IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI

BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER AND SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 2542/MUM/2022 (A.Y. 2018-19)

L & T Technology Services Limited L & T House, N.M. Marg Mumbai - 400001 **PAN: AACCL4310P**	*v.*	ACIT – Circle – 2(2)(1) Room No. 545, 5th Floor Aaykar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Shri Nitesh Joshi**
Department Represented by	**:**	**Shri Manoj Kumar**
Date of Conclusion of Hearing	**:**	**23.08.2023**
Date of Pronouncement	**:**	**31.10.2023**

O R D E R

PER S. RIFAUR 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 - 2 [hereinafter in short "Ld.DRP"] dated 13.06.2022 for the A.Y.2018-19 passed u/s. 144C(5) of Income-tax Act, 1961 (in short "Act").

2. Aggrieved with the above order, Assessee preferred appeal before us raising following grounds in its appeal: -

"TRANSFER PRICING ISSUES

1. The learned Dispute Resolution Panel ("DRP" hereinafter) erred in confirming the action of the Transfer Pricing Officer in respect of the corporate guarantee given to the Associated Enterprise by the Appellant Company and in determining the arm's length rate of guarantee commission at 1.85% per annum as against 0.65% per annum charged by the Appellant Company as guarantee commission.

NON-TRANSFER PRICING ISSUES

2. The Assessing Officer erred in adding the premia income on forward contracts to the total income of the Appellant without appreciating the fact that the premia income had already been offered to tax in the earlier years.

3. Without prejudice to Ground No.2, the Assessing Officer erred in adding an amount of Rs.49,39,00,893 as the premia income without realising that the said amount represents income already taxed in earlier years and that he ought to have added only Rs. 43,61,51,550 (as he did in the draft assessment order) being the amount claimed as deduction in the return of income.

4. The Assessing Officer erred in not allowing the deduction claimed by the appellant in respect of reversal of provision for doubtful debts without appreciating the fact the said provision had been disallowed by the Appellant in the earlier years.

5. The Assessing Officer erred in confirming an addition of Rs.1,33,88,722 being interest credited to Profit and Loss account as required by Accounting Standard Ind AS-109 "Financial Instruments" merely on the ground that the DRP had not adjudicated the matter and without appreciating that the said income was not earned by appellant but that it represented only an accounting treatment of a financial instrument as required by the mandatory Accounting Standards prescribed by the Ministry of Corporate Affairs.

6. Without prejudice to Ground No. 5, we submit that the said accounting treatment of recognising the financial instrument at fair value also results in rental expense which is not incurred but should therefore also be allowed as an expense on the same principle while computing the total income of the Appellant.

7. The Ld. DRP erred in holding that the amendment brought in Section 14A by the Finance Act 2022 to be 'clarificatory' in nature and therefore not excluding investments which did not yield exempt income during the year for the purpose of computing disallowance under section 14A r.w.r.8D of the Income tax Rules.

8. Without prejudice to Ground No.7, the Assessing Officer erred in computing the said disallowance following at Rs.60,35,270 as against Rs. 6,03,570.

9. The learned Dispute Resolution Panel erred in confirming the action of the NeFAC and holding that prototypes and demo that are exported by the Appellant were liable to be added to the total income as unexplained expenditure under section 69C of the Act without realising that the sales consideration was already included in the contract price awarded by the customer and the said prototypes are not separately billable.

10. The Assessing Officer erred in adding without admitting the evidence filed by the Appellant. an amount of Rs.5,54,08,919 being double taxation relief claimed by the appellant under Section 90/91 of the Income-tax Act by failing to appreciate that the foreign income on which taxes had been paid in foreign jurisdictions had always and already formed part of the taxable income in India.

11. The Assessing Officer erred in ignoring a challan evidencing the payment of Dividend Distribution tax (DDT) amounting to Rs.8,30,52,816 and thereby granting credit of DDT of Rs.8,32,63,338 as against the credit claimed by the Appellant of Rs.16.63,16,153.

12. Without prejudice to the above grounds, the appellant submits that the Assessing Officer erred in not granting DIT relief commensurate with the taxable income as per the Assessment Order.

13. The Appellant craves leave to add to, alter or amend the above Grounds of Appeal as and when advised."

3. Assessee has raised Ground No. 1 in relation to international transaction and other grounds of appeal raised by the assessee are relating to corporate issues. We proceed to deal with the issues raised by the assessee ground wise.

4. With regard to Ground No. 1, brief facts of the case are, assessee filed the original Return of Income for A.Y.2018-19 on 30.11.2018 declaring total income of ₹.380,18,41,390/- and subsequently revised the return of income on 27.03.2019 declaring a total income of ₹.379,96,10,620/-. The case was selected for scrutiny based on the various reasons discussed in the assessment order. Accordingly, notices u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response, assessee has submitted all the information as per the notices issued by the Assessing Officer.

5. The assessee is a Non-Government Company and it is involved in digital Engineering, mobility and augmented reality, IoT, automation of knowledge, robotics, Autonomous & near-autonomous vehicles, energy efficiency and imaging and video. It is basically a global Engineering R&D service company.

6. The Assessing Officer noticed that assessee has an international transaction involving corporate guarantee. Accordingly, the case was referred to Transfer Pricing Officer under section 92CA(1) of the Act. Accordingly, Transfer Pricing Officer issued notices under section 92CA(2) of the Act and collected the informations relating to the transactions as

reported in Form–3CEB . The Transfer Pricing Officer observed that assessee has given a corporate guarantee on behalf of its wholly owned subsidiary L & T Technology Services LLC (AE) and Esencia Technologies INC. It is observed that assessee has received corporate guarantee fee of ₹.68,08,737/- @0.65% p.a from the AE. For benchmarking the transaction, the assessee has opted for other method. The assessee has received the sanction letter from IDBI bank, wherein the bank had quoted 0.65% guarantee commission for the bank guarantee. The assessee also received sanction letter for credit facilities from ICICI bank, wherein the bank has quoted 0.6% guarantee commission for financial guarantee.

7. The Transfer Pricing Officer vide notice dated 10.07.2021 issued to the assessee asked to furnish the complete details of working of guarantee commission and justify the same. Further, it was asked why it should not be calculated on the basis of external CUP as the information collected from the banks under section 133(6) of the Act at the rate of 2.05%. Based on the average rate of corporate guarantee given by the HDFC bank is at 1.80% and SBI Bank is at 2.30%.

8. In response, assessee submitted vide letter dated 13.07.2021 that the assessee has received quotes from IDBI bank wherein the corporate

guarantee was quoted at 0.65% and corporate guarantee was provided during the course of the normal business for the assistance of the AE and not loose the business opportunities, hence it is in nature of quasi capital or shareholder activity, thus outside the ambit of international transaction under section 92B(1) of the Act.

9. Alternatively, assessee also submitted that ALP of corporate guarantee should be considered 0.5% on the basis of the Hon'ble Bombay High Court decision in the case of Everest Kanto Cylinders Ltd. *v.* DCIT and various other case law.

10. After considering the submissions of the assessee Transfer Pricing Officer dismissed the submissions of the assessee and he observed that the assessee has not discharged its onus and has not provided any comparable to benchmark the transactions and in the absence of any valid comparable in the public domain, he is constrained to benchmark this transaction using the rates applicable to bank guarantee. Further, he observed that the Hon'ble Bombay High Court in the case of Everest Kanto Cylinders Ltd. *v.* DCIT (supra) and Mumbai ITAT Decision in the case of Glenmark Pharmaceuticals Ltd., (in ITA No. 5031/MUM/2012 dated 13.11.2013 for the A.Y. 2008-09), a downward adjustment to the naked

quotes of the rates of bank guarantee has been done in this year. Accordingly, he made the downward adjustment of 0.2% from the average bank guarantee after adjustment he has benchmarked @1.85% to the guarantee amount given to its AE at ₹.1,98,65,670/-. Since assessee has already collected corporate guarantee commission of ₹.68,02,737/- and made the net adjustment of ₹.1,30,62,933/-.

11. Aggrieved with the above order, assessee preferred objection before CIT(DRP-1), Mumbai -2. After considering the objections and submissions of the assessee, Ld. DRP has rejected the same and sustained the proposed addition made by the Assessing Officer/Transfer Pricing Officer.

12. Aggrieved with the above order assessee is in appeal before us and at the time of hearing Ld. AR submitted that assessee has charged 0.65% as corporate guarantee based on the Internal CUP i.e., assessee has received the quote from IDBI bank and where IDBI bank and ICICI bank wherein they have charged the rate as quoted by the banks as corporate guarantee from its AE.

13. Ld. AR brought to our notice Page No. 5 of the Ld. DRP order and objected to the adoption of External CUP. In this regard he brought to

our notice Page No. 65 of the Paper Book which is the actual collection of corporate guarantee from its AE.

14. Further, he brought to our notice Page No. 70 of the Paper Book which is the sanction of various facilities to the assessee by the IDBI bank, wherein assessee was sanctioned limit for ₹.25 Crores from IDBI Bank wherein the assessee was quoted for financial and advance payment guarantee / other @0.65% per anum. Further, he brought to our notice Page Nos. 82 and 83 of the Paper Book wherein assessee has received bank quote from ICICI bank and ICICI Bank has given a quote of 0.6% for financial guarantee. He submitted that assessee has received financial guarantee facilities from these two banks and the average bank guarantee fees of 0.65% and he prayed that the Internal CUP should be considered for benchmarking the same wherein Transfer Pricing Officer has adopted External Benchmarking and he further, relied on the decision of Everest Kanto Cylinders Ltd. *v.* DCIT (supra) and prayed that 0.5% of the guarantee commission may be sustained.

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

16. Considered the rival submissions and material placed on record, we observe from the record that assessee has entered into international transactions of giving corporate guarantee to its AE's. It is fact on record that assessee has collected guarantee commission from its AE @0.65% at the same time we also observe that assessee was given a sanction facility by IDBI bank and ICICI bank which has quoted the average bank guarantee fee of 0.65%. However, Transfer Pricing Officer has collected information regarding guarantee commission from HDFC bank and SBI bank. Since Transfer Pricing Officer has collected the above said information by issuing notice under section 133(6) of the Act it is normal for the banks to give card rate of charges without considering the financials of the tested parties. Since Transfer Pricing Officer has collected this information through show cause notice under section 133(6) of the Act without giving specific financials of tested parties the rates given by those banks cannot be considered as proper quotes for analysis. It is not clear from the order of the Transfer Pricing Officer that assessee's as well as AE's exposure were shared with those banks. It is fact on record that the assessee has received the quote of sanction of credit facility as well as bank guarantee facility from IDBI bank and ICICI bank, from perusal of the documents submitted by the assessee relating to IDBI bank and ICICI bank we observe that assessee has received the above said quotes from IDBI bank and ICICI bank based

on actual utilization of bank guarantee by the assessee. Since assessee has also passed on the above burden to its AE. Therefore, Internal CUP is already available in this transaction. It is unwarranted to rely on External CUP by Transfer Pricing Officer which were not based on actual exposure. In our considered view, ALP adjustment proposed by the Transfer Pricing Officer is not proper. Accordingly, Ground No. 1 raised by the assessee is allowed.

17. With regard to Ground Nos. 2 and 3 which is relating to premia income, relevant facts relating to the grounds are, Assessing Officer while verifying the income declared by the assessee in original return of income filed on 31.11.2018 and the revised return of income filed on 27.03.2019 observed that assessee has claimed relief under section 90 / 90A has charged from ₹.19,07,11,678/- (in the original return of income) to ₹.22,98,45,025/- (in the revised return of income). Assessing Officer observed that reported "Revenue from operation" was ₹.3506,55,10,924/- both in the original as well as revised return of income, which means that there was an under reporting of income to the tune of ₹.5,54,08,919/- though the assessee choose to increase the relief claimed under section 90 / 90A from ₹.19,07,11,678/- to ₹.22,98,45,025/- in the revised return of income. In support of the above the Assessing Officer has tabulated

the total taxes paid outside India and the total relief claimed in comparison to the original return of income and revised return of income in his order Page No. 13 to 15 of the draft assessment order. Accordingly, he proposed addition of ₹.5,54,08,919/-.

18. Aggrieved with the above order, assessee filed objection before DRP and in support of the same assessee has submitted that assessee entered into forward contracts to hedge its foreign exchange risk. Forward contracts are bought or sold at forward rates and the difference between spot and forward rates is known as premia. Under erstwhile accounting standards i.e., prior to F.Y. 2016-17 the company was accounting the premia income or discount over the period of the forward contract. W.e.f 01.04.2016, the company was mandated to follow Ind-AS, the entity was required to recognize the changes in fair values and the derivative hedge instrument. As a result of this, the fair value gain on outstanding contracts, whose premia income was already taxed to profit and loss account under erstwhile accounting standard has been re-accounted in F.Y. 2017-18.

19. During the year, a Principal Only Swap (POS) whose effective date commenced from 10.04.2012 was terminated on 10.04.2017 i.e., current

assessment year. The POS is an exchange of Principal in two currencies on specific dates with an exchange of fixed interest payments in the two currencies on specific dates. The product is used by customers wishing to cover exchange rate risk on a series of foreign currency cash flows beyond one year. The assessee has submitted the details of income offered to tax over the period for tax periods as under: -

Year	Amount
FY12-13	*7,31,08,449*
FY 13-14	-1,53,59,107
FY14-15	26,55,84,580
FY 15-16	17,05,66,970
Sub-total	49,39,00,893

20. The above said instrument was matured in 2017 April and therefore the gain/loss on settlement of the transaction was accounted in Profit and loss account. As per the details submitted by the assessee the income on the transaction was already taxed in the years in which premia was booked and the reversal of income of ₹.49,39,00,893/- was not effected through profit and loss account a deduction is claimed in the year of maturity, reduced by ₹.5,77,49,342. It was submitted that NFAC has denied deduction of ₹.43,61,51,550 for premia income which was already offered to tax under the previous accounting standard. On adoption of Ind-AS 109, the gain/loss on the hedge instrument was re-accounted for on settlement of the instrument during this year.

21. After considering the submissions of the assessee, Ld.DRP remitted the issue back to the file of the Assessing Officer to verify the claim of the assessee and directed to verify from the past assessment records whether assessee has offered the income in A.Y. 2012-13 to A.Y. 2016-17 and if it is found to be correct then addition may be deleted. However, before passing the final assessment order Assessing Officer issued notice to the assessee to substantiate the claim made before Ld. DRP. The Assessing Officer observed in his order that assessee was issued notice dated 12.07.2022 requesting for the details along with the proofs of previous year in which income has been offered. Since the assessee has not provided any proof to substantiate the claim that the income has been offered in the earlier years and therefore, the addition in the draft assessment order has been confirmed.

22. Aggrieved with the above order, assessee is in appeal before us. At the time of hearing, Ld.AR of the assessee submitted that this transaction is relating to forward contract and as per the method of accounting adopted by the assessee prior to F.Y. 2016-17 gain / losses was already offered to tax in the earlier assessment years. Since assessee has migrated to Ind-AS, assessee has to recalculate the loss on account relating to the transactions which assessee has concluded in April 2017.

As per the new Ind-AS assessee has to recalculate and declare the actual gain / loss in the current assessment year. Accordingly, assessee has declared the POS income and exchanged gain / losses in the respective assessment years. He has filed the computation of income for the A.Y.2015-16 and 2016-17 in the form of Paper Book to submit that assessee has already submitted all this information before Assessing Officer. He prayed that the claim of the assessee may be entertained.

23. On the other hand, Ld. DR supported the findings of the Assessing Officer and he submitted that assessee has not provided any information before Assessing Officer to verify the same. Therefore, without proper verification Assessing Officer cannot allow the claim of the assessee.

24. Considered the rival submissions and material placed on record, we observe from the record that assessee has booked certain derivative transactions having impact more than one assessment years. The relevant derivative was matured on April 2017 and as per the method of accounting adopted by the assessee prior to this assessment year, assessee has declared profit or loss in the POS transactions. As per the information submitted by the assessee before us clearly shows that assessee has declared FOREX loss / gain in A.Y.2015-16 and 2016-17 and

assessee has also brought to our notice the relevant financial records and computation of income. As per the submissions of the Ld. AR the same information was also submitted before Ld. DRP. Now, before us Ld.AR of the assessee submitted that Assessing Officer has failed to consider the above said documents and prayed that the above may be considered.

25. After considering the submissions of the assessee and annual financial report we observe that no doubt assessee has followed method of accounting to declare the gain / loss in the above said POS transaction. However, mere submission of financial records and computation of income does not give clear picture for the Assessing Officer to verify the same. In our considered view assessee has to submit the relevant contract notes and working of the various contracts which has matured on April 2017 before Assessing Officer and submit the gain / loss recorded by the assessee in previous year as well as the loss / gains recorded by the assessee during the current assessment year. Since it is a factual matter and which requires detailed verification, we deem it fit and proper to remit this issue back to the file of the Assessing Officer to verify the same we also direct the assessee to submit the relevant information before Assessing Officer. Accordingly, the Assessing Officer is directed to verify the same before allowing the deduction claimed by the assessee.

Accordingly, Ground Nos. 2 and 3 raised by the assessee is allowed for statistical purpose.

26. With regard to Ground No. 4 which relates to provisions for doubtful debts, the relevant facts are, the NFAC has reversed the provisions for doubtful debts of ₹.12,59,70,491/-. Aggrieved, assessee preferred objection before Ld. DRP and Ld. DRP after considering the submissions of the assessee gave a direction to Assessing Officer to verify the claim of the assessee that the provision was disallowed in the year in which provision was created, resultantly, it results in double taxation.

27. Similar to the premia income, the Assessing Officer before passing the final assessment order asked the assessee to provide the relevant information. However, assessee has submitted the provisions for doubtful debts has been created in A.Y. 2015-16 and 2016-17 and submitted the extract of the profit and loss account and ITR – 6 to substantiate the claim. However, Assessing Officer observed that the assessee has not been able to provide one to one correlation of the provisions of doubtful debts disallowed and the amount claimed on reversal in the current year. Since assessee has not submitted one to one correlation the Assessing Officer sustained the additions made in the draft assessment order.

28. Aggrieved assessee is in appeal before us. At the time of hearing, Ld.AR of the assessee submitted that the assessee has reversed the provision made in the year in which it was created and assessee has not claimed any provision for doubtful debts during the current assessment year. It is only a reversal of the old provisions. Based on the submissions of the assessee, Ld. DRP gave a clear direction to the Assessing Officer to verify the same and after verification it may be allowed.

29. Ld.AR of the assessee submitted that assessee has submitted the relevant profit and loss account and computation of income before Assessing Officer and also he has filed the same in the form of Paper Book before us and he took us through Page No. 284, 290 of the Paper Book to demonstrate that in the financial year end 31.03.2015 and 31.03.2016 assessee has reversed the provision for doubtful debts and he submitted that assessee is following this method of accounting consistently.

30. On the other hand, Ld. DR reiterated the findings of the Assessing Officer that assessee has not filed any information relating to the claim made by the assessee.

31. Considered the rival submissions and material placed on record, we observe that assessee has submitted year end profit and loss account for financial year ending 31.03.2015, 31.03.2016 and also 31.03.2019 to make the claim that assessee reversed the provision for doubtful debts. However, Assessing Officer has rejected the claim for the reason that assessee has not filed one to one correlation of the provision of doubtful debts. After considering the submissions of the assessee we observe from the record that assessee is following method of accounting consistently over the years and assessee creates provision for doubtful debts and reverses the same in computation of income. Therefore, we direct the Assessing Officer to verify the claim of the assessee that the assessee created the provision for doubtful debts in profit and loss account. However, reverses the same while computing the computation of income for the purposes of taxation in the same assessment year. Therefore, we direct the Assessing Officer to verify the claim of the assessee and allow the same. Assessee shall cooperate with the proceedings before the Assessing Officer without taking unnecessary adjournments. Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee. Accordingly, Ground No.4 raised by the assessee is allowed for statistical purpose.

32. With regard to Ground No. 5 and 6 which is relating to interest credit to profit and loss account as required by Accounting standards IND-AS-109 and further, claim of the assessee that recognizing the finance instrument at fair value also results in rental expenses which is not incurred but should therefore also be allowed as an expenses on the same principle while computing the total income of the assessee. This issue admittedly Ld. DRP has not adjudicated and the same was observed by the Assessing Officer at Page No. 4 of his order. Since Ld. DRP has not given clear findings and Assessing Officer also not verified the claim of the assessee, we deem it fit and proper to remit this issue back to the file of the Assessing Officer to verify the claim of the assessee in detail and allow the same after due verification. Assessee shall cooperate with the proceedings before the Assessing Officer without taking unnecessary adjournments. Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee. Accordingly, Ground No. 6 is allowed for statistical purpose.

33. With regard to Ground No. 7 and 8 relating to disallowance under section 14A of the Act, the relevant facts are during the year assessee has earned dividend income from mutual funds investment amounting to ₹.738,31,926/- in the return of income. The assessee has suomoto

disallowed the expenses of ₹.1,64,33,279/- in relation to exempt income under section 14A of the Act.

34. During the course of assessment proceedings, Assessing Officer observed that provision of section 14A of the Act are applicable in this case as per sub section (2) of section 14A of the Act, Assessing Officer is required to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the Act. Since Assessing Officer has not satisfied with the correctness of the claim of the assessee in respect of the above said expenditure in relation to exempt income he has proceeded to make the disallowance under Rule 8D of I.T. Rules by relying on several case laws. Accordingly, he disallowed 1% of the annual average of investment of ₹.2,60,60,61,700/- to the extent of ₹.2,60,60,617/-. He adjusted suomoto disallowance of expenditure made by the assessee and disallowed the excess as disallowance of ₹.96,27,338/- under section 14A of the Act.

35. Aggrieved assessee preferred appeal before Ld. DRP and before Ld.DRP assessee has submitted that the investments during the year were made in mutual funds and the foreign subsidiary for which dividend from its subsidiary is taxable under section 115BBD and it is not exempt. It

was submitted that both these investments were made out of surplus funds of the business and it was submitted relevant information before Ld. DRP and it objected the method adopted by the Assessing Officer to make the disallowance.

36. After considering the submissions of the assessee Ld. DRP partly allowed the claim of the assessee to the extent of investments made by the assessee in Foreign company which is taxable under Income-tax Act, 1961. Other objections raised by the assessee accordingly, dismissed by the Ld. DRP. Accordingly, Ld. DRP has partly allowed the claim of the assessee.

37. While passing the final assessment order Assessing Officer has removed the foreign investments made by the assessee and accordingly, the revised annual average of investments was worked to ₹.1,70,36,84,877/- and determined the 1% of the above investments for the disallowance to the extent of ₹.1,70,36,849/- and after adjusting the suomoto disallowance made by the assessee of ₹.1,64,33,279/- and determined the 14A disallowance at ₹.60,35,270/-.

38. Aggrieved with the above order assessee is in appeal before us. At the time of hearing, Ld.AR of the assessee submitted that Assessing Officer has not recorded proper satisfaction and he brought to our notice the observations of the Assessing Officer at Page No. 5 and 7 of the draft assessment order and further, he brought to our notice Page No. 15 and 19 of the Ld. DRP Order. As an alternative plea the Ld.AR also brought to our notice the clerical error in the final assessment order as per which the 1% of the annual average investment is ₹.1,70,36,849/- and after adjusting the suomoto disallowance made by the assessee and the net difference is ₹.6,35,270/- only. Therefore, Assessing Officer has made the clerical error by making the disallowance of ₹.60,35,270/- instead of ₹.6,35,270/-.

39. On the other hand, Ld. DR objected the submissions of the assessee on no satisfaction, he submitted that Assessing Officer at Page No. 7 of the draft assessment order has properly recorded the satisfaction. Further, he submitted that the courts have held that express satisfaction is not required, it is enough to demonstrate that the provision under section 14A is applicable in the case.

40. Considered the rival submissions and material placed on record, we observe from the record that Assessing Officer while passing the final assessment order made a small clerical error of determining the net disallowance of ₹.60,35,270/- instead of ₹.6,35,270/- after adjusting the suomoto disallowance made by the assessee. Since the mistake is apparent on record we direct the Assessing Officer to make the disallowance of ₹.6,35,270/- only. With regard to the objections raised by the assessee on the non-recording of satisfaction by the Assessing Officer we are not inclined to accept the above submissions. Accordingly, Ground No. 7 raised by the assessee is dismissed and Ground No. 8 raised by the assessee is allowed.

41. With regard to Ground No. 9, brief facts are, at the time of assessment, Assessing Officer observed that as per CBIC report of Export / Import summary data there has been an export to the value of ₹.2,47,50,375/- reported as sale of products which has been exported. However, he observed that there has been no reporting of any sale of products as per the profit and loss account statement in the ITR. Accordingly, he issued show cause notice to the assessee to submit various documents relating to export sales. Since assessee has failed to make the submissions vide their submissions dated 15.09.2021 and

accordingly, he proceeded to make the above said non-reporting of export sales of products of ₹.2,47,503,25/- as unexplained sales under section 69C of the Act.

42. Aggrieved with the above order, assessee filed objection before Ld.DRP and made the following submissions: -

> *"In the notice issued by NFAC, the NFAC states that as per CBEC report of Export/Import summary data there has been export to the value of Rs. 2,47,50,325 reported as sale of products. However there has been no reporting of any sale of products in the ITR*
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> *In response to this requirement, the company vide submission dated 24.09.2021 had clarified that company is a service company offering a portfolio of engineering research & development services across five major industries Transportation, Industrial products, Telecom & Hi-tech, Medical Devices and Process Industry. Being an engineering service provider, the company is not engaged in production, manufacture or sale of any goods. It was clarified that export revenue is reported in service revenue.*
>
> *The company has 2 types of exports: Re- exports and Product Exports (classified under service revenue).*
>
> *1. Re-exports: Re-exports means export of foreign goods which are imported to India. The company imports items from the customer on returnable basis for rendering various services such as testing, analysis, re-processing etc. After performing such services, the items are sent back to the customer again. The ownership of such goods always remains with the customer and thus they do not form part of sales when they are sent back to the customer. The sample copy of invoice/packing list was submitted in Annexure wherein re-exports were mentioned in the description.*
>
> *We also clarified that no custom duty is paid on import of such goods when they are imported merely for the purpose of re-exports as we operate from SEZ units. The company also*

submitted sample copy of Guaranteed Remittance waiver certificate from the commercial bank evidencing that there is no inward foreign remittance for re-exports undertaken by us. Copy enclosed in Annexure.

1. The product exports are restricted to prototypes and demo that support the engineering deliverables. The products exported include hardware components, electronic components, lab equipment, IT assets, etc. ranging from cables, motor jigs, power test jig etc.

In our response dated 24.09.2021, we clarified that company being an engineering service company, the operational revenues are included in revenue from operations of the company. The company has reported a turnover of Rs. 3506,55,10,924 during the year, while the NFAC without appreciating the details of exports and re-exports filed by the company has added an amount of Rs. 2,47,50,326 of exports available in Departments database as unexplained expenditure u/s 69C.

The NFAC has also completely erred in treating adding the export sale of products (a source

of income) as unexplained expenditure u/s 69C. This substantiates that NFAC has mechanically acted to make adjustment to treat a stream of revenue as unexplained expenditure."

43. After considering the submissions of the assessee Ld. DRP unable to concede the additions proposed by the Assessing Officer under section 69C of the Act and they directed the Assessing Officer to verify from the records the details of goods exported, considering the fact that the ownership of the goods still lying with the other party. While passing the final assessment order the Assessing Officer called for the informations from the assessee and after analyzing the information submitted by the assessee he observed that the assessee has two types of exports i.e.,

re-exports and direct exports (classified under service revenue). Accordingly, he came to the conclusion that assessee has re-exported goods amounting to ₹.1,87,33,669/- out of total value disclosed in CBIC data of ₹.2,47,50,325/- and the balance amount of ₹.60,16,656/- he considered the same as not reported by the assessee and accordingly, he confirmed the addition.

44. Aggrieved assessee is in appeal before us and submitted that all the value declared in CBIC data relating to re-export only and assessee has only collected service charges which are also recorded in its books of accounts. In support of the same assessee has filed the additional evidences before us and explained that these goods were only re-exported and only recorded the service charges collected from the parties and prayed that these additional evidences may be admitted and remit this issue back to the file of the Assessing Officer to verify and duly allow the same after due verification. In this regard he relied on the decision of the Anaikar Trades and Estates (P.) *v.* CIT dated 23 February, 1990 [186 ITR 313(Madras)].

45. On the other hand, Ld. DR objected to the additional evidences filed by the assessee and he submitted that assessee files the evidences bits

and pieces and it is not possible for the assessing authorities to consider the evidences in bits and pieces. He supported the order of the Assessing Officer and submitted that Assessing Officer has duly considered the documents submitted by the assessee and only disallowed the difference which assessee failed to substantiate before him. However, he agreed that in case the bench accepts the additional evidences it may be remitted back to the file of the Assessing Officer.

46. Considered the rival submissions and material placed on record, it is brought to our notice that assessee is re-exporting the goods after providing the services. Therefore, these goods re-exported are nothing but the goods imported by the assessee and after providing the services same goods were being re-exported. He agreed that certain documents were filed before Assessing Officer. However, he submitted that additional evidences will prove the nature of transactions. Considering the importance of these documents we deem it fit and proper to admit the additional evidences and remit this issue back to the file of the Assessing Officer to verify the same and after due verification if found proper the claim of the assessee may be allowed. Assessee shall cooperate with the proceedings before the Assessing Officer without taking unnecessary adjournments. Needless to say that the Assessing Officer shall provide

adequate opportunity of being heard to the assessee. Accordingly, Ground No. 9 raised by the assessee is allowed for statistical purpose.

47. With regard to Ground No. 10, brief facts relevant to the ground are, Assessing Officer has rejected the claim of the assessee an amount of ₹.5,54,08,919/- being the double taxation relief claimed by the assessee for not filing any supporting documents of DIT relief. Assessee filed objection before Ld. DRP and filed the relevant information and Ld.DRP directed the Assessing Officer to verify the claim in line to tax paid in foreign countries on the income the assessee has included in his return of income after due verification and in accordance of law.

48. In final assessment order Assessing Officer called for the relevant information and assessee has submitted copy of CA certificate, copy of original and revised Form – 67`, after considering the same Assessing Officer observed that similar addition has been made in A.Y. 2017-18, the appeal for the same is still pending before Ld. CIT(A) and further, he observed that the reliance of the assessee on CA certificate is not enough to establish that the assessee has offered the income during the year and accordingly, he rejected the submissions of the assessee.

49. Aggrieved assessee is in appeal before us. At the time of hearing, Ld.AR of the assessee submitted tax credit claim in Form – 67 and he prayed that it has been filed before tax authorities. Further, he submitted that assessee has filed revised return of income and it has made further claim. He brought to our notice Page No. 20 of the Ld.DRP order and Page No. 10 of the draft assessment order. He prayed that this issue may be remitted back to the file of the Assessing Officer for verification of the same and after due verification it may be allowed.

50. On the other hand, Ld. DR agreed with the submissions of Ld.AR of the assessee to remit this issue back to the file of the Assessing Officer so that Assessing Officer could verify the relevant information and consider the documents submitted by the assessee.

51. Considered the rival submissions and material placed on record, assessee has filed original and revised Form – 67 and since assessee has declared income of "income earned by it outside India" and any tax suffered by it has to be given credit based on the income declared by the assessee and the relevant tax paid by the assessee. Before us, assessee has filed Form 67 which requires verification. Accordingly, we direct the Assessing Officer to verify the above Form – 67 and claim of the assessee

and after due verification as per law. Assessee shall cooperate with the proceedings before the Assessing Officer without taking unnecessary adjournments. Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee. Accordingly, Ground No. 10 raised by the assessee is allowed for statistical purpose.

52. With regard to Ground No. 11, this issue is relating to payment of dividend distribution tax amounting to ₹.8,30,52,816/- and granting credit of DDT of ₹.8,32,63,338/- as against the credit claimed by the assessee ₹.16,63,16,153/-.

53. Before us, Ld.AR of the assessee submitted evidences of remittance at Page No. 292 and 293 of the Paper Book these evidences are against the credit of dividend distribution tax claimed by the assessee. We deem it fit and proper to remit these evidences to the file of the Assessing Officer with the direction to verify the same and allow the same as per law. Assessee shall cooperate with the proceedings before the Assessing Officer without taking unnecessary adjournments. Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee. Accordingly, Ground No. 11 raised by the assessee is allowed for statistical purpose.

54. With regard to Ground No. 12 and 13, these grounds are general in nature, accordingly, these grounds are dismissed as such.

55. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 31st October, 2023.

Sd/-	Sd/-
(VIKAS AWASTHY)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai / Dated 31.10.2023
Giridhar, Sr.PS

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