

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“I” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.2105, 1977 & 1978/Mum/2022  
(A.Ys.2016-17 to 2018-19)**

Green Maiden A 2013 Trust, Level 1, IFC 1, Esplanade, St. Helier, Jersey Zip Code-Je2 3BX	Vs.	Assistant Commissioner of Income Tax International Tax Circle 2(3)(2), Mumbai Room No. 1711, 17 <sup>th</sup> Floor Air India Building, Nariman Point Mumbai – 400 021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABTG9795M		
Appellant	..	Respondent

Appellant by :	Ms.Aarti Sathe & Ms. Aasavari Kadam
Respondent by :	Lovish Kumar

Date of Hearing	18.01.2023
Date of Pronouncement	30.01.2023

आदेश / O R D E R

**Per Amarjit Singh (AM):**

These 3 appeals filed by the assessee are directed against the final order of the assessing officer and direction of the DRP for assessment year 2016-17 to 2018-19. Since, identical issues on common facts are involved in these 3 appeals except variation in the amount, therefore for the sake of convenience these 3 appeals are adjudicated by this common order after taking ITA No. 2105/Mum/2022 as a lead case and its finding will be applied by mutatis mutandis to the other two appeals wherever these are applicable.

## ITA No. 2105/Mum/2022

- “1. Ground No. 1: The Ld. Dispute Resolution Panel (DRP) violated the principles of judicial discipline by not following the binding Jurisdictional Bombay High Court judgement in the Appellant's own case with respect to its taxability of income.**

*On the facts and in the circumstances of the case and in the law, the Ld. AO erred in passing the final order and the Ld. DRP grossly violated the principles of judicial discipline by not following the binding Jurisdictional Bombay High Court judgement dated 28 October 2021 in the Appellant's own case in respect of taxability of income earned by the Appellant from its investments made in India.*

- 2. Ground No. 2: The Appellant is a valid trust and is subject to the provisions of the Income-tax Act, 1961 ('Act').**

*Without prejudice to ground 1, on the facts and in the circumstances of the case and in law, the Ld. AO erred in passing the final order and the Ld. DRP erred in upholding the draft assessment order passed by the Ld. AO which held that the provisions of the Act are not applicable to the Appellant. In doing so, the Ld. DRP failed to appreciate that:*

- (a) the Appellant is a valid trust and fulfils the conditions of a trust both as envisaged under the Indian Trusts Act, 1882 and the Trusts (Jersey) Law 1984: and*
- (b) there is nothing in the language of the provisions of inter alio, section 61, section 63, and section 161 of the Act that restricts its applicability to only Indian trusts*

- 3. Ground No. 3: Income of the Appellant (being a revocable trust, settled by ADIA) is exempt from tax in India as per Article 24 of the India-UAE Tax Treaty.**

*Without prejudice to ground 1, on the facts and in the circumstances of the case and in law, the Ld. AO erred in passing the final order and the Ld. DRP has erred in upholding the action of the Ld. AO of taxing the entire interest income of Rs. 52,79,88,603 earned during AY 2016-17 by the Appellant from its investments made in India. In doing so, the Ld. DRP failed to appreciate the following:*

- (a) The transfer (settlement and contributions) by Abu Dhabi Investment Authority (ADIA) to the appellant is revocable in nature in terms of the provisions of section 63 of the Act and, accordingly, by virtue of the provisions of section 61 of the Act, the entire interest income of Rs.52,79,88,603 should be considered as the income of the transferor, i.e, ADIA*
- (b) As per Article 24 of the India-UAE Double Taxation Avoidance Agreement (India UAE Tax Treaty), the said interest income of Rs. 52,79,88,603 is exempt from tax in India in the hands of ADIA*

(c) Accordingly, by virtue of the specific provisions of section 61 and section 63 of the Act read with the provisions of Article 24 of the India UAE Treaty, the interest amount of Rs.52,79,88,603 should be considered as the income of ADIA and same is not chargeable to tax in India.

**4. Ground No. 4: Income of the Appellant (being a determinate trust settled by ADIA) is taxable in the hands of the Trustee [Equity Trust (Jersey) Limited (ETJL)] in the same and like manner as that of ADLA and thus is exempt from tax in India as per Article 24 of the India UAE Tax Treaty.**

Without prejudice to ground 1 and 3 above, assuming without admitting, even if the interest income of Rs. 52.79.88,603 is sought to be taxed in the hands of Equity Trust (Jersey) Limited (the Trustee of the Trust), the Ld. AO erred in passing the final order and the Ld. DRP failed to appreciate the following

(a) By virtue of the provisions of inter alia section 161(1) of the Act, as a representative assessee of ADIA, tax can be levied on the Trustee only in the like manner and to the same extent as would have been leviable upon and recoverable from ADIA

(b) Accordingly, by the virtue of the provisions of section 161 of the Act read with the provisions of Article 24 of the India-UAE Treaty, no tax is leviable in the hands of the Trustee (ETJL)

**5. Ground No. 5: On the facts and circumstances of the case and law, the Ld. AO erred in levying interest under section 234B of the Act amounting to Rs. 5.53,08,325-**

Without prejudice to ground to 4 above, on the facts and in the circumstances of the case and in law, the LA. AO has erred in computing interest under section 234B of the Act amounting to Rs. 5,53,08,325

**6. Ground No. 6: Initiating penalty proceedings under section 271(1)(c) of the Act**

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

**7. Ground No. 7: Short Grant of TDS credit amounting to Rs. 43,43,533**

On the facts and in the circumstances of the case and in law, the LA AO has erred in providing TDS credit of Rs. 4,04,59,501 against the eligible TDS credit of Rs 4.48.03.034. Thus, the Ld. AO granted short TDS credit of Rs. 43-43-533

**8. Ground No 8: Non Granting of Refund**

*On the facts and circumstances of the case and in law, the la AO erred in not granting refund of Rs. 4,48,03,034 along with applicable interest under section 244A of the Act*

*The Appellant craves leave to add, to amend, to substitute, to withdraw, to modify, to alter and/or reinstate the foregoing grounds of the appeal on or before the time of hearing.”*

2. The fact in brief is that return of income declaring total income at Rs. 52,45,69,950/- was filed on 26.07.2016 claiming the same to be exempt under DTAA and computed its tax liability at nil. The assessee is a non-resident based in New Jersey. The assessee is a revocable and determinative trust settled by Abudhabi Investment Authority (ADIA) through the deed of settlement dated 22.07.2013, with Equity Trust Jersey Ltd (ETJL) acting as the trustee of the trust. ADIA is a public institution owned by and subject to the supervision of the Emirate of Abu Dhabi. The trust is registered with the Security and Exchange Board of India (SEBI) as a foreign portfolio investor (FPI). The trustee of the assessee trust (ETJL) and ADIA had filed an application before the authority for advance Rule (AAR) as on 30.03.2015 claiming the tax exemption on the interest earned from investment made in non-convertible debenture of Indian portfolio companies as per the Article 24 of the India-UAE DTAA. The AAR vide order dated 18.03.2020 held that said interest income was taxable in India as the income from the investment in debt portfolio in India has been received or accrued to Green Maiden (GMT) assessee trust in India and is taxable u/s 5 r.w.s 9(1)(i) of the Act. It is also held that the trust registered in Jersey and there is no treaty between India and Jersey and India-UAE treaty is applicable to persons who are residents of one or both of the contracting states. The ADIA's income is exempt under Article 24 had it invested directly in the Indian market.

3. During the course of draft assessment proceedings the assessee explained that it had filed a writ petition before the Hon'ble High Court

of Bombay challenging the ruling pronounced by the AAR. At the draft assessment stage the assessing officer observed that the writ petition was still not admitted before the Hon'ble High Court, therefore, in accordance with ruling of AAR the assessing officer taxed the interest income as per Sec. 115AD of the Act.

4. Against the draft assessment officer the assessee has filed its objections with the DRP-1, Mumbai on 28.09.2021 in the prescribed form 35A. Before the DRP assessee vide letter dated 25.01.2022 referred the decision of the Hon'ble Bombay High Court dated 28.08.2021 on the writ petition filed by the assessee against the ruling of AAR dated 18.03.2022. The Hon'ble Bombay High Court held that the income earned by GMT assessee trust is not chargeable to tax in India either by virtue of application of Section 61 r.w.s 63 of the Act or an application of Sec. 161 of the Act, conjointly with the provision of Article 24 of the India-UAE Tax Treaty. Since, the Hon'ble Bombay High Court has quashed the ruling dated 18.03.2022 of AAR, therefore, assessee submitted before the DRP to set aside the draft assessment order passed by the assessing officer. Before the DRP the assessee also submitted that income of the trust is taxable in the hands of the trustee in the same and like manner as that of ADIA and thus it is exempt from tax in India as per Article 24 of the India-UAE Tax Treaty. The trust is being set up by and for the benefit of ADIA who shall be the settlor and sole beneficiaries of this trust.

5. As per provision of Sec. 160(1)(iv) of the Act, since trustee is entitled to receive income on behalf of the sole beneficiary (ADIA), trustee should be considered as representative assessee of ADIA. As per Sec. 161(1) of the Act any income arising to the trustee of GMT is to be assessed in like manner to the same extent as it would be leviable and recovered from sole beneficiary i.e ADIA.

The income can be taxed in the hands of the ETJL u/s 161(1) of the Act or directly in the hands of the ADIA u/s 166 of the Act. However, if the income is taxed in the hands of the ETJL, then tax would be levied upon ETJL in like manner and to the same extent as it would be leviable and recovered from sole beneficiaries i.e ADIA. Any income earned by ADIA from India is exempt from tax in India under Article 24 of the India-UAE Tax Treaty.

6. At the time when ADIA was making decision to investment in India there was no legal framework in UAE under which a trust could be formed and it is not possible for the ADIA to establish a sole shareholder subsidiary company in UAE. ADIA for commercial and administrative reasons had made its all-illiquid investment through separate legal entities to ensure it does not have to directly deal with various portfolio companies.

7. However, the DRP had rejected the observation filed by the assessee stating that department has not accepted order of Hon'ble Bombay High Court and an SLP has already been filed in the Hon'ble Supreme Court against the decision of Hon'ble Bombay High Court. Therefore, the DRP held that to keep the issue alive they did not find it appropriate to interfere at the present stage with the finding made by the assessing officer, therefore, objection raised by the assessee were rejected.

8. In accordance with the aforesaid directions of the DRP to keep the issue alive the A.O has passed a final assessment order u/s 143(3) r.w.s. 144C(13) of the Act on 29.06.2022 and determined tax of Rs.11,42,03,935/- u/s 115AD.

9. During the course of appellate proceedings before us at the outset the ld. Counsel has contended that the issue in appeal is squarely covered in favour of the assessee by the decision of Hon'ble jurisdictional

Bombay High Court in the case of the assessee itself vide writ petition no. 709 of 2021 dated 12.11.2021.

On the other hand, the ld. D.R supported the order of the lower authorities.

10. with the assistance of the ld. Representative we have gone through the order of the Hon'ble High Court as supra. The relevant operating part of the order is reproduced as under:

*"We do not agree with the conclusions arrived at by AAR.*

*24 As regards to the reasoning given by AAR that the trust is registered in Jersey, there is no treaty between India and Jersey and Section 61 and 63 of the Act would apply only to those trust which fall under the Indian Trust Act 1882, it has to be noted that Shri Kotangale himself agreed that there is no provision in the Act which provides that these provisions shall apply only to Indian Trust. Section 61 of the Act provides that any income arising to any person by virtue of revocable transfer shall be chargeable to tax as the income of the transferor. The Deed of Settlement and particularly clauses from the Deed of Settlement quoted earlier, show that there is a revocable transfer by settlor, i.e., ADIA to trustee ETL and as such any income arising to the trustee should be chargeable in the hands of ADIA. Nothing in Section 61 requires involvement of a trust in revocable transfer. Section 61 is plain and simple in as much as, it provides for income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income tax as the income of the transferor and shall be included in his total income. Further Section 61 is not dependent on Section 63 of the Act. A transfer can be revocable transfer on its own merits without reference to Section 63 of the Act. Clause (a) of Section 63 of the Act merely extends the provisions of Section 61 of the Act to cases which might not otherwise be covered by Section 61 by extending the meaning of word revocable. Clause (b) in Section 63 extends the meaning of the word transfer in Section 61 to cases which might not otherwise amount to transfer.*

*25 A settlement or a trust are merely instances of what could amount to transfer for the purposes of Section 61. Section 63 (b) includes in the definition of transfer any settlement or trust or covenant or agreement or arrangement. Moreover, Section 63 is not restricted only to trust. It is an inclusive definition. So long as the conditions provided in Section 63 (a) are fulfilled, any transfer whether connected with the trust or not will be a revocable transfer. The case of AAR that if the transaction does not qualify as a trust, the provisions of Section 63 and/or Section 61 are not applicable, is erroneous. In any event, under Section 63 there is no requirement that a trust covered by it must necessarily be an Indian trust falling under the Indian Trust Act. Such restriction which is not there in the Act cannot be imported into Sections 61 and 63 of the Act. As noted earlier, where such restriction is provided for the Act says so as noted in section 10(23FB) of the Act where it specifically provides that venture capital fund means a fund operating under the trust deed registered under the provisions of Registration Act, 1908.*

26 As regards the stand that India has not ratified the Hague Convention on the Law Applicable to Trust and on their recognition ("Hague Trust Convention", Convention of 1 July 1985), trust laws of a foreign jurisdiction are not applicable in India, the word 'trust' first of all is not defined under the Act or General Clauses Act, 1897. The word trust has to be interpreted as per its general meaning. The trust is defined under Section 3 of the Indian Trust Act to be an obligation annexed to the ownership of the property, and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another, or of another and the owner. A trust can be an Indian Trust or a Foreign Trust. There is nothing in Sections 61 and 63 of the Act to restrict its applicability only to trust settled in India and, therefore, one cannot rule out their applicability to a Foreign Trust. Even if the definition of the trust under the Indian Trust Act can be held to say that it does not cover 'The Trust', i.e., Green Maiden A 2013 Trust, still the word trust in Section 63 covers all trust within its ambit. Hague Trust Convention referred to by AAR does not decide the issue one way or the other. There is nothing to even suggest in the ruling of AAR as to how the ratification of Hague Trust Convention would affect the status of Foreign Trust in India. If we accept what AAR has opined that Foreign Trust can be recognised in India only if and after India ratified the Hague Trust Convention that would imply that no Foreign Trust can be treated as trust for the purpose of the Act. In the case of H.M.M. Vikramsinghjit of Gondal (Supra) shows that even Foreign Trusts are recognised in Indian Tax Laws. The Apex Court held that certain trust set up outside India are discretionary trust within the meaning of Section 164 of the Act. Therefore, even a Foreign Trust is a trust under the Act, which shows AAR's preposition that a Foreign Trust cannot be treated as a trust for the purposes of the Act unless the Hague Trust Convention is ratified by India, is incorrect.

Shri Pardiwalla submitted that even Income Tax Return form prescribed under the Act requires the details of trust created under the laws of a country outside India. It was not denied by Shri Kotangle. This presupposes that a Foreign Trust is a trust for the purposes of the Act. If one has to accept AAR's contention that the word trust can only be an Indian Trust for the purposes of the Act it has to be based on some statutory provisions which is not the case. Shri Pardiwalla showed a comparison between India and Jersey laws on the subject. As per Section 3 of Indian Trust Act the trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.

Article 2 of the Trusts (Jersey) Laws 1984 reads as under:

"A trust exists where a person (known as a trustee) holds or has vested in the person or is deemed to hold or have vested in the person property (of which the person is not the owner in the person's own right)- (a) for the benefit of any person (known as a beneficiary) whether or not yet ascertained or in existence; (b) for any purpose which is nor for the benefit only of the trustee; or (c) for such benefit as is mentioned in subparagraph (a) and also for any such purpose as is mentioned in subparagraph(b)."

Therefore, as can be seen from the definitions, the Trust created in terms of the deed of settlement is consistent with the requirements of both, the Indian Trusts Act as well as Trust (Jersey) Law, 1984 as to what constitutes a trust.

27 As to the ground that the settlor cannot be a sole beneficiary, as ADIA was settlor as well as sole beneficiary, first of all the Act does not make any such provision. Secondly, there is no provision under the Indian Trust Act also which debars the settlor from being beneficiary. In the case of *Bhavna Nalinkant Nanavati (supra)*, the settlor of the trust was also the sole beneficiary in the Deed of Settlement. The Gujarat High Court, while interpreting Section 3 of the Indian Trust Act observed as under:

.....

*“The ownership of trust property has to be for the benefit of a person or more than one person of whom the settlor may himself be one but never for the benefit of an owner alone, viz the trustee. There cannot be a case where the creator of the trust would also be the trustee and also the sole beneficiary, because in such cases a man cannot enforce a trust against himself.”*

Thus, it follows that the settlor cannot be the trustee and sole beneficiary. In the present instance, the settlor is not the trustee but is the sole beneficiary which is clearly permissible.

28 As regards AAR’s view that Sections 60 to 64 are designed to overtake and circumvent the counter design by a taxpayer to reduce its tax liability by parting its property in such a way that the income should no longer be received by him but at the same time he retains certain powers over property/income, that is not the case as regards petitioner. In the case at hand, if ADIA had invested the amount directly, the income derived from such investment would be exempted under Article 24 of India-UAE DTAA. ADIA has not created the trust to avoid tax and that is not AAR's case either. AAR says if ADIA had directly invested they would not have been liable to pay tax. AAR failed to understand why would someone not invest directly if the returns on such investment would be exempt from tax. AAR fails to appreciate that ADIA routed its investment on certain instruments through the trust only for commercial expediency. According to AAR the assessee’s representative could not satisfactorily answer the query as to why ADIA routed its investments in non-convertible debenture funds through Jersey route for investment in Indian market and ADIA itself being an FII registered with SEBI could have directly invested in Indian Portfolios and taken advantage of Article 24 of India-UAE treaty. But the fact is ADIA has explained in detail in its letter dated 13th November 2018 and letter dated 25th September 2019 to AAR, why it routed its investment in non convertible debentures through Jersey route for Indian market.

29 As regards the ground that Section 160(1)(i) or 160(1)(iv) of the Act, provides that trustee can be representative assessee but in this case trustee being a resident of Jersey cannot be an agent of ADIA, in our view that is not sustainable as the Act does not provide anywhere that only trustee who is resident of India can be an agent under Section 160 of the Act.

30 As regards the ground of proposed amendment in the Finance Bill 2020 (Exemption from certain income of wholly owned subsidiaries of ADIA), Shri Pardiwalla submitted that AAR relied on the amendment despite the fact that the same was introduced in the Act post the hearing of the application and was never put to ADIA for them to make any submissions thereon. We would agree with Shri Pardiwalla. It was improper for AAR to have relied upon the proposed

*amendment. If, AAR wanted to, it could have given notice to ADIA to make their submissions thereon. Therefore, the contents of the proposed amendment could not have been relied upon by AAR.*

*31. In our view, therefore, the Deed of Settlement dated 22nd July 2013, whereby the trust was set up, contained specific clauses which established the revocable nature of the trust. As the ADIA has settled the trust on the terms mentioned in the Deed of Settlement, the contribution made by it to the trust would be a transfer as defined in Section 63 of the Act. As Section 63 does not anywhere specify that a trust covered by it must necessarily be a trust falling under the Indian Trust Act 1882 and as per Section 63(b) of the Act, any settlement or trust is included within the meaning of 'transfer' and Section 63(b) does not provide that the trust described therein needs to be an Indian Trust, the provisions of Sections 61 to 63 of the Act are applicable to the case at hand. As the term 'trust' is not defined either in Section 63 or Section 2 of the Act 'trust' would clearly be a trust as one understands the term in its common parlance. Even if one has to have recourse to the definition of the term "trust" in Section 3 of the Indian Trust Act 1882, i.e., an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owners, or declared and accepted by him, for the benefit of another, or of another and the owner, there is nothing in the language of Section 61 or 63 that restricts its applicability only to trusts settled in India and accordingly, AAR was not justified in concluding that a Foreign Trust will not be covered under the said provisions. AAR while expressing its view that India has not ratified Hague Convention on the law applicable to trust has overlooked the fact that ADIA is not seeking to apply Foreign Law to India but is merely seeking an application of Section 61 which in no manner excludes, from its applicability, a trust settled outside India. A Foreign Trust can be treated as a trust under the Act also appears from the income tax return forms prescribed under the Act wherein Schedule FA, Para F, in form ITR-5, require the disclosure of "details of trusts" created under the laws of a country outside India, in which one is trustee, beneficiary or settlor. There are similar requirements in Form ITR-2, ITR-6 and ITR-7. Therefore, the Act presupposes that a Foreign Trust is a trust for the purposes of the Act. In *Vikramsinghjit of Gondal (Supra)*, the Apex Court has applied the provisions of Section 164 and 166 of the Act to tax the beneficiary of a trust settled in U.K.*

*32. Even if, the trust is based out of Jersey and the trust is settled in Jersey, ADIA being the settlor and sole beneficiary of the trust and resident of UAE as per Article 24 of the India-UAE DTAA, the income which arises to it by virtue of investment in Indian Portfolio companies will be governed by the beneficial provisions of the India-UAE DTAA. To take it further, even if the trust structure were to be discarded, then it must necessarily follow that the investment must be regarded as having been made by ADIA and hence the income would arise in the hands of ADIA which income would not be taxable in India by virtue of provisions of India-UAE DTAA. We have to note that there was no attempt whatsoever to reduce the tax liability by using the trust structure. When the provisions of the Trust Deed provided that ADIA has right to re-assume power over the entire income arising on the investments made by the trust in the portfolio companies, the entire income arising therefrom has to be in terms of Section 61 of the Act to be assessed in the hands of ADIA. This would mean the exemption under Article 24 of India-UAE DTAA would be attracted. Even if for a moment we say that for any reason the provisions of Section 61 are not applicable, then also the trustee can only be assessed in a representative*

*capacity and, accordingly the provisions of Section 160(i)(iv) will be applicable. Therefore, even if the income is taxed in the hands of the trustee in terms of Section 161(1), it will be taxed in the “like manner and to the same extent” as the beneficiary. Once again, ADIA is the sole beneficiary of the trust, the income assessed in the hands of the trustee will take colour of that of ADIA’s income and thereby, the benefit of India-UAE DTAA must be granted.*

33. *As there is no bar to the settlor and beneficiary being the same person and in view of the judgment in Bhavana Nalinkant Nanavati (supra) where the court has interpreted Section 3 of the Indian Trust Act, 1882 as creating a fiduciary relationship between the trustee and the beneficiary, where the ownership of the trust property has to be for the benefit of another person which can include the settlor himself, if one reads Sections 61 and 63 of the Act, it is quite clear that Section 61 is independent of Section 63 of the Act and a transfer can be a revocable transfer on its own merits and is not restricted only to trusts. A “settlement” or a “trust” are instances of what amount to transfer. So long as the settlor has a right to reassume power over the assets settled, the same would amount to revocable transfer. In the facts of the case at hand, ADIA could reassume the power and hence the contribution to the trust was a revocable transfer thereby making the income arising to the trust taxable in the hands of ADIA which was exempt under Article 24 of India-UAE DTAA. The tax liability of a trust has to be determined by applying the provisions of the Act alongwith the provisions of India-UAE DTAA and not apply the law as applicable in Jersey.*

34. *In the circumstances, the ruling dated 18th March 2020 has to be quashed. The income that accrues to the trust would not be chargeable to tax in India either by virtue of application of Section 61 read with Section 63 or on an application of Section 161 of the Act conjointly with the provisions of Article 24 of the India-UAE DTAA. Since we have quashed the Ruling dated 18th March 2020 of the AAR, the steps taken in furtherance of the Ruling order passed therein are also quashed and set aside. Ordered accordingly.*

35. *Petitions disposed with no order as to costs.”*

11. In view of the above facts and findings as discussed supra, it is evident that at the level of the assessing officer the writ petition filed by the assessee before the Hon’ble Bombay High Court was at the admission stage. However, before issuing the direction by the DRP u/s 144C(5) of the Act on 16.02.2022, the Hon’ble Bombay High Court has already decided the writ petition filed by the assessee vide order dated 28.10.2021 (supra). In this regard, the ld. DRP has categorically referred at para 7.14 of their order that the addition to the taxable income has proposed by the assessing officer in his draft assessment order on the basis of AAR ruling itself has already been reversed by the Hon’ble jurisdictional High Court. The DRP has also stated in their finding that question

raised in the objection filed by the assessee are squarely covered by the decision dated 28.10.2021 of Hon'ble Bombay High Court.

12. Looking to the above facts, finding and decision of the Hon'ble Bombay High Court as supra we considered that the directions issued by the DRP are not justified, therefore, we set aside the final order passed by the assessing officer. Accordingly, ground of appeal no. 1 to 4 of the assessee are allowed.

13. Ground No. 5 relating to levy of interest u/s 234B is consequential, therefore, the same is not required any adjudication the same stand dismissed.

14. Ground No. 6 relating to initiating of penalty under provision of Sec. 271(1)(c) is premature at this stage, therefore the same stand dismissed.

**Ground No. 7 relating to short grant of TDS credit amounting to Rs.43,43,533/- :**

15. After discussion with both the parties we restore this issue to the file of the assessing officer for deciding afresh after verification of the relevant material on record. Therefore, this ground of appeal the assessee is allowed for statistical purposes.

**Ground No. 8: Not grant of refund:**

16. After discussion with both side this issue is also restored to the file of the assessing officer for deciding afresh after verification of the relevant material on record. Therefore, this ground of appeal is also allowed for statistical purposes.

17. In the result, the ground of appeal no. 1 to 4 are allowed and ground no. 5 & 6 are dismissed the ground no. 7 & 8 are allowed for statistical purposes.

## **ITA No. 1977/Mum/2022**

### **Ground No. 1 to 4:**

18. As the facts and issues involved in these grounds of appeal are same as grounds no. 1 to 4 of ITA No. 2105/Mum/2022 as supra, therefore, applying the same findings mutatis mutandis these ground of appeal of the assessee are allowed.

### **Ground No. 5: regarding computing of surcharge:**

19. After discussion with both sides this ground of appeal is restored to the file of the assessing officer for deciding afresh after verification of the relevant material placed on record. Therefore this ground of assessee is allowed for statistical purposes.

### **Ground No. 6 & 7:**

20. As the facts and issues involved in these grounds of appeal are same as grounds no. 5 and 6 vide ITA No. 2105/Mum/2022 as supra, therefore, applying the same findings mutatis mutandis these ground of appeal of the assessee are also dismissed.

### **Ground No. 8:**

21. As the facts and issue involved in this ground of appeal are same as ground no. 8 vide ITA No. 2105/Mum/2022 as supra, therefore, applying the same findings mutatis mutandis this ground of appeal of the assessee is allowed for statistical purposes.

## **ITA No. 1978/Mum/2022**

### **Ground No. 1 to 4:**

22. As the facts and issues involved in these grounds of appeal are same as grounds no. 1 to 4 of ITA No. 2105/Mum/2022 as supra,

therefore, applying the same findings mutatis mutandis these ground of appeal of the assessee are allowed.

**Ground No. 5:**

23. After discussion with both sides this ground of appeal is restored to the file of the assessing officer for deciding afresh after verification of the relevant material placed on record. Therefore this ground of assessee is allowed for statistical purposes.

**Ground No. 6 & 7:**

24. As the facts and issues involved in these grounds of appeal are same as grounds no. 5 and 6 vide ITA No. 2105/Mum/2022 as supra, therefore, applying the same findings mutatis mutandis these ground of appeal of the assessee are also dismissed.

**Ground No. 8:**

25. As the facts and issue involved in this ground of appeal are same as ground no. 8 vide ITA No. 2105/Mum/2022 as supra, therefore, applying the same findings mutatis mutandis this ground of appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 30.01.2023

Sd/-  
(Vikas Awasthy)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 30.01.2023

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.