned by the AO after considering the number of man days and rate per man day for such training and considered for taxation. We order accordingly.”

10. The AO during set aside proceedings after the order of the Tribunal asked the assessee to make its arguments/submissions to which the assessee complied

with. So far as the issue relating to training charges is concerned, it was submitted inter alia by the assessee that :

- a) it did not provide any training to the employees of SAIL in India, since such training was to be provided to the employees of SAIL outside India, and that too, free of cost, no income could be said to have accrued to the assessee in India
- b) Clause 7.8 of the GCC read with Clause 6 of the SCC shows that no training is envisaged in India under the terms of contract.
- c) it is under obligation to provide training to SAIL staff in Korea or in any other Country but not in India.
- d) training is inextricably linked to the offshore supply and therefore not taxable in India.
- e) certificate issued by SAIL was produced wherein it has been certified that no training is to be conducted in India under the terms of the contract, and if at all, some training needs arises in India, that would be free of cost.

11. So far as the issue relating to liquidated damages and defect liability is concerned, it was submitted by the assessee that:

- a) Defect liability and liquidated damages are in the nature of trade warranties and contingent in nature which arise only on the happening of certain specific instances mentioned in the contract. (Refer GCC Clauses 29.2.1 and 30.2 of the contract).

- b) As per Clause 30 of the GCC of the contract, the said liability can arise only if any defect is found in the design and engineering, materials, post commissioning or preliminary acceptance test.
- c) As per clause 29.2 of the GCC, the liquidated damages may arise only due to delay in completion of facilities.
- d) This being the initial years of the project, none of the above mentioned events have occurred to trigger such liability.
- e) Assessee produced a certificate issued by SAIL, wherein it has been certified that none of the said instances have taken place in the subject year.

12. As regards the revenue received for design and engineering services is concerned, it was submitted that:

- a) Design and Engineering sold by the Assessee to SAIL have been designed largely on the basis of standard technologies available with it.
- b) Consideration received by the assessee was for the sale of a product which is indispensable part of offshore supply, hence not taxable.
- c) Primarily the work relating to the sale of designs and engineering was done outside the territory of India and the sale was also affected outside India.
- d) Even if the consideration for off-shore designs is treated as for services, then too both under the Act as well as under Double

Taxation Avoidance Treaty (DTAA), there would be nil taxation in India.

- e) This is because these services are in no way connected or attributable to the PE in India.

13. However, the AO was not satisfied with the arguments advanced by the assessee. So far as the training charges is concerned, he held that training has been provided in India and the consideration for the same is included in the revenue received by the assessee for offshore supply of equipment. As regards liquidated damages and defect liability is concerned, the AO attributed 2% of the consideration for offshore supply as the price for liquidated damages and defect liability and accordingly assumed ad hoc profit rate of 50%. As regards the revenue received for design and engineering services is concerned, the AO held that design and engineering are chargeable to tax u/s 9(1)(vii) of the Act as well as Article 13 of the India-Korea DTAA. The DRP upheld the action of the AO. However, in the case of liquidated damages and defect liability, the DRP directed the AO to consider the profit rates in the global financials while computing profit rate on such charges. The AO, in the final order, determined the taxable income of the assessee at Rs.4,68,85,264/-.

14. Aggrieved with such order of the AO/DRP, the assessee is in appeal before the Tribunal by raising the following grounds:-

- Ø1. That the Assessment Order passed in pursuance to the directions issued by the Learned Dispute Resolution Panel (DRP) is a vitiated order as the Ld.

DRP has erred both on facts and in law in confirming the addition made by the Learned Deputy Commissioner of Income-tax (Ld. AO) to the appellant's income.

2. That on the facts and circumstances of the case and in law, the Ld. AO/DRP erred in assessing the income of the appellant at Rs 4,68,85,264/- as against the returned loss of Rs 84,04,207/-.

3. That on the facts and circumstances of the case and in law, the Ld. AO has erred in making and the Ld. DRP has erred in ignoring, several incorrect factual findings as highlighted by the appellant in Annexure B9 of the objections filed before the DRP.

4. That on the facts and circumstances of the case and in law, the Ld. AO/DRP erred in holding that the consideration for training services rendered or to be rendered in India is embedded in the consideration for offshore supply, and is taxable in India, despite the fact that, under the contract, no training is envisaged to be undertaken in India.

4.1 That on the facts and circumstances of the case, the Ld. AO/DRP failed to appreciate that, the assessee since had not to provide any training to the employees of SAIL in India, and as such, training was to be provided to the employees of SAIL outside India, and that too, free of cost, accordingly no income could be said to have accrued to the assessee in India.

4.2 That the Ld. AO has erred in disregarding the facts and the circumstances of the case that, the training activities, being incidental to the supplies made by the assessee from outside India, cannot have separate taxability.

5. On the facts and in the circumstances of the case and in law, the Ld. AO/DRP has erred in holding that cost for Defect liability & liquidated damages charges is to be included in the income of the assessee despite of fact that these incidental obligations are in the nature of trade warranties.

5.1 While doing so the Ld. AO/DRP has grossly ignored the fact that the same are contingent in nature and can arise only on the happening of certain specific instances mentioned in the contract and none of such event has taken place in the subject year.

5.2 That the Ld. AO/DRP has grossly ignored the certificate issued by SAIL, wherein it has certified that defect liability and liquidated damages are in the nature of trade warranties and none of the said activities have taken place in the subject year.

5.3 That the Ld. AO has grossly erred in attributing the cost for defect liability and liquidated damages @ 2% of the offshore supplies which is arbitrary, unreasonable and has no basis. Further, Ld. AO has grossly erred in determining the net profit @ 50% which is arbitrary, unreasonable and has no basis despite of the direction given by the Ld. DRP to consider global profit rates while determining net profits.

6. On the facts and in the circumstances of the case and in law, the Ld. AO/DRP has erred in proposing that the revenues in respect of design and engineering services are taxable as FTS under section 9(i)(vii) of the Act, and also under Article 13 of the tax treaty in India in the subject year

6.1 While doing so, the Ld. AO/DRP failed to appreciate the fact that design and engineering services are an inseparable part of the offshore supplies

7. On the facts and in the circumstances of the case and in law, the Ld. AO/DRP erred in levying interest under Section 234B of the Act while calculating the tax liability of the Appellant.

8. On the facts and in the circumstances of the case and in law, the Ld. AO/DRP erred in initiating the penalty proceedings under section 271(1) (c) of the Act.

The above objections are without prejudice to each other.

Appellant craves leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the hearing.ö

15. The assessee has also raised the following additional grounds:-

ö1. That on the facts and circumstances of the case and in law, the assessment order dated December 26, 2016 issued by the Learned Assessing Officer ("Ld. AO") is bad in law and void ab initio as the same has been passed in violation of section 144C of the Income-tax Act, 1961.

2. That on the facts and circumstances of the case and in law, the Ld. AO erred in violating the procedure laid down under section 144C of the Act by directing to issue notice of demand and penalty notice under section 274 read with section 271(i)(c) of the Act along with the assessment order dated December 26, 2016.

That the above grounds of appeal are without prejudice to the other grounds of appeal.ö

16. The ld. Counsel for the assessee, referring to the additional grounds, submitted that these are purely legal in nature and no fresh facts are required to be investigated. Referring to the decision of the Honøble Supreme Court in the case of Jute Corporation of India Ltd. vs. CIT, reported in 187 ITR 688 and various other decisions, he submitted that the additional ground raised by the assessee may kindly be admitted and necessary relief be granted to the assessee.

17. The ld. DR, on the other hand, opposed the additional grounds.

18. After hearing both the sides, we find that the additional ground raised by the assessee are purely legal in nature. Therefore, relying on the decisions of the Honøble Supreme Court in the case of NTPC Ltd. vs. CIT, 229 ITR 383 and the decision in the case of Jute Corporation of India cited (supra), we admit the additional grounds raised by the assessee for adjudication.

19. The d. counsel for the assessee submitted that the AO was supposed to pass the draft assessment order. However, at para 11 of the order dated 26<sup>th</sup> December, 2016, the AO has given a direction for issue of demand notice, show cause notice for penalty and challan. This shows that this is the final order. He submitted that as per the provisions of section 144C(1) of the Act, the AO must forward a draft of the proposed order of assessment to the eligible assessee if he proposes to make on or after the first day of October, 2009 any variation which is prejudicial to the

interests of such assessee. Therefore, as per the provisions of the Act, where the AO proposes to vary the income in the hands of the assessee, there was a requirement to issue show cause notice to the assessee to the said additions by way of draft assessment order. Since, in the instant case, the AO has passed the order along with which he also directed to issue demand notice and show cause notice for levy of penalty, therefore, such action of the AO results in finalization of the assessment. Since the AO has not followed the correct procedure as provided in the statute and has passed the final assessment order, therefore, in view of the decision of the Chennai Bench of the Tribunal in the case Shri Chandanmal Nagaraj vs. ACIT, ITA No.80/Chny/2018 and the decision of the Pune Bench of the Tribunal in the case of Eaton Industrial Systems (P) Ltd., ITA No.536/Pune/2014, order dated 12<sup>th</sup> April, 2018, the order passed by the AO is null and void.

20. The ld. DR, on the other hand, submitted that it is only a typographical error and no such notice of demand has been issued to the assessee. Referring to the provisions of section 292B and 292BB of the Act, he submitted that since no notice has been issued to the assessee and this is not the final assessment order and it is only a typographical error, therefore, the arguments advanced by the ld. Counsel for the assessee are not tenable in law. Further, final order has been passed subsequently. He accordingly submitted that the additional grounds raised by the assessee should be dismissed.

21. We have heard the rival arguments advanced by both the sides and perused the record. On a pointed query raised by the Bench as to whether the assessee has received any such demand notice, the Id. Counsel fairly conceded that no such demand notice or show cause notice for levy of penalty has been received. Further, after receipt of the order, the assessee has approached the DRP and the DRP has passed the order on 18<sup>th</sup> September, 2017 and, thereafter, the AO has passed the final order on 30<sup>th</sup> October, 2017. Since the Id. Counsel for the assessee could not substantiate with evidence to the satisfaction of the Bench that the AO has issued the demand notice and challan along with the draft assessment order, therefore, the additional ground raised by the assessee are dismissed.

22. The Id. Counsel for the assessee strongly challenged the order of the AO. He submitted that the Tribunal in the original proceedings has held that the sale price of offshore supply of equipment also includes some consideration towards training activities and it directed the AO to verify the date of actual rendition of training and determine the value of training as per man day rate. He submitted that the Assessee in the remand proceedings before the AO had submitted that the training would be provided to SAIL staff post installation and commissioning for the purpose of operation and maintenance of the plant. Since, no training had been provided in the years under consideration, the question of attributing an amount towards training in the year under consideration, does not arise at all. Referring to the certificate issued by SAIL (copy placed at Page 78 of the Convenience

Compilation), he submitted that it has been certified that no training has been conducted in India and that the consideration for training services is included in the amount being received by the company for foreign supervision services.

23. He submitted that the AO ignored the above submissions as well as the certificate and proceeded to attribute Rs.2,23,41,600 (AY 2008-09) and Rs. 2,40,12,000 (AY 2009-10) towards training services. The Id. Counsel for the assessee submitted that the AO cannot attribute any amount on account of training services specifically when the same have not been imparted in the year under consideration. He submitted that since the consideration of these services has already been included in the amount received for Foreign Supervisory Activity and the revenue from the aforesaid activities have already been offered to tax, therefore, no further attribution can be made by the AO. He accordingly submitted that the addition made by the AO on account of training services should be deleted.

24. So far as addition on account of Liquidated Damages and Defect Liability is concerned, the Id. Counsel for the assessee submitted that the consideration for the offshore supplies does not include any consideration towards Defect Liability and Liquidated Damages. He submitted that the Tribunal in the original round of proceedings had asked the AO to determine if consideration for defect liability and liquidated damages was included in the amount received for offshore supply of equipment.

25. He submitted that AO after merely referring to the findings of the Tribunal proceeded to unreasonably attribute 2% of the consideration for offshore supply as the price for liquidated damages and defect liability. An ad-hoc profit rate of 50% was assumed and additions of Rs. 2,35,83,017 (AY 2008-09) and Rs. 2,78,33,443 (AY 2009-10) were made. He submitted that the AO failed to consider the various clauses of the contract and certificates brought on record by the assessee and proceeded to attribute part of revenue earned from offshore supply equipment towards defect liability and liquidated damages which is not correct.

26. The Id. Counsel for the assessee referring to page 139 of the paper book submitted that Table 13B in the contract clearly shows that revenue for Performance Guarantee Tests was included in the Foreign Supervisory Charges. Hence, the finding of the AO that price for rectifying any defect in the equipment is included in revenue earned from offshore supply is incorrect. He submitted that as far as liquidated damages are concerned, the same may arise due to delay in completion of facilities. For the above, he drew the attention of the Bench to Clause 29.2 of the agreement copy of which is placed at page 246 of the paper book. Referring to Clause 29.2.1 of the contract (Page 246 of the Convenience Compilation) he submitted that the said clause clearly quantify the same as 0.5% of contract value per week of delay with a cap of 5%. The said damages are penal in nature and exist only to protect the interest of the buyer. These damages have to be paid by the assessee in case of delay i.e. a contingent event. The said liquidated

damages under no circumstance can be concluded to be a part of the consideration. Hence, the AO's conclusion that the same forms part of the revenue earned from offshore supply is incorrect and against the settled principles of contract law.

27. He submitted that the clauses pertaining to defect liability also provide that in case the product is defective the same will have to be replaced or repaired (Clause 30.1 and 30.2 at Page 242 of the convenience compilation). The same are again contingent in nature and can arise only on the happening of certain specific events as mentioned in clause 30 of the General Conditions to the Contract (GCC). He submitted that since, the years under consideration were the first years of the project, none of the above- mentioned events had occurred to trigger such liability. Referring to the certificate issued by SAIL (Page 80 of the Convenience Compilation), he submitted that it has been certified that no liability has arisen in the subject years. Referring to clause 30 of General Conditions of the Contract (page 133), the Id. Counsel for the assessee submitted that the defect liability period has been specified and the liability on this account would arise only if any defect is found in the design and engineering, materials etc. during such defect liability period. It is certified that no liability on this account has arisen during the Financial Year 2008-09.

28. Referring to the decision of Kolkata Bench of the Tribunal in the case of Outotec GmbH v. DDIT [172 TTJ 337], the Id. Counsel for the assessee submitted that the Tribunal in the aforesaid case has held that clauses like liquidated

damages, performance guarantee and defect liability are part of normal commercial arrangements generally agreed in common trade parlance and cannot form the basis for attributing revenue earned from offshore supply of equipment to India. He accordingly submitted that in view of the decision cited (supra) no portion of the revenue earned from the sale of equipment can be taxed in India by virtue of the commercial clauses like performance guarantee, defect liability and liquidated damages.

29. Ld. Counsel for the assessee submitted that despite the aforesaid clauses, the AO attributed 2% of the consideration for offshore supply on ad-hoc basis and estimated a profit rate of 50%. He submitted that the action of the AO runs contrary to the clauses of the contract and the certificate of SAIL and, therefore, the addition made on account of liquidated damages and defect liability should be deleted.

30. Without prejudice to the above submissions, the ld. Counsel for the assessee submitted that the AO has incorrectly assumed a profit rate of 50% and disregarded the global profit rates of the company submitted during the assessment proceedings. Referring to the paper book page 106 to 110, he submitted that the assessee's global profit rate during the calendar year 2007 and 2008 was 9.7% and 5.3% respectively. However, the AO completely disregarded the financials and applied 50% as profit rate without any cogent reason or explanation. He submitted that the DRP in its directions also directed the AO to compute the profit rate as per

the global financials of the assessee but the AO failed to follow the said direction of the DRP as well. He accordingly submitted that the AO should be directed to follow the aforesaid directions of the Ld. DRP and compute profit rate in line with the global profit rate of the assessee during the calendar year 2007 and 2008 i.e. 9.7% and 5.3% respectively.

31. The ld. DR, on the other hand, heavily relied on the order of the AO. He submitted that in this case the Tribunal had set aside the matter to the file of the AO on specific points with a clear-cut finding that the services included in sale consideration for offshore sale are chargeable to tax as fee for technical services. The Tribunal has held that the sale price of offshore supply of equipment also includes some consideration for services rendered or to be rendered by the assessee in India. Accordingly, the Tribunal upheld the attribution of sale consideration of offshore supply to the extent of the services included in the sale price. The assessee has filed appeal before Hon'ble High Court against the set aside decision of the Tribunal which is pending for decision. Referring to the grounds of appeal filed by the assessee, he submitted that as per the said grounds the treatment of the following services have been challenged:-

É Training Services

É Defect liability and Liquidated Damages

É Design and Engineering Services

32. The ld. DR submitted that the Tribunal could not confirm with facts on record that whether separate charges were made for the above services or not. He submitted that this finding has relevance because if the service charges are separately charged, then, in that case, there is no question, of attribution of sale consideration towards such service and in case the services are not separately charged, it implies that the same were included in the sale consideration.

33. So far as the training cost is concerned, the ld. DR submitted that the Tribunal has concluded that it was included in the sale consideration as per page 25 of the order of the Tribunal. So far as the training expenses is concerned, he submitted that these are surely included in the sale price. The Tribunal has set aside the case to the AO to compute the value of such training conducted during the period under consideration. The AO was asked by the Tribunal to verify as to whether pre-supply training etc., in this regard was given by the assessee to the personnel of SAIL in India during the year under consideration. So far as the certificate issued by SAIL stating that no training was to be conducted in India under the terms of the contract and if at all some training needs arises in India, that would be free of cost is concerned, he submitted that the said certificate does not depict the time period of actual conduct of training. It nowhere denies that training was not imparted. It only confirmed that training need in India would be provided free of cost. Referring to para 18.4 of the general conditions of contract, he submitted that while basic induction training for all categories of staff and for all

job positions will be provided by the employer, the contractor shall identify from the manpower requirements as per sub-clause 18.6 thereof, the key positions and number of persons to be trained for efficient running of the plant. Employer will depute personnel with appropriate qualification and experience for training. He submitted that in the absence of specific time period of training in the year under consideration, the AO has referred to the technical specifications which mentions that the taxpayer will be providing 1200 man days of training to the staff of SAIL and for the training services, no separate charge has been made. He accordingly submitted that the AO was justified in computing the training cost of 1200 man days at the rate of 600 Euros per man day.

34. So far as liquidated damages are concerned, he submitted that the certificate submitted by the assessee that no such event of incurring defect liability took place in the concerned period cannot be accepted in absence of filing of any evidence where such services for defect resolution have been separately charged during the entire contract. He submitted that the contract does mean liability on the assessee in case of defect liability and liquidated damages may have taken place in the entire contract period. However, this fact is indeterminate at the time of bid and therefore, the commercial bid is bound to load such liability cost on estimation basis in the sale consideration. Therefore, once the assessee has not charged any defect liability or liquidated damages, the only conclusion that is coming out of the decision of the Tribunal is that the defect liability and liquidated damages are part

of sale consideration. He accordingly submitted that the AO is fully justified in estimating the cost of defect liability and liquidated damages by attributing the part of sale consideration and charge it as fee for technical services.

35. We have considered the rival arguments made by both the sides, perused the orders of the AO and DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made addition on account of training charges, defect liabilities and design and engineering services which have been approved by the DRP. So far as the training charge is concerned, it is the case of the AO that training has been provided in India and the consideration for the same is included in the revenue received by the assessee for offshore supply of equipments. It is the submission of the Id. Counsel that no training has been conducted in the concerned assessment year. It is also his submission that POSCO shall not be entitled to any separate consideration because the same is included in amount paid for Foreign Supervision Services. It is also his submission that the training would be provided to SAIL staff post installation and commissioning for the purpose of operation and maintenance of plants. According to him, since no training had been provided in the year under consideration, the question of attributing the amount towards training in the year under consideration does not arise at all.

35.1 We find merit in the above submission of the ld. Counsel for the assessee. We find, the assessee, in the instant case filed the certificate dated 17.07.2014 issued by SAIL, copy of which is placed at page 78 of the paper book, wherein SAIL has certified that no training has been conducted in India and that the consideration for training services is included in the amount being received by the company for foreign supervision services. The relevant extract of the certificate placed in the paper book reads as under:-

öI, P.V.S.U Mahesh son of Late P.L. Narasimham aged 46 years, in the capacity of Assistant General Manager (Finance), IISCO Steel Plant, Steel Authority of India Limited (hereinafter referred to as öSAILö), do hereby certify that as per the contract agreement dated October 16, 2007 between SAIL and consortium comprising of M/S POSCO Engineering & Construction Company Limited, South Korea (hereinafter referred to as öPOSCOö) and M/S Nagarjuna Construction Company Limited (hereinafter referred to as öNCCö), POSCO is under an obligation to provide training to SAIL staff in India [Refer clause 7.8, page 73]. It is further certified that no training has been conducted till date in India and as and when training shall be imparted to SAIL staff POSCO shall not be entitled to any separate consideration [Refer Pricing Schedule - Table 14B. page 27] because hours to be spent by POSCO in imparting training in India had been considered to be a part of consideration for Foreign Supervision Services paid or payable by SAIL to POSCO.

This certificate has been issued on a specific request of POSCO for its income-tax proceedings in Idnia. And this certificate does not bind SAIL commercially or legally.

Sd/-  
(P.V.S.U. Mahesh)  
AGM (Finance)  
SAIL-ISP, Burnpur.ö

I, P.V.S.U Mahesh son of Late P.L. Narasimham solemnly affirm that this certificate is based on the factual terms of the contract and the actual activities undertaken and is not intended to provide any comment on the tax implication which may arise on account of the said payments in the hands of M/S POSCO Engineering & Construction Company.

Solemnly declared and affirmed at on this 17<sup>th</sup> day of July, 2014.

Sd/-  
(P.V.S.U. Mahesh)  
AGM (Finance)  
SAIL-ISP, Burnpur.ö

36. In our opinion, the AO cannot attribute any amount on account of training services specifically when the same have not been imported in the year under consideration. Further, we find merit in the submission of the Id. Counsel that the consideration of these services has already been included in the amount received for foreign supervisor activity and since the revenue from the aforesaid activities have already been offered to tax, no further attribution can be made by the AO. In this view of the matter, we hold that the addition made by the AO on account of training services is not justified. Accordingly, the same is directed to be deleted.

37. So far as the liquidated damages and defect liability is concerned, we find, the AO in the instant case attributed 2% of the consideration for offshore supply as the price for liquidated damages and accordingly ad hoc profit rate of 50% was assumed. It is the submission of the Id. Counsel that the consideration for the offshore supply does not include any consideration towards defect liability and liquidated damages. It is also his submission that no liability arose in the concerned assessment years. Further, it is also his submission that table 13B in the contract, copy of which is placed at page 139 of the paper book, clearly shows that the revenue for performance guarantee test was included in the foreign supervisory

charges and, therefore, the finding of the AO that price for rectifying any defect in the equipment is included in the revenue earned from offshore supply is incorrect.

38. We find, as per clause 29.2, copy of which is placed at page 246 of the paper book, liquidated damages may arise due to delay in completion of facilities. Clause 29.2.1 of the contract, copy of which is placed at page 246 of the paper book clearly quantifies the same as 0.5% of the contract value per week of delay with a cap of 5%. We find merit in the submission of the Id. Counsel that the said damage being penal in nature exist only to protect the interest of the buyer. Thus, the damages have to be paid by the assessee in case of delay i.e., a contingent event, therefore, the said liquidated damages under no circumstances can be concluded to be a part of consideration. We, therefore, find merit in the argument of the Id. Counsel that the conclusion of the AO that the same form part of the revenue earned from offshore supply is incorrect and against the settled principle of law. Further, this being the initial year of contract for the project, no such occasion had arisen and, therefore, in absence of any material with the AO, he was not justified in making the addition.

39. We further find, SAIL has issued a certificate copy of which is placed at page 80 of the paper book wherein they have certified that no liability has arisen in the said years. The relevant extract of the certificate reads as under:-

øI P.V.S.U Mahesh son of Late P.L. Narasimham aged 46 years, in the capacity of Assistant General Manager (Finance), IISCO Steel Plant, Steel Authority of India Limited (hereinafter referred to as øSAILö), do hereby certify that as per the contract agreement dated October 16, 2007 between

SAIL and consortium comprising of M/S POSCO Engineering & Construction Company Limited, South Korea (hereinafter referred to as 'POSCO') and M/S Nagarjuna Construction Company Limited (hereinafter referred to as 'NCC'), defect liability and liquidated damages are in the nature of trade warranties.

As referred to in clause 30 of General Conditions of the Contract, page 133, a defect liability period has been specified and the liability on this account would arise only if any defect is found in the design and engineering, materials etc. during such defect liability period. It is certified that no liability on this account has arisen during the Financial Year 2007-08

Further, referring to clause 29.2 of General Conditions of the Contract, page 131, liquidated damages may arise due to delay in completion of facilities and it is certified that the liability on this account has arisen during the Financial Year 2007-08.

As mentioned above, these are contingent events dependent on happening of specific event (s) mentioned in Clauses 29.2.1 and 30.2, page 131 and 133, respectively.

It is also certified that these contingent liabilities may or may not arise at all under the subject contract.

Sd/-  
(P.V.S.U. Mahesh)  
AGM (Finance)  
SAIL-ISP, Burnpur.

I, P.V.S.U Mahesh son of Late P.L. Narasimham solemnly affirm that this certificate is based on the factual terms of the contract and the actual activities undertaken and is not intended to provide any comment on the tax implication which may arise on account of the said payments in the hands of M/S POSCO Engineering & Construction Company.

Solemnly declared and affirmed at on this 17<sup>th</sup> day of July, 2014.

Sd/-  
(P.V.S.U. Mahesh)  
AGM (Finance)  
SAIL-ISP, Burnpur.

40. We find, the Kolkata Bench of the Tribunal in the case of Outotec GmbH vs. DDIT, reported in 172 TTJ 337, has held that clauses like liquidated damages,

performance guarantee and defect liability are part of normal commercial arrangements generally agreed in common trade parlance and cannot form the basis for attributing revenue earned from offshore supply of equipment to India.

The relevant observation of the Tribunal read as under:

“From the above observations of Delhi High Court, Tribunal and AAR, it is clear that the acceptance tests are merely in the nature of warranty provisions. Further, the observation of Delhi High Court also clarify that breach of warranty could result in payment of damages and does not by itself mean the property/title in the goods did not pass to buyer outside India. Accordingly, the clause of acceptance tests and liquidated damages are nothing but merely in the nature of warranty provision and its remedial measures. Hence, undue importance cannot be given to such clauses and the same cannot be construed to mean that any portion from the sale of equipment can be taxed in India”

41. In view of the above, we hold that no portion of revenue earned from the sale of equipment can be taxed in India by virtue of commercial clauses like performance guarantee, defect liability and liquidated damages. We, therefore, set aside the order of the AO and direct him to delete the addition. Grounds of appeal No.4 and 5 are accordingly allowed.

42. So far as the revenue received for design and engineering services is concerned, the AO held that design and engineering are chargeable to tax u/s 9(1)(vii) of the Act as well as Article 13 of the India-Korea DTAA. It is the submission of the Id. Counsel for the assessee that the consideration for design and engineering is not taxable in India since such designs and drawings are treated as inseparable part of offshore supplies. We do not find any merit in the above

argument of the Id. Counsel for the assessee. We find, the Tribunal while setting aside the issue to the file of the AO at para 7.3 of the order has observed as under:-

"7.3. We are not convinced with the submissions advanced on behalf of the assessee in this regard. The primary question for our consideration is to decide the nature of Drawings and Documents for which such amount has been received. Page 1042 onwards of the paper book, which is a part of Appendix-2, being the Time Schedule to the Contract agreement, throws light on the nature of Drawings and Documents. It starts with the Basic Engineering and extends to Drawings/Documents for Information/Review and then to As-Built Drawings and Documents. When we peruse the details under such broad categories, it can be seen that it refers to Site plan, Process flow sheet, GA & Sectional drawings for foundation of buildings and equipment, Layout and sections of roads, railway tracks, Colour Scheme, Soil Investigation Report, Preliminary Outline Drawings, Excavation outline Drawings, Design calculation for all electrical works, Conduit drawings and Cut out details etc. etc. We are unable to appreciate as to how such Designs and engineering can be considered as part of equipment to be supplied by the assessee from abroad. In fact, such Design and ITA No. 5787/Del/2013 POSCO Engineering & Construction Company Ltd. 41 drawings deal with every aspect of the erection and commissioning of the plant right from foundation of buildings and roads till the completion of the entire project. All such drawings are customized. It is totally incorrect to say that such Drawings and designs for which consideration of Euro 150900 was received be considered as offshore supply of equipments and hence exempted from taxation. Our view is fortified from the judgment of the Hon'ble jurisdictional High Court in Director of Income Tax Vs Rio Tinto Technical Services (2012)340 ITR 507 which reversed the finding given by the Tribunal that the consideration received was for a composite contract and hence could not be bifurcated. It has been held that in the absence of any bifurcation, an estimated allocation has to be made for tax purposes. From the above judgment, it is manifest that the contention of the Id. AR that the fees for design and drawing should be considered as part of supply of offshore equipment, is not sustainable"

42.1 Further, at para 7.7, the Tribunal has held as under:-

"7.7. A bare perusal of this Explanation defining the term fees for technical services' makes it clear that it refers to rendering of any of technical services apart from managerial or consultancy. It also includes the provision of services of technical or other personnel. As the nature of afore-discussed drawings and designs customized to the assessee's requirements are result of the rendering of technical services, we are of the considered opinion that the consideration for the same qualifies to be categorized as 'Fees for

technical services'. The Hon'ble jurisdictional High Court in Rio Tinto Technical Services (supra) vide para 22 of this judgment in the context of remuneration for such services has held that the Tribunal has not specifically examined Explanation 2 to Sec. 9(1)(vii) which defines fees for technical services."

43. We find, the Tribunal has given the finding which are specific and unequivocal regarding the taxability of design and engineering services. Since the issue is settled at the level of ITAT and which was not set aside to the file of the AO for any enquiry or verification, we do not find any infirmity in the order of the AO holding that design and engineering services are chargeable to tax u/s 9(1)(vii) of the Act as well as Article 13 of the India-Korea DTAA. The Id. Counsel for the assessee has also not brought anything before us to take a contrary view than the view taken by the AO on this issue. Accordingly, the ground raised by the assessee on this issue as per ground of appeal No.6 is dismissed.

44. Grounds of appeal No. 1 to 3 being general in nature are dismissed.

45. So far as ground No.7 relating to levy of interest u/s 234B is concerned, the same being mandatory and consequential in nature is dismissed.

46. Ground of appeal No.8 relates to levy of penalty u/s 271(1)(c) of the Act which is premature at this juncture and, therefore, the same is dismissed.

ITA No.545/Del/2017 (A.Y. 2009-10)

47. The grounds of appeal raised by the assessee read as under:-

ō1. That the Assessment Order passed in pursuance to the directions issued by the Learned Dispute Resolution Panel (-Ld. DRPø) is a vitiated order

as the Ld. DRP has erred both on facts and in law in confirming the addition made by the Learned Deputy Director of Income-tax (Ld. AO) to the Appellant's income. That on the facts and circumstances of the case and in law, the Ld. AO/DRP erred in assessing the income of the appellant at Rs 11,02,52,648 as against the returned loss of Rs 64,01,941.

2. That on the facts and circumstances of the case and in law, the Ld. AO has erred in making and the Ld. DRP has erred in ignoring, several incorrect factual findings as highlighted by the appellant in Annexure B9 of the objections filed before the DRP.

3. That on the facts and circumstances of the case and in law, the Ld. AO/DRP erred in holding that the consideration for training services rendered or to be rendered in India is embedded in the consideration for offshore supply, and is taxable in India, despite the fact that, under the contract, no training is envisaged to be undertaken in India.

4.1 That on the facts and circumstances of the case, the Ld. AO/DRP failed to appreciate that, the assessee since had not to provide any training to the employees of SAIL in India, and as such, training was to be provided to the employees of SAIL outside India, and that too, free of cost, accordingly no income could be said to have accrued to the assessee in India.

4.2 That the Ld. AO has erred in disregarding the facts and the circumstances of the case that, the training activities, being incidental to the supplies made by the assessee from outside India, cannot have separate taxability. The Ld AO/DRP has grossly ignored the facts the certificate issued by SAIL, wherein it has certified that no training is to be conducted in India under the terms of the contract

4.3 That the Ld. AO has grossly erred in taxing the training charges on gross basis without allowing any expenditure i.e. without verifying the profit margin on such transaction

5 On the facts and in the circumstances of the case and in law, the Ld. AO/DRP has erred in holding that cost for Defect liability & liquidated damages charges is to be included in the income of the assessee despite of fact that these incidental obligations are in the nature of trade warranties.

5.1 While doing so the Ld. AO/DRP has grossly ignored the fact that the same are contingent in nature and can arise only on the happening of certain specific instances mentioned in the contract and none of such event has taken place in the subject year.

5.2 That the Ld. AO/DRP has grossly ignored the certificate issued by SAIL, wherein it has certified that defect liability and liquidated damages are

in the nature of trade warranties and none of the said activities have taken place in the subject year.

5.3 That the Ld. AO/DRP has grossly erred in attributing the cost for defect liability and liquidated damages @ 2% of the offshore supplies which is arbitrary, unreasonable and has no basis. Further, grossly erred in determining the net profit @ 50% which is arbitrary, unreasonable and has no basis.

6. On the facts and in the circumstances of the case and in law, the Ld. AO/DRP has erred in proposing that the revenues in respect of design and engineering services are taxable as FTS under section 9(i)(vii) of the Act, and also under Article 13 of the tax treaty in India in the subject year

6.1 While doing so, the Ld. AO/DRP failed to appreciate the fact that design and engineering services are an inseparable part of the offshore supplies

7. On the facts and in the circumstances of the case and in law, the Ld. AO/DRP erred in levying interest under Section 234B of the Act while calculating the tax liability of the Appellant.

8. On the facts and in the circumstances of the case and in law, the Ld. AO/DRP erred in initiating the penalty proceedings under section 271(1) (c) of the Act.

The above objections are without prejudice to each other.

The Appellant craves leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the hearing.ö

47.1. The additional grounds raised by the assessee read as under:-

ö1. That on the facts and circumstances of the case and in law, the assessment order dated March 30, 2016 issued by the Ld. AO is bad in law and void ab initio as the same has been passed in violation of section 144C of the Income-tax Act, 1961.

2. That on the facts and circumstances of the case and in law, the Ld. AO erred in violating the procedure laid down under section 144C of the Act by directing to issue notice of demand and initiating penalty proceedings under section 271(i)(c) of the Act within the assessment order dated March 30, 2016 "

48. After hearing both the parties we find the issues raised in this appeal are identical to the issues raised in ITA No.7715/Del/2017. Therefore, following the reasonings given therein, we decide the issues involved in this appeal also in terms indicated above in ITA No.7715/Del/2017.

49. In the result, both the appeals filed by the assessee are partly allowed.

The order pronounced in the open court on 27.09.2021.

Sd/-

(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 27<sup>th</sup> September, 2021.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi