

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "D" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA Nos.1904 & 5851/Del/2017, 6827/Del/2018**

**[Assessment Years : 2012-13, 2013-14, 2014-15]**

Expeditors International of Washington Inc. 1015, Third Avenue, 12 <sup>th</sup> Floor, Seattle, Washington, USA PAN: AACCE4315R	vs	ACIT (International Taxation) Circle-1(2) (2) New Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No.4778/Del/2019**

**[Assessment Year : 2015-16]**

Expeditors International of Washington Inc. 1015, Third Avenue, 12 <sup>th</sup> Floor, Seattle, Washington, USA PAN: AACCE4315R	vs	DCIT (International Taxation) Circle-1(2)(2), New Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No.180/Del/2021**

**[Assessment Year : 2017-18]**

Expeditors International of Washington Inc. 1015, Third Avenue, 12 <sup>th</sup> Floor, Seattle, Washington, USA PAN: AACCE4315R	vs	ACIT (International Taxation) Circle-1(2)(2), New Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>
Appellant by	Shri Deepak Chopra, Sh. Hasrpreet Ajmani & Sh. Rohan Khare, Advs	
<b>Respondent by</b>	Mrs. Anupama Anand, CIT DR	
<b>Date of Hearing</b>	27.10.2021	
<b>Date of Pronouncement</b>	05.01.2022	

## **ORDER**

### **PER KUL BHARAT, JM :**

This bunch of five appeals filed by the assessee against the different orders of the Assessing Officer passed u/ 144C (13)/143(3) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] pertaining to Assessment Years 2012-13, 2013-14, 2014-15 & 2015-16 & 2017-18 respectively. Since identical grounds have been raised, all appeals were taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity. We take ITA No.1904/Del/2017 pertaining to Assessment Year 2012-13 as a lead case.

### **ITA No.1904/Del/2017 [Assessment Year : 2012-13]**

2. Now, we take up the **ITA No. 1904/Del/2017 [Assessment Year : 2012-13]** wherein the assessee has raised following grounds of appeal:-

*The Appellant respectfully submits:-*

1. *That on the facts and in the circumstances of the case and in law, the order passed under section 144C(13) r.w.s. 143(3) of the Income-tax Act, 1961 ("the Act") by the Learned Assessing Officer ("Ld. AO") is erroneous and bad in law as well as in facts.*
  
2. *That the Ld. AO and the Hon'ble Dispute Resolution Panel ('Hon'ble DRP') on the facts and law, have erred in holding that fee for freight/ logistic support services by the T<sup>1</sup> Appellant, rendered outside India amounting to INR 2,75,31,32,292 is in the nature of fee for technical services / Fee for Included Services as per the provisions of section 9(1)(vii) of the Act and under Article 12 of the India-USA Double Taxation*

*Avoidance Agreement ('DTAA') respectively.*

- 2.1 That the Ld. AO and the Hon'ble DRP have erred in law and on facts by upholding the fee for logistics support services to be in the nature of fee for technical support by considering entirely incorrect set of facts which do not pertain to the issue at hand.*
- 3. That the Ld. AO and Ld. DRP, on the facts and law, have erred in holding that reimbursement of Global Account Management ('GAM') charges amounting to INR 3,09,85,415 received by the Appellant from Expeditors International (India) Private Limited ('El India') is in nature of fee for technical services / fee for included services as per the provisions of section 9(1)(vii) of the Act and under Article 12 of the India-USA DTAA respectively.*
- 4. That the Ld. AO and the Ld. DRP, on the facts and law, have erred in holding that the reimbursement of lease line charges amounting to INR 1,20,59,744 received by the Appellant from El India is in nature of royalty under Explanation 2 to section 9(l)(vi) of the Act and under Article 12 of the India-USA DTAA respectively.*
- 5. That the Ld. AO, on the facts and law, has erred in levying surcharge and education cess without appreciating the fact that the tax rate provided under the India-USA DTAA is an all-inclusive tax rate.*
- 6. That on the facts and law, the Ld. AO has erred in levying excessive interest u/s 234B of the Act.*

7. *That on the facts and law, the Ld. AO has erred in levying excessive interest under section 234C of the Act ignoring the statutory provision where the same can be levied only on returned income and not on assessed income.*
8. *That on the facts and law, the Ld. AO has erred in initiating penalty proceedings u/s 271(l)(c) of the Act mechanically by alleging that the Appellant has furnished incorrect particulars of income without recording any adequate satisfaction for such initiation.*
9. *The above grounds of appeal are all independent and without prejudice to each other.*

3. The facts giving rise to the present appeal that the assessee filed its return of income on 29.11.2012 for the Assessment Year 2012-13 declaring total income of Rs. 32,79,49,150/-. The case was selected for scrutiny assessment. While framing the assessment, the Assessing Officer observed that during the year under consideration, the assessee had undertaken international transaction with its associated enterprises. Therefore, the international transactions undertaken by the assessee was referred to the Transfer Pricing Officer for determining the Arms Length Price who vide his order dated 07.01.2016 did not report any adverse inference, for making adjustments. However, the Assessing Officer observed that during the course of assessment the assessee was asked to submit the details of receipt from India along with the copy of agreement/contracts with Indian Customers or any other party in India wherefrom payments were received during the subject year. In response thereto, the assessee filed the details on the basis of that details, the Assessing Officer observed that out of the total receipts the

assessee offered only royalty income in its return of income. Therefore, the Assessing Officer show caused the assessee vide order entry dated 29.01.2016 to explain whether there was any change in business model of the assessee as compared to Assessment Year 2011-12. It was further asked to explain as to why the assessment should not be completed on the line of the assessment made in Assessment Year 2011-12 on the issues of Logistic Service Fees and General Account Management Charges. In reference to that the assessee filed its reply that reply was not found acceptable by the Assessing Officer and proposed to assess the total income at Rs. 3,12,41,26,601/-.

4. The assessee aggrieved by the proposed order filed its objection before the Dispute Resolution Panel-1, New Delhi [in short "the DRP-1"]. The objections of the assessee for decided against the assessee. Therefore, the Assessing Officer in pursuance to direction of the DRP and considering the facts of the case assessed the income at total income of Rs. 3,12,41,26,600/- against the return income of Rs. 32,79,49,150/-.

5. Ground No.1 raised by the assessee is general in nature, needs no separate adjudication.

6. Ground No.2 is against the addition of Rs.2,75,31,32,292/- holding that fee for freight/logistic support services was in the nature of fee for technical services/fee for included services. Ground No.2.1 raised by the assessee is in support of Ground No.2.

7. Ld. Counsel for the assessee submitted that this issue is squarely covered by the decision of the Hon'ble Co-ordinate Bench of this Tribunal for

the Assessment Years 2010-11 & 2011-12.

8. Ld. CIT DR opposed these submissions and supported the orders of the authorities below.

9. We have heard the rival contentions and perused the material available on records. The Revenue has not disputed the fact that the Co-ordinate Bench in ITA No.1740/Del/2015 for Assessment Year 2010-11 has held as under:-

*28. "Thus, on going through the provisions of the Act, facts of the case, business operations of the assessee, we hold that the services rendered by the assessee do not fall within the purview of managerial, consultancy or technical services. The payment for freight and logistics cannot be treated as technical services. Similarly, the provisions of Section 9(1)(i) are not attracted in this case as no income has accrued or arisen from the business connection abroad in India. The explanation states that only that part of income from business operations can be said to be accruing or arising in India only if it is relatable to the carrying of operations in India. Thus, the payment received by the assessee neither falls under Section 9(1)(i) or Section 9(1)(vii). Hence, we hereby decline to interfere with the directions of the Dispute Resolution Panel in this case."*

10. Further, Ld. Counsel for the assessee submitted that Co-ordinate Bench of the Tribunal following the decision in ITA No.1705/Del/2016 pertaining to Assessment Year 2011-12 in assessee's own appeal held as under:-

*".....After going through the directions of DRP as well as the agreements in consonance with present Assessment Year, it is found that the activities mentioned by the assessee do not fall within the purview of Managerial/Consultancy or Technical Services. Thus, the payment towards the same cannot be treated as technical Services. The Support Services are very much of a general services in nature and does not require any*

*Managerial/Technical or Consultancy Expertise. The assessee during the assessment year 2011-12 has categorically mentioned that the nature of these operations is purely logistic support provided by the assessee for shipment of transport of goods perform outside in India and the contract is entered between expertise international India Pvt. Ltd. and the customers i.e. at the consigner sent in the case of expert of Consignment from India to overseas countries found USA and between the assessee and the customer that is at the consignment end in the case of import of consignment from other countries i.e. USA to India. As regards GAM charges/expenses, the cost of these group is allocated to a respective countries benefited to these services and are incurred outside India. The GAM staff is employed with the assessee and there is no employer-employee relationship between the employees and the expeditor international India. These actual expenses incurred by the assessee are allocated in proportion to the Revenue by the relevant expedite group entity in that country from that particular customer account which is managed by the GAM team. These so called expenses without any income element embed in them are then reimbursement to the assessee on actual basis by Expeditors International India. These facts were neither disputed by the Revenue before the DRP in Assessment Year 2010-11 nor in the present Assessment Year i.e. A.Y 2011-12. The activities were not changed in the present assessment year as well. Therefore, though the contention of the Ld. DR was that the agreement was not taken into account as well as the TP Study was not taken into account in Assessment Year 2010-11 does not stand correct as the agreement related to freight logistic support services and global account management charges were very much mentioned in order dated 30/09/2020 by the Tribunal. There are no distinguishable facts pointed out by the Ld. DR. Hence, the issues in the present year are squarely covered/identical to that of Assessment Year 201-11. Thus, the appeal of the assessee is allowed.”*

11. The Revenue has not brought to our notice any change into facts and circumstances in the year under appeal. The Revenue has also not brought to our notice any other binding precedent on the issue under consideration. We

therefore, taking a consistent view, direct the Assessing Officer to delete the addition. This ground of assessee's appeal is allowed.

12. Ground No.3 is against the addition made in respect of reimbursement of Global Account Management ("GAM") charges amounting to Rs.3,09,85,415/-, treating the same in the nature for fee for technical services/fee for included services.

13. At the outset, Ld. Counsel for the assessee submitted that the issue is squarely covered by the decision of the Hon'ble Co-ordinate Bench of this Tribunal for the Assessment Years 2010-11 & 2011-12.

14. Ld. CIT DR opposed these submissions and supported the orders of the authorities below.

15. We have heard the rival contentions and perused the material available on records. The Revenue has not disputed the fact that the Co-ordinate Bench in ITA No.1740/Del/2015 for Assessment Year 2010-11 has held as under:-

*28. "Thus, on going through the provisions of the Act, facts of the case, business operations of the assessee, we hold that the services rendered by the assessee do not fall within the purview of managerial, consultancy or technical services. The payment for freight and logistics cannot be treated as technical services. Similarly, the provisions of Section 9(1)(i) are not attracted in this case as no income has accrued or arisen from the business connection abroad in India. The explanation states that only that part of income from business operations can be said to be accruing or arising in India only if it is relatable to the carrying of operations in India. Thus, the payment received by the assessee neither falls under Section 9(1)(i) or Section 9(1)(vii). Hence, we hereby decline to interfere with the*

*directions of the Dispute Resolution Panel in this case.”*

16. Further, the Tribunal following the decision in ITA No.1705/Del/2016 pertaining to Assessment Year 2011-12 held as under:-

*“.....After going through the directions of DRP as well as the agreements in consonance with present Assessment Year, it is found that the activities mentioned by the assessee do not fall within the purview of Managerial/Consultancy or Technical Services. Thus, the payment towards the same cannot be treated as technical Services. The Support Services are very much of a general services in nature and does not require any Managerial/Technical or Consultancy Expertise. The assessee during the assessment year 2011-12 has categorically mentioned that the nature of these operations is purely logistic support provided by the assessee for shipment of transport of goods perform outside in India and the contract is entered between expertise international India Pvt. Ltd. and the customers i.e. at the consigner sent in the case of expert of Consignment from India to overseas countries found USA and between the assessee and the customer that is at the consignment end in the case of import of consignment from other countries i.e. USA to India. As regards GAM charges/expenses, the cost of these group is allocated to a respective countries benefited to these services and are incurred outside India. The GAM staff is employed with the assessee and there is no employer-employee relationship between the employees and the expeditor international India. These actual expenses incurred by the assessee are allocated in proportion to the Revenue by the relevant expedite group entity in that country from that particular customer account which is managed by the GAM team. These so called expenses without any income element embed in them are then reimbursement to the assessee on actual basis by Expeditors International India. These facts were neither disputed by the Revenue before the DRP in Assessment Year 2010-11 nor in the present Assessment Year i.e. A.Y 2011-12. The activities were not changed in the present assessment year as well. Therefore, though the contention of the Ld. DR was that the agreement was not taken into account*

*as well as the TP Study was not taken into account in Assessment Year 2010-11 does not stand correct as the agreement related to freight logistic support services and global account management charges were very much mentioned in order dated 30/09/2020 by the Tribunal. There are no distinguishable facts pointed out by the Ld. DR. Hence, the issues in the present year are squarely covered/identical to that of Assessment Year 201-11. Thus, the appeal of the assessee is allowed.”*

17. The Revenue has not brought to our notice any change into facts and circumstances in the year under appeal. The Revenue has also not brought to our notice any other binding precedent on the issue under consideration. We therefore, taking a consistent view, direct the Assessing Officer to delete the addition. This ground of assessee's appeal is allowed.

18. Ground No.4 is in respect of disallowance of reimbursement of lease line charges amounting to Rs.1,20,59,744/- holding that the amount is in the nature of royalty.

19. At the outset, Ld. Counsel for the assessee submitted that the issue is squarely covered by the decision of Co-ordinate Bench of the Tribunal in ITA No.4226/Del/2007 pertaining to Assessment Year 2004-05 in the assessee's own case holding as under:-

*6. “On due consideration of the facts and circumstances in the light of ITAT's order, in earlier years, which have been affirmed by the Hon'ble Delhi High Court in ITA No.475/Del/2009 and 751/Del/2010, we do not find any error in the order of the Learned CIT(Appeals). Both the grounds taken by the Revenue are, therefore, rejected.”*

20. Further, following the decision of Co-ordinate Bench of the Tribunal in ITA No.2128/Del/2011 pertaining to Assessment Year 2005-06 in assessee's

own case holding as under:-

28. *“We have heard the rival submissions and perused all the materials available on record. The issue in the present ground is with respect to the disallowance of VSAT expenses by invoking the provision of section 40(a) of the Act. We find that identical issue arose in assessee’s own case in A.Y. 2001-02 & 2004-05 wherein the issue was decided in favour of the assessee by the Co-ordinate Bench of Tribunal. We further find that the order of Tribunal in favour of the assessee was upheld by the Hon’ble Delhi High Court. Before us, no distinguishing feature in the facts of the case and that of A.Y. 2001-02 & 2004-05 has been pointed out by the Revenue. Further no fallacy in the findings of CIT(A) has been pointed before us by the Revenue. Revenue has also not placed any material on record to demonstrate that the order of the Tribunal in assessee’s own case in earlier years has been set aside/overruled or stayed by higher judicial forum. In such a situation, we find no reason to interfere in the order of CIT(A). Thus the ground of appeal of the Revenue is dismissed.”*

21. The Revenue has not brought to our notice any change into facts and circumstances in the year under appeal. The Revenue has also not brought to our notice any other binding precedent on the issue under consideration. We therefore, taking a consistent view, direct the Assessing Officer to delete the addition. This ground of assessee’s appeal is allowed.

22. Ground No.5 raised by the assessee is against the levying surcharge and education cess.

23. Ld. Counsel for the assessee submitted that the issue is squarely covered by the decision of Co-ordinate bench of the Tribunal in ITA No.3892/Del/2017 pertaining to Assessment Year 2010-11 held as under:-

43. *“The Hon'ble High Court of Bombay at Panaji bench in the case of Sesa Goa 423 ITR 426 had the occasion to consider a similar issue and has held as under:*

*“In relation to taxing statute, certain principles of interpretation are quite well settled. In New Shorrock Spinning and Manufacturing Co. Ltd. Vs Raval, 37 ITR 41 (Bom.), it is held that one safe and infallible principle, which is of guidance in these matters, is to read the words through and see if the rule is clearly stated. If the language employed gives the rule in words of sufficient clarity and precision, nothing more requires to be done. Indeed, in such a case the task of interpretation can hardly be said to arise :Absoluta sententia [www.taxguru.in](http://www.taxguru.in) 10 TXA17&18-13 dt.28.02.2020 expositore non indiget. The language used by the Legislature best declares its intention and must be accepted as decisive of it.*

*19. Besides, when it comes to interpretation of the IT Act, it is well established that no tax can be imposed on the subject without words in the Act clearly showing an intention to lay a burden on him. The subject cannot be taxed unless he comes within the letter of the law and the argument that he falls within the spirit of the law cannot be availed of by the department. [See CIT vs Motors & General Stores 66 ITR 692 (SC)].*

*20. In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied, into the provisions which has not been provided by the legislature [See CIT Vs Radhe Developers 341 ITR 403 ]. One can only look fairly at the language used. No tax can be imposed by inference or analogy. It is also not permissible to construe a taxing statute by making assumptions and presumptions [See Goodyear Vs State of Haryana 188 ITR 402(SC)].*

21. There are several decisions which lay down rule that the provision for deduction, exemption or relief should be interpreted *www.taxguru.in* 11 TXA17&18-13 dt.28.02.2020 liberally, reasonably and in favour of the assessee and it should be so construed as to effectuate the object of the legislature and not to defeat it. Further, the interpretation cannot go to the extent of reading something that is not stated in the provision [See AGS Tiber Vs CIT 233 ITR 207].

22. Applying the aforesaid principles, we find that the legislature, in Section 40(a)(ii) has provided that “any rate or tax levied” on “profits and gains of business or profession” shall not be deducted in computing the income chargeable under the head “profits and gains of business or profession”. There is no reference to any “cess”. Obviously therefore, there is no scope to accept Ms. Linhares's contention that “cess” being in the nature of a “Tax” is equally not deductible in computing the income chargeable under the head “profits and gains of business or profession”. Acceptance of such a contention will amount to reading something in the text of the provision which is not to be found in the text of the provision in Section 40(a)(ii) of the IT Act.

23. If the legislature intended to prohibit the deduction of amounts paid by a Assessee towards say, “education cess” or any other “cess”, then, the legislature could have easily included reference to “cess” in clause (ii) of Section 40(a) of the IT Act. The fact that the legislature has not done so means that the legislature did not intend to prevent the *www.taxguru.in* 12 TXA17&18-13 dt.28.02.2020 deduction of amounts paid by a Assessee towards the “cess”, when it comes to computing income chargeable under the head “profits and gains of business or profession.”

24. The Revenue has not brought to our notice any change into facts and circumstances in the year under appeal. The Revenue has also not brought to

our notice any other binding precedent on the issue under consideration. We therefore, taking a consistent view, direct the Assessing Officer to delete the addition. This ground of assessee's appeal is allowed.

25. Ground No.6 & 7 raised by the assessee are consequential in nature hence, dismissed.

26. Ground No.8 raised by the assessee is against the penalty proceedings u/s 271(1)(c) of the Act. This ground of appeal is against the initiation of penalty proceedings, the same is held to be premature, hence dismissed.

27. In the result, the appeal of the assessee is partly allowed.

**ITA No. 5851/Del/2017 [Assessment Year 2013-14]**

28. Now, we take up the ITA No. 5851/Del/2017 [Assessment Year 2013-14] wherein the assessee has raised following grounds of appeal:-

*"The Appellant respectfully submits:-*

1. *That on the facts and in the circumstances of the case and in law, the order passed under section 144C(13) r.w.s. 143(3) of the Act by the Learned Assessing Officer ("Ld. AO") is erroneous and bad in law as well as in facts.*
2. *That the Ld. AO and the Hon'ble DRP on the facts and in law, have erred in holding that fee for freight/ logistic support services by the Appellant, rendered outside India amounting to INR 3,26,62,68,670 is in the nature of fee for technical services / Fee for Included Services as per the provisions of section 9(1)(vii) of the Act and under Article 12 of the India-USA Double Taxation Avoidance Agreement ('DTAA') respectively.*

3. *That the Ld. AO and Hon'ble DRP, on the facts and in law, have erred in holding that reimbursement of Global Account Management ('GAM') charges amounting to INR 3,08,84,909 received by the Appellant from Expeditors International (India) Private Limited ('El India') is in nature of fee for technical services / fee for included services as per the provisions of section 9(1 )(vii) of the Act and under Article 12 of the India-USA DTAA respectively.*
4. *That the Ld. AO and the Ld. DRP, on the facts and in law, have erred in holding that the reimbursement of lease line charges amounting to INR 1,60,31,536 received by the Appellant from El India is in nature of royalty under Explanation 2 to section 9(l)(vi) of the Act and under Article 12 of the India-USA DTAA.*
5. *That without prejudice to any other ground of appeal the Ld. AO, on the facts and in law, has erred in levying surcharge and education cess without appreciating the fact that the tax rate provided under the India-USA DTAA is an all-inclusive tax rate.*
6. *That without prejudice to any other ground of appeal, the Ld. AO on the facts and in law has erred in levying interest under section 234A of the Act.*
7. *That without prejudice to any other ground of appeal, the Ld. AO on the facts and in law, has erred in levying excessive interest under section 234B of the Act.*
8. *That on the facts and in law, the Ld. AO has erred in initiating penalty proceedings u/s 271(l)(c) of the Act mechanically by alleging that the Appellant has furnished incorrect particulars of income without recording any adequate satisfaction for such initiation.*

*The above grounds of appeal are all independent and without prejudice to each other.”*

29. The facts and grounds are identical as were in ITA No.1904/Del/2017 pertaining to Assessment Year 2012-13. The Ld. Representatives of the parties have adopted the same arguments as were in ITA No.1904/Del/2017 [Assessment Year 2012-13]. We, therefore taking the consistent view, partly allow the grounds raised by the assessee in this appeal. Our finding in ITA No.1904/Del/2017 would apply *mutatis mutandi* in the year under consideration on the Ground Nos. 1 to 8 as raised by the assessee.

30. In the result, the appeal of the assessee is partly allowed.

**ITA No. 6827/Del/2018 [Assessment Year 2014-15]**

31. Now, we take up the ITA No. 6827/Del/2018 [Assessment Year 2014-15] wherein the assessee has raised following grounds of appeal:-

*“The Appellant respectfully submits:-*

1. *That on the facts and in the circumstances of the case and in law, the order passed under section 144C(1) r.w.s. 143(3) of the Act by the Learned Assessing Officer ("Ld. AO") is erroneous and bad in law as well as in facts.*
2. *That the Ld. AO and the Ld. DRP on the facts and in law, have erred in holding that fee for freight/ logistic support services received by the Appellant, for services rendered outside India amounting to INR 3,81,95,21,702 is in the nature of Fee for Technical Services / Fee for Included Services ('FTS/FIS') as per the provisions of section 9(l)(vii) of the Act and under Article 12 of the India-USA Double Taxation Avoidance Agreement ('DTAA').*

3. *That the Ld. AO and Ld. DRP, on the facts and in law, have erred in holding that reimbursement of Global Account Management ('GAM') charges amounting to INR 3,81,08,797 received by the Appellant from Expeditors International (India) Private Limited ('El India') is in nature of FTS/FIS as per the provisions of section 9(l)(vii) of the Act and under Article 12 of the India-USA DTAA.*
4. *That the Ld. AO and the Ld. DRP, on the facts and in law, have erred in holding that the reimbursement of lease line charges amounting to INR 1,94,10,291 received by the Appellant from El India is in nature of royalty under Explanation 2 to section 9(l)(vi) of the Act and under Article 12 of the India-USA DTAA.*
5. *That without prejudice to any other ground of appeal, the Ld. AO on the facts and in law, has erred in levying interest under section 234A of the Act.*
6. *That Without prejudice to any other ground of appeal, the Ld. AO on the facts and in law has erred in levying interest under section 234B of the Act.*
7. *That on the facts and in law, the Ld. AO has erred in initiating penalty proceedings u/s 271(1)(c) of the Act mechanically by alleging that the Appellant has furnished incorrect particulars of income without recording any adequate satisfaction for such initiation.*

*The above grounds of appeal are all independent and without prejudice to each other.”*

32. The facts and grounds are identical as were in ITA No.1904/Del/2017 pertaining to Assessment Year 2012-13. The Ld. Representatives of the parties

have adopted the same arguments as were in ITA No.1904/Del/2017 [Assessment Year 2012-13]. We, therefore taking the consistent view, partly allow the grounds raised by the assessee in this appeal. Our finding in ITA No.1904/Del/2017 on the identical grounds raised in this year shall apply *mutatis mutandi*.

33. In the result, the appeal of the assessee is partly allowed.

**ITA No. 4778/Del/2019 [Assessment Year 2015-16]**

34. Now, we take up the ITA No. 4778/Del/2019 [Assessment Year 2015-16] wherein the assessee has raised following grounds of appeal:-

*“The Appellant respectfully submits:-*

1. *That on the facts and in the circumstances of the case and in law, the order passed under section 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 (the Act) by the Learned Assessing Officer (Ld. AO) is erroneous and bad in law as well as in facts.*
2. *That the Ld. AO and the Ld. DRP on the facts and in law, have erred in holding that fee for freight/logistic support services received by the Appellant, for services rendered outside India amounting to INR 3,972,134,887 is in the nature of Fee for Technical Services/Fee for Included Services (FTS/FIS) as per the provisions of section 9(l)(vii) of the Act and Article 12 of the India-USA Double Taxation Avoidance Agreement ('DTAA').*
3. *That the Ld. AO and Ld. DRP, on the facts and in law, have erred in holding that reimbursement of Global Account Management (GAM) charges amounting to INR*

*43,929,429 received by the Appellant from Expeditors International (India) Private Limited (El India) is in nature of FTS/FIS as per the provisions of section 9(l)(vii) of the Act and Article 12 of the India-USA DTAA.*

- 4. That the Ld. AO and the Ld. DRP, on the facts and in law, have erred in holding that the reimbursement of lease line charges amounting to INR 18,332,839 received by the Appellant from El India is in nature of royalty under Explanation 2 to section 9(l)(vi) of the Act and Article 12 of the India-USA DTAA.*
- 5. That without prejudice to any other ground of appeal, the Ld. AO on the law, has erred in levying interest under section 234B of the Act.*
- 6. That without prejudice to any other ground of appeal, the Ld. AO on the facts and in law, has erred in levying interest under section 234B of the Act.*
- 7. That on the facts and in law, the Ld. AO has erred in initiating penalty proceedings u/s 271(l)(c) of the Act mechanically by alleging that the Appellant has furnished incorrect particulars of income without recording any adequate satisfaction for such initiation.*
- 8. The above grounds of appeal are all independent and without prejudice to each other.”*

35. The facts and grounds are identical as were in ITA No.1904/Del/2017 pertaining to Assessment Year 2012-13. The Ld. Representatives of the parties have adopted the same arguments as were in ITA No.1904/Del/2017 [Assessment Year 2012-13]. We, therefore taking the consistent view, partly allow the grounds raised by the assessee in this appeal. Our finding on the

identical grounds raised by the assessee in ITA No.1904/Del/2017 shall apply on the grounds raised in the year under consideration *mutatis mutandi*. The appeal of the assessee in ITA No.4778/Del/2019 pertaining to Assessment Year 2015-16 is partly allowed.

36. In the result, the appeal of the assessee is partly allowed.

**ITA No. 180/Del/2021 [Assessment Year 2017-18]**

37. Now, we take up the ITA No. 180/Del/2021 [Assessment Year 2017-18] wherein the assessee has raised following grounds of appeal:-

1. *“That on the facts and in the circumstances of the case and in law, the order passed under section 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 (the Act) by the Learned Assessing Officer (Ld. AO) is erroneous and bad in law as well as in facts.*
2. *That the Ld. AO and the Ld. DRP on the facts and in law, have erred in holding that fee for freight/ logistic Support services received by the Appellant, for services rendered outside India amounting to INR 4,489,300,983 is in the nature of Fee for Technical Services/Fee for Included Services (FTS/FIS) as per the provisions of section 9(l)(vii) of the Act and under Article 12 of the India- USA Double Taxation Avoidance Agreement ('DTAA').*
3. *That the Ld. AO and Ld. DRP, on the facts and in law, have erred in holding that reimbursement of Global Account Management (GAM) charges amounting to INR 56,886,997 received by the Appellant from Expeditors International (India) Private Limited (El India) is in*

*nature of FTS/FIS as per the provisions of section 9(l)(vii) of the Act and under Article 12 of the India-USA DTAA.*

4. *That the Ld. AO and the Ld. DRP, on the facts and in law, have erred in holding that the reimbursement of lease line charges amounting to INR 17,088,913 received by the Appellant from El India is in nature of royalty under Explanation 2 to section 9(l)(vi) of the Act and under Article 12 of the India USA DTAA.*
5. *That the Ld. AO and DRP grossly erred in not appreciating that the GAM and lease line charges were in the nature of pure cost to cost reimbursements with no income element and hence, the same could not be characterised as FTS/FIS/Royalty, neither under the India-USA DTAA nor under the Act.*
6. *That without prejudice to any other ground of appeal, the Ld. AO op the facts and in law, has erred in levying interest under section 234B of the Act.*
7. *That on the facts and in law, the Ld. AO has erred in initiating penalty proceedings u/s 270A of the Act mechanically by alleging that the Appellant has underreported the income without recording any adequate satisfaction for such initiation.*

*The above grounds of appeal are all independent and without prejudice to each other.”*

38. The facts and grounds are identical as were in ITA No.1904/Del/2017 pertaining to Assessment Year 2012-13. The Ld. Representatives of the parties have adopted the same arguments as were in ITA No.1904/Del/2017

[Assessment Year 2012-13]. We, therefore taking the consistent view, partly allow the grounds raised by the assessee in this appeal. Our finding on the identical grounds raised in ITA No.1904/Del/2017 shall apply *mutatis mutandi* on the grounds raised in ITA No.180/Del/2021 pertaining to Assessment Year 2017-18.

39. In the result, the appeal of the assessee is partly allowed.

40. In the final result, all appeals of the assessee are partly allowed.

Order pronounced in the open Court on 05<sup>th</sup> January, 2022.

**Sd/-**

**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\*R. N/Amit Kumar\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI