

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "K", MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND  
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**ITA NO. 2512/MUM/2022 (A.Y: 2018-19)**

KEC International Limited 463 RPG House Dr. Annie Besant Road Worli, Mumbai – 400030  <b>PAN: AACCK5599H</b> <b>(Appellant)</b>	v.	DCIT – Circle – 5(2)(1) Room No. 571, 5 <sup>th</sup> Floor Aayakar Bhawan Churchgate, Mumbai - 400020  <b>(Respondent)</b>
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<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Vijay Mehta</b>
<b>Department Represented by</b>	<b>:</b>	<b>Ms. Manju Thakur</b>
<b>Date of Conclusion of Hearing</b>	<b>:</b>	<b>03.08.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>13.09.2023</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

**1.** This appeal is filed by the assessee against the final Assessment Order and directions of the Dispute Resolution Panel of Learned Commissioner of Income Tax (DRP-1), Mumbai-1 [hereinafter in short

"Ld.DRP"] dated 27.06.2022 for the A.Y.2018-19 passed u/s. 144C(5) of Income-tax Act, 1961 (in short "Act").

**2. Assessee has raised following grounds in its appeal: -**

**1. Non-compliance with section 144B of the Act:**

1.1. *On the facts and circumstances of the case and in law, the AO erred in passing the draft assessment order and the final assessment order in contrary to and without complying with the provisions of section 144B of the Act.*

1.2. *The Appellant prays that the draft assessment order and the final assessment order be held as bad in law and consequently, the assessment proceedings and the assessment order be quashed.*

**2. Transfer pricing addition on account of corporate guarantee:**

2.1. *On the facts and circumstances of the case and in law, the DRP erred in confirming the action of the TPO/AO in holding that issuance of corporate guarantee is an 'international transaction' and consequently, transfer pricing addition of Rs. 13,97,23,463/- should be made at the rate of 1.16% of the guarantee amount.*

2.2. *They failed to appreciate and ought to have held that mere issuance of corporate guarantee is not an 'international transaction'.*

2.3. *The Appellant prays that the TPO/AO be directed to delete the transfer pricing adjustment on account of corporate guarantee.*

2.4. *Without prejudice to the above, the rate of corporate guarantee commission be reduced reasonably.*

**3. Addition to income based on Service Tax Return:**

3.1. *On the facts and circumstances of the case and in law, the DRP erred in confirming the action of the AO in considering Rs. 43,42,62,923/- as income of Appellant being the amount of advance received by the Appellant from its customers which was reflected in service tax returns as Advance.*

3.2. *They failed to appreciate and ought to have held that service tax is payable on advance amounts also and amounts reflected in service tax return are based on the service tax law and need not necessarily be income accrued as per accounting principles as the appellant correctly following accounting Methodology.*

3.3. *The Appellant prays that the AO be directed to delete the addition of Rs. 43,42,62,923/- being the amount of advance received by Appellant from customers.*

4. **Claim for taxes paid outside India:**

4.1. *On the facts and circumstances of the case and in law, the AO/DRP erred in not admitting and allowing the deduction in respect of the taxes paid outside India but not eligible for credit u/s. 90 & 91 of the Act aggregating to Rs.4,91,44,649/-*

4.2. *The Appellant prays that the AO be directed to allow the deduction of foreign taxes aggregating to Rs.4,91,44,649/-,*

5. **Deduction u/s. 80JJAA**

5.1. *On the facts and circumstances of the case and in law, the AO/DRP erred in not admitting and allowing the deduction u/s.80JJAA of the Act amounting to Rs. 1,00,82,570/-.*

5.2. *The Appellant prays that the AO be directed to allow the deduction u/s. 80JJAA of the Act of Rs. 1,00,82,570/-,*

6. **Short TDS credit granted:**

6.1. *On the facts and in the circumstances of the case and in law, the AO erred in granting short TDS credit of Rs. 37,461 in the computation sheet provided alongwith order u/s 143(3) r.w.s 144C(13) of the Act.*

6.2. *The AO failed to appreciate and ought to have granted full TDS credit as claimed by the Appellant.*

7. **Short credit of Regular Tax Paid:**

7.1. *On the facts and the circumstances of the case and in law, the AO erred in granting short credit in respect regular tax paid by the Appellant to the extent of Rs 13,34,12,710.*

7.2. *The Appellant prays that the AO be directed to also grant full credit of regular tax paid of Rs. 13,34,12,710.*

8. **Interest levied u/s 234B & 234C:**

8.1. *On the facts and the circumstances of the case and in law, the AO erred in levying interest u/s 234B & 234C of the Act.*

8.2. *The Appellant prays that the AO be directed to delete or suitably reduce the interest levied u/s 234B and 234C of the Act.*

9. **General:**

*The Appellant craves leave to add, omit or alter grounds of appeal before or during the hearing of the aforesaid matter."*

3. We proceed to adjudicate the issues raised by the assessee ground wise.

**4.** With regard to Ground No. 1 which is in respect of Non-compliance with section 144B of the Act, Ld. AR of the assessee submitted that this ground is not pressed, accordingly, the same is dismissed as not pressed.

**5.** With regard to Ground No. 2, which is in respect of, transfer pricing addition on account of corporate guarantee, Ld. AR of the assessee submitted that the issue under consideration is relating to corporate guarantee given by the assessee to its Associate Enterprises in relation to various banks, Ld. AR submitted a chart, for the sake of clarity, it is reproduced below: -

Sr.No	Given on behalf of (AE)	Given to	Given on account of	Value	Rate of Guarantee fees recovered	Addition made by DRP	Remarks
1.	KEC Transmission LLC and KEC US, LLC, USA (WOS) now known as SAE Tower Holding LLC	ICICI Bank, UK	Financing to SPV for acquisition of SAE USA's business.	USD-3,65,37,634 INR-237,65,57,520		1.16% Rs.2,75,68,067	The Guarantee was given in earlier years and the Hon'ble ITAT in AY 2011-12, AY 2012-13, AY 2013-14 and AY 2017-18 has determined ALP @0.20%
2.	Sharif Group and KEC Ltd Company	Axis Bank	Non fund based credit facility for which charge on the receivable from the project of JV given	USD-3,00,00,000 INR 1,95,13,23,000		1.16% Rs.1,58,75,750	This guarantee was provided in earlier Year and the Hon'ble ITAT in AY 2017-18 has determined ALP @0.60%.
3.		Kotak Mahindra Bank Limited	Non Fund based facility	USD-1,72,50,000 INR 1,12,20,10,725		1.16% Rs.1,30,15,324	— do—
4.		ICICI BANK Limited	Non Fund based facility	USD-3,41,00,000 INR 221,80,03,810	-	1.16% Rs.2,57,28,844	— do—
5.		Bank Muscat S.A.O.G	Fund based working capital loan facility	SAR-11,46,53,182 INR-197,79,96,682	0.60%	0.56% (1.16-0.60) Rs.91,27,729	— do—
6.		Banque Saudi Fransi, Jeddah	Fund based working capital loan facility	SAR-1,78,99,540 INR-30,88,02,868	0.60%	0.56% (1.16-0.60) Rs.7,04,167	— do—

Sr.No	Given on behalf of (AE)	Given to	Given on account of	Value	Rate of Guarantee fees recovered	Addition made by DRP	Remarks
7.		Abu Dhabi Commercial Bank	Fund based working capital loan facility	AED-19,96,51599 INR-344,43,89,345	0.60%	0.56% (1.16-0.60) Rs.1,27,72,306	- do—
8.		Arab Banking Corporation	Fund based working capital loan facility	USD- 4,86,09,019 INR-83,86,02,779	0.60%	0.56% (1.16-0.60) Rs.7,96,044	
9.		Deutsche Bank AG	To avail credit facility for which collateral security in the nature of receivable was provided by AE	USD -1,19,54195 INR 77,75,49,855		1.16% Rs.86,24,200	
10.		Arab Bank Pic	Non fund based credit facility for which charge on the receivable from the project of JV given	USD-2,50,00,000 INR-162,61,02,500		1.16% Rs.1,82,94,319	
11.		Yes Bank	Non fund based credit facility for which charge on the receivable from the project of JV given	USD-3,00,00,000 INR-195,13,23,000		1.16% Rs.49,61,172	
12.	Towers Mexico S De RL de Mexico	Steel Force NV, Belgium	Securing credit terms (receivable)	USD- 30,00,000 INR-19,44,43,200	-	1.16% Rs.22,55,541	This guarantee was provided in earlier Year and the Hon'ble ITAT in AY 2017-18 has determined ALP @0.60%
		Total				13,97,23,463/-	

**6.** He submitted that in the earlier assessment years i.e. A.Y. 2013-14 and 2017-18 similar issue was considered by the Coordinate Bench and decided the issue in favour of the assessee. He submitted that the corporate guarantee given to AI Sharif Group and KEC Limited Company and SAE Towers Mexico, the Assessing Officer and Ld. DRP has sustained

the addition @1.16% and Coordinate Bench considered the issue and restricted the corporate guarantee @0.60%. He prayed that the same rate may be considered for the assessment year under consideration also.

**7.** With regard to corporate guarantee given to KEC Transmission LLC and KEC US LLC, USA (WOS) now known as SAE Tower Holding LLC, he submitted that the corporate guarantee given by the assessee in the A.Y.2011-12 and the rate for the same was also sustained by the Ld. DRP @1.16%. However, in the earlier assessment year and subsequent Assessment Years, the Coordinate Bench has sustained the same @0.20%. He prayed that following the rule of consistency the corporate guarantee @0.20% may be sustained by following the decision of the Coordinate Bench in the earlier Assessment Years.

**8.** However, at the time of hearing, the bench asked the Ld. AR of the assessee to substantiate the claim made on the issue of SAE Tower Holding LLC considering the fact that this guarantee was given in A.Y.2011-12 and how the same guarantee was continued till date without there being any revision. The bench observed that the corporate guarantee is reviewed every year or at least once in three years. The corporate guarantee cannot be same which was given in the

A.Y.2011-12. The Ld.AR prayed that the rule of consistence may be followed.

**9.** On the other hand, Ld. DR relied on the orders of lower authorities and prayed that the corporate guarantee rate determined by the lower authorities may be sustained.

**10.** Considered the rival submissions and material placed on record, the Coordinate Bench considered the same issue in the earlier Assessment Years in ITA.No. 33/Mum/2022 dated 31.05.2023 and observed as under:-

*"29. As regards the balance 3 corporate guarantees, we find that same were given by the Assessee on behalf of its AEs to banks for the purpose of availing loans. In respect of the aforesaid three corporate guarantees that the CIT(A) has held as under:*

*"7. Now I consider benchmarking of 3 transactions of Corporate guarantees Details are as under*

*(i) Corporate guarantee given to National Bank of Oman on behalf of KEC Global FZ LLC RasUI Khaimah of OMR 52,60,323/-: As per the order of the TPO. this corporate guarantee was given in 2010 for availing loan of Rs 74.24.02,536/- (OMR 52,60,323) from National Bank of Oman The Appellant recovered guarantee fee @ 0.6% of Rs 44,54,415/-. The TPO determined the ALP at 2% and computed adjustment of Rs 91,32,568/-*

*(ii) Corporate guarantee given to State Bank of India, Jeddah on behalf of Al Sharif Group and KEC Limited Co. of SAR 11,15,94,000/- .: As per the order of the TPO, this corporate guarantee was given in 2012 for availing loan of Rs*

*1,61,66,73.437/- (SAR 11,15,94,000) from State Bank of India, Jeddah The Appellant has recovered guarantee fee @0.6% of 97.00.041/- The TPO determined the ALP at 2% and computed adjustment of Rs 1,97,10,128/-.*

*(iii) Corporate guarantee given to Bank Muscat SAOG on behalf of Al Sharif Group and KEC Limited Co. of SAR 8,45,29,440/-: As per the order of the TPO, this corporate guarantee was given in 2012 for availing loan of Rs 1.22 45,86,450/- (SAR 8,45,29,440) from Bank Muscat SAOG. The recovered guarantee fee @ 0.6% of Rs 73,47,519/- The TPO determined the ALP at 2% and computed adjustment of Rs 89,57,934/-*

*7.1 Submission: The Appellant has made a common submission. It is submitted that corporate guarantee is not an international transaction The Appellant has also submitted that corporate guarantees were issued to enable AEs to avail credit facilities as a matter of commercial prudence primarily to protect the business interest of the group by fulfilling the shareholder's obligations.*

*The Appellant has also claimed that non-charging of commission is justified where additional security is provided. In case of Al Sharif Group which obtained financing facility from SBI. Jeddah and Bank of Muscat, the banks obtained primary right over AEs contract receivables of project of Saudi Electricity company. While these receivables were security for the credit facility provided, the Appellant provided corporate guarantee to comply with administrative requirements. It is thus claimed that no risk was borne by the Appellant under the circumstances. As such charging of guarantee commission is not warranted.*

*The Appellant has further stated that benchmarking rate of 2% adopted by the TPO is ad hoc and is not justified Reliance is placed on decision of the Hon'ble Bombay High Court in the case of Everest Kanto Cylinders Ltd v CIT (ITA 1165 of 2013) for the proposition that consideration applied for issuance of corporate guarantee are from that of the bank guarantee and that high rate of commission in case of corporate guarantee issued by holding company for subsidiary is not justified.*

*It is submitted without prejudice that Appellant has charged guarantee commission @ 0.6% to AES. The said rate is based on rate mentioned under the facility letter issued by the assessee's bank. It is claimed that this rate is most direct comparable uncontrolled transaction to benchmark the rate of guarantee commission*

*Lastly, the Appellant has relied on ITAT's decision in its case for AY 2012-13. by reproducing Para 7.11 of the order (already reproduced in Para 6.7 1 above) and submitted that benchmarking be done @ 0.2%*

*7.2 I have considered the order and submissions of the Appellant. The transaction of issue of corporate guarantee is covered under the definition of International Transaction' u/s 92B rw. Explanation. As per Explanation (1) (c) of 92B (inserted with retrospective effect from 01.04.2002 by Finance Act 2012), 'guarantee' has been specifically clarified to be an international transaction. The legislature is aware that there are some conditions to be satisfied under section 92B for qualifying as an International transaction. The very fact that it has included certain items as international transaction in the explanation implies that in the view of the legislature, these items fulfil the conditions of section 92B(1) and have been included in the explanation as a matter of abundant caution. Therefore there can be no onus on department to show that a guarantee is an international transaction in terms of section 92B(1) in the case of corporate guarantee If the assessee fails to show a guarantee as International Transaction and claims that it is not an international transaction in terms of section 92B(1), it is for the assessee to show that there is no service or impact on income*

*Xx*

*7.2.1 As regards the benchmarking rate, the Appellant has already charged 0.6% as guarantee commission. The TPO has increased this benchmarking rate to 2% in all the 3 cases. The Appellant has submitted that benchmarking be done at 0.2% following the decision of the Hon'ble ITAT in its case in respect of benchmarking of corporate guarantee Issued by the*

*Appellant to ICICI, UK on behalf of its AE KEC US LLC & KEC Transmission LLC The operative part of the decision is already produced in Para 6.7. It is seen that the facts of 2 corporate guarantees are different. The 3 guarantees under consideration are for availing of regular credit facilities whereas credit facilities from ICICI, UK was for certain of which the Appellant was to be the ultimate beneficiary Therefore, the benchmarking rates cannot be same. The Appellant has already charged 0.6% rate which is based on a facility letter by its own bank, which is a good comparable. It is, therefore, held that no interference is called for in the benchmarking @ 0.6% done by the Appellant and the adjustments made by the TPO are deleted” (Emphasis Supplied)*

30. *On perusal of the above, it can be seen that the CIT(A) held that the transaction of issuance of corporate guarantee to be an international transaction as per Explanation (1)(c) to Section 92B of the Act (inserted with retrospective effect from 01.04.2002 by Finance Act 2012). The CIT(A) rejected the contention of the Assessee to benchmark the guarantee fee in respect of the three corporate guarantees at the rate of 0.2% by highlighting the difference in the purpose of giving corporate guarantees and the reasoning given by the Tribunal that corporate guarantee issued by the Assessee to ICICI, UK on behalf of its AE KEC US LLC and KEC Transmission LLC, was for the ultimate benefit of the Assessee. The CIT(A) pointed out that the 3 guarantees under consideration were given for the purpose of availing of regular credit facilities whereas credit facilities from ICICI, UK benchmarked at the rate of 0.2% was for the ultimate benefit of the Assessee itself. The CIT(A) noted that the Assessee had already recovered the guarantee fee at the rate of 0.6% from the AEs on the basis of letter issued to the Appellant by its bank for similar facility. Perusal of the order passed by TPO shows that the TPO had determined arm’s length guarantee fee at the rate of 2% by way of estimation. During the course of hearing, it was pointed out by the Learned Authorised Representative for Assessee that the corporate guarantee was given for working capital loan facility granted to the AE in which the Assessee was 50% partner, and therefore, there was no default risk. Further, repayment of loan was secured by way of charge against the receivables from Saudi Electric Company, a Government Undertaking and a client of the Assessee’s AE and therefore, the Assessee had only provided*

*secondary security. The aforesaid submission, at best, supports the view taken by the CIT(A) to adopt the lower rate of 0.6% proposed to be charged by the bank of the Assessee as the arm's length rate for corporate guarantee fee instead of 2% determined by the TPO/Assessing Officer. Given the facts and circumstances of the present case, we are not inclined to interfere with the order passed by the CIT(A) on this issue. Accordingly, Ground No. 3(ii)-(iii) raised by the Revenue are dismissed."*

**11.** Respectfully following the above said decision, we are inclined to sustain the corporate guarantee of 0.60% proposed to be charged by the bank of the assessee as the ALP rate for all the corporate guarantees given by the assessee including the corporate guarantee given to SAE Tower Holding LLC, considering the fact that the corporate guarantee given in A.Y. 2011-12 may not be proper since the assessee has not brought on record any material on the subsequent corporate guarantee awarded to SAE Tower Holding LLC , in our considered view the same rate of 0.60% may be sustained for all the corporate guarantee given by the assessee under consideration. Accordingly, ground raised by the assessee is partly allowed.

**12.** With regard to Ground No. 3, which is in respect of addition to income based on service Tax Return, at the time of hearing, Ld. AR of the assessee brought to our notice Page No. 11 of the Ld. DRP and submitted that the Assessing Officer observed that assessee has reported higher

turnover in service tax return as compared to ITR and Assessing Officer has considered the turnover reported as per service tax return.

**13.** Aggrieved assessee filed objection before Ld. DRP and before Ld.DRP assessee has filed the reconciliation of turnover in service tax return and turnover shown in ITR. It was submitted that the gross amount of services as per the service tax return is ₹.5,53,02,46,110/-, out of the aforesaid amount of ₹.5,53,02,46,110/- an amount of ₹.53,61,23,000/- was reported in "sale of services" whereas the balance amount of ₹.4,99,41,23,110/- as part of construction contract revenue in the financials and ITR in line with the requirement of Ind AS.

**14.** Further, he brought to our notice Page No. 26 of the Paper Book where the assessee has filed detailed note before the Ld. DRP along with Service tax Form ST -3. After considering the submissions of the assessee Ld. DRP partly allowed the objections raised by the assessee with the following observations: -

*"7.3 The assessee has submitted copies of Service Tax Returns filed by it in respect of its Gurgaon and Mumbai offices, copies of which have also been submitted before the assessing officer on September 29, 2021. It is seen from the returns that for different classification of services, there is specific columns (part B2) which gives details of gross turnover etc. in respect of "Service Receiver" under reverse charge mechanism. On perusal copies of the returns*

*it is seen that the following gross amounts are shown in part B2, pertaining to service receivers*

SI	Service	Gurgaon Office	Mumbai Office
1	Works Contract Services	36,63,00,073	23,00,440
2	Other Taxable Services	0	4,39,31,444
3	Information Technology Software Services	0	15,72,500
4	Legal Consultancy Services	51,37,755	1,75,59,938
5	Goods Transport Agency Services	14,66,51,556	27,39,05,041
6	Manpower Supply Agency Services	3,52,67,213	12,31,09,327
7	Rent a Cab Scheme Operator Services	6,23,34,930	71,41,951
8	Security Agency Services	2,65,64,423	0
9	Banking and Financial Services	1,84,62,704	0
		66,07,18,654	46,9520,641

*7.4 It can be seen from the above that Rs. 113,02,39,295/- is included in service tax return on reverse charge mechanism basis and so cannot be included in the turnover of the assessee. From the above, it is clear that the amount of Rs. 1,13,02,39,295/- will not form part of the turnover of the assessee. Accordingly, the assessing officer is directed to delete the proposed addition after verifying the figures from the details submitted before it.*

*7.5 The assessee has represented that amount of Rs. 43,42,52,923/- is advance received from customers. As per the accounting policy followed by the assessee, amounts received before the related work is performed are included in the balance sheet, as a liability, as advance received. As and when the invoices are raised by the Assessee on the customer in terms of agreement and based on percentage of completion of the project, proportionate mobilization advance is recognized as revenue by the assessee and offered to tax.*

*7.6 The submissions of the assessee are considered. The percentage of completion method of accounting requires the reporting of revenues and expenses on a period-by-period basis, as determined by the percentage of the contract that has been fulfilled. The current income and expenses are compared with the total estimated costs to determine the tax liability for the year. For example, a project that is 20% complete in year one and 35% complete in year two would only have the incremental 15% of the revenue recognized in the second year. What is important here, to arrive at the correct*

percentage of work completed in a year, is to compute the cost of project already incurred and then compare the same with the total project cost.

7.7 It is noted, from the sample data provided by the assessee in respect of one of the projects (Orient Cement for Project no. CV011-Townships & Roads), that the assessee is recognizing the revenue based on the invoices raised, which are in turn based on the physical not the financial, cost based- milestones achieved. The panel has noted that the reliance of the assessee on physical milestones to be achieved brings in a degree of subjectivity in revenue recognition, which is not what the percentage completion method envisages.

7.8 In view of the above, it is held that the assessee has not been able to demonstrate that the revenue recognition model it uses to account for the receipts in its books as income is transparent, and also in accordance with the percentage completion method. Hence, it is not possible to return a finding that the amount of Rs. 43,42,52,923/- is advance received from customers. This part of the objection is accordingly rejected.”

**15.** In this regard, Ld. AR of the assessee submitted that amount aggregating to ₹.43,42,62,923/- is 'amount of advance from customers' is also clearly reflected in the service tax return filed by the Assessee. Copy of the relevant extracts of service tax return are as under:

Sr. No.	Service Tax Reg. No.	Amount (Rs.)	Reference
1	AACCK5599HST003	36,72,24,482	SI No. B1.2 on Pg 2 of Annexure 1-A (Refer page No 27 of the FPB filed on March 8, 2022)
2	AACCK5599HST002	6,70,38,441	SI No. B1.2 on Pg 16 of Annexure 1-B (Refer page No 73 of the FPB filed on March 8, 2022)
	Total	43,42,62,923	

Thus, the service tax returns itself substantiates the claim of the Assessee that the amount aggregating to ₹.43,42,62,923/- is in the nature of 'advance' which the Assessing Officer has inadvertently treated as 'turnover and added to the total income of the Assessee.

**16.** Further, Ld. AR of the assessee submitted that during the DRP hearing on 08.03.2022, the DRP Panel Members had requested the Assessee to furnish details of advances aggregating to ₹.43,42,62,923/- along with supporting documents and also explained the accounting treatment. The list of advances aggregating to ₹.43,42,62,923/- received for the period April 2017 to June 2017 is enclosed as Annexure 2 (summary for advances pertaining to AACCK5599HST003 enclosed on page 1 of Annexure 2 and summary for advances pertaining to AACCK5599HST002 page 46 of Annexure 2). The accounting treatment is as under: -

The relevant accounting policy of the Assessee as appearing in the audited accounts is as under: -

*"Construction contracts:*

*When the outcome of a construction contract can be estimated reliably, revenue and costs are recognised by reference to the stage of completion of the contract activity at the end of the reporting period, measured based on the proportion of contract costs incurred for work performed to date relative to the estimated total contract*

*costs, except where this would not be representative of the stage of completion. Variations in contract work, claims and incentive payments are included to the extent that the amount can be measured reliably and its receipt is considered probable.*

*The outcome of a construction contract is considered as estimated reliably when all critical approvals necessary for commencement of the project have been obtained.*

*When the outcome of a construction contract cannot be estimated reliably, contract revenue is recognised to the extent of contract costs incurred that it is probable to be recovered. Contract costs are recognised as expenses in the period in which they are incurred.*

*When it is probable that total contract costs will exceed total contract revenue, the expected loss is recognised as an expense immediately*

*When contract costs incurred to date plus recognised profits less recognised losses exceed progress billings, the surplus is shown as amounts due from customers for contract work. For contracts where progress billings exceed contract costs incurred to date plus recognised profits less recognised losses, the surplus is shown as the amounts due to customers for contract work. Amounts received before the related work is performed are included in the balance sheet, as a liability, as advances received. Amounts billed for work performed but not yet paid by the customer are included in the balance sheet under trade receivables*

*Liquidated damages/penalties are accounted as per the contract terms wherever there is a delayed delivery attributable to the Company."*

**17.** Ld. AR of the assessee submitted that in construction projects, generally, on entering into agreement, the Assessee receives mobilization advances from its customers which is a percentage of total contract value. For example, if the total contract value is say ₹.100 and the agreed mobilisation advance in the agreement is say 15% of the contract value, the Assessee receives ₹.15 as mobilisation advance. Subsequently, as and when the Assessee works on the project, it raises invoices on the customer

from time to time based on the milestones and Bill of Quantities (BOQ) as per the contract terms. The assessee account for the revenue percentage of completion of the project in lines with the accounting policy as discussed above. In the invoice, mobilisation advance is adjusted from the bill amount on proportionate basis. Say in the instant example, as per the contract, Assessee will raise invoice for 20% of the contact value, in such a case, the invoice will be raised as under: -

Sr. No.	Particulars	Amount (Rs.)
1.	Gross amount (20% of Rs. 100)	20
2.	Less: Mobilisation advance adjusted (20% of Rs 15)	(3)
3.	Net amount	17

Sample invoice reflecting the above treatment is enclosed as Annexure 3

**18.** Thus, Ld. AR of the assessee submitted that as and when the invoices are raised by the Assessee on the customer in terms of the agreement and based on the percentage of completion of the project, proportionate mobilisation advance is recognised as revenue by the Assessee and offered to tax. The same practice is being followed by the assessee consistently over several years. Therefore, it is submitted that the instant case is not of any undisclosed turnover and therefore, the addition proposed by the Assessing Officer ought to be deleted.

**19.** On the other hand, Ld. DR relied on the orders of the lower authorities.

**20.** Considered the rival submissions and material placed on record, we observe from the submissions made by the parties that the assessee has declared various receipts before service tax authorities an amount aggregating to ₹.709,47,48,328/-, the above said amount includes an amount of ₹.43,42,62,923/- being amount received as advance from customers [mobilization advances]. As per the provisions of section 66B of Finance Act, 1994 the assessee has to pay the service tax @14% on the value of services provided or agreed to be provided in the taxable territory and collected in such manner as may be prescribed. Since assessee has to pay the service tax on the services provided as well as agreed to be provided i.e., advances, therefore assessee has to pay the service tax on the total amount of ₹.709.47 crores including the advance received by the assessee during the year. As per the prudent method of accounting, assessee has to declare the revenue in its Books of Accounts only to the extent of services provided not the total amount received by the assessee for which there may be certain services to be provided. In this case assessee has recorded as revenue for the value of actual services provided and as per the information submitted before us from the Form

ST-3 at Page No. 31 at Sl.No. B1.2 the assessee has received an amount of ₹.36,72,24,482/- as advances. Similarly, Form ST-3 at Page No. 32 an amount of ₹.6,70,38,441/-. From the above two service tax return, it clearly shows that these payments were received by the assessee only as advances. Therefore, the above said amount cannot be treated as revenue for the current Assessment Year. We observe that Ld.CIT(A) has considered the issue in a different dimension wherein he has gone with the notion of Percentage of completion of the project, without considering the fact that assessee has to declare the revenue to the extent of services provided by it but not for the services which is pending to be performed. Therefore, we are not inclined to accept the findings of the Ld.CIT(A). Accordingly, ground raised by the assessee is accordingly, allowed.

**21.** With regard to Ground Nos. 4,5,6 and 7 of grounds of appeal, these grounds are raised for the first time during this assessment year before the Assessing Officer and Ld. DRP. In our view, as held in the case of Goetze (India) Ltd., v. CIT [284 ITR 232 (SC)], the appellate authorities can entertain the fresh claim for deduction otherwise than by revised return of income. After considering the overall merits on the submissions made by the assessee, we are inclined to remit these issues back to the file of Assessing Officer with a direction to verify the records submitted by

the assessee on merit and as per law. It is needless to say that assessee may be given a proper opportunity of being heard. Accordingly, the issues under consideration are remitted back to the file of Assessing Officer for statistical purpose.

**22.** With regard to Ground No. 8 which is in respect of interest levied u/s. 234B & 234C of the Act, we observe that this ground is consequential in nature, accordingly this ground is not adjudicated at this stage and kept open.

**23.** Ground No. 9 is general in nature, accordingly, the same is dismissed.

**24.** In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 13<sup>th</sup> September, 2023

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**

Mumbai / Dated 13/09/2023  
Giridhar, Sr.PS

**Sd/-**  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**