

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 477/JP/2023  
निर्धारण वर्ष/Assessment Years : 2018-19

Smt. Irvind Gujral S-12 Mandawa Enclave, Sirsi Road Near Metro Hospital, Jaipur	बनाम Vs.	ITO, Ward-1(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABOPG 8194 J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. P. C. Parwal (CA)  
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 26/10/2023  
उदघोषणा की तारीख/Date of Pronouncement: 09/11/2023

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 26/05/2023 [here in after (NFAC)] for assessment year 2018-19 which in turn arise from the order dated 06.02.2021 passed under section 143(3) of the Income Tax Act, by NeAC, Delhi.

2. In this appeal, the assessee has raised following grounds: -

*"1. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs. 15,22,442/- under the head income from house property in respect of rental income received from two properties situated in Australia despite the fact that as per Article 6 of DTAA such income is taxable in Australia and not in India.*

*2. The appellant craves to alter, amend & modify any ground of appeal.*

*3. Necessary cost be awarded to the assessee."*

3. Succinctly, the fact as culled out from the records is that the Assessee is a resident of India deriving foreign income from two sources i.e. interest from deposit in bank account at Australia and rental income from two properties situated at 26, Shirley St, Australia and 9, Blenheim Avenue Australia respectively. She filed her return of income on 24.08.2018 (PB 2-4) declaring total income of Rs.6,57,090/- which includes interest income from bank deposit in Australia of Rs.7,37,194/-. The rental income from Australian property was not included in the Indian income tax return in view of Article 6 of DTAA and in respect of the rental income, tax of 4698.16 Australian dollars was paid in the income tax return filed in Australia (PB 5-14).

3.1 In the assessment proceeding AO observed that assessee in her return of income has not shown Income from two house properties situated

at Australia considering Article 6 of DTAA with Australia. However, Article 6 only states that the income of the real estate “may” be taxed in the contracting state in which that property is situated and it does not preclude the taxation of the same in resident state. He referred to section 5(1)(c) of the Income tax Act according to which global income of a resident is taxable in India. Accordingly AO made addition of rental income of Rs.15,22,442/- by taking the amount of rent for the period 01.07.2017 to 30.06.2018 (Australian FY) as calculated at Pg 6-8 of the order.

4. Aggrieved from the order of the AO, assessee preferred an appeal before the Id. CIT(A)/NFAC. The Ld. CIT(A) from Pg 19 to 31 of the order after referring to section 90(3) of the Act, CBDT Notification No.91/2008 dt. 28.08.2008, decision of Mumbai ITAT in case of Essar Oil Ltd. Vs. Addl. CIT 42 taxmann.com 21 which is extensively quoted at Pg 20-28 of the order and the decision of Mumbai ITAT in case of Shah Rukh Khan Vs. CIT 79 taxmann.com 227 after distinguishing the decision of ITAT, Delhi Bench in case of Natasha Chopra Vs. DCIT 196 ITD 185 on the ground that this decision has not considered the decision of ITAT, Mumbai Bench in case of Essar Oil Ltd. and Shah Rukh Khan held that income from property in Australia is also liable to be taxed in India and thus upheld the order of AO.

5. Feeling dissatisfied from the Id. order of the Id. CIT(A) the assessee has preferred this appeal on the grounds as raised and reproduced here in above. A propose to the grounds so raised the Id. AR appearing on behalf of the assessee has placed his written submission which is extracted in below;

*Submission:-*

1. The only issue in the present case is whether the rental income received from the properties situated at Australia on which income tax is paid in Australia could be also taxed in India or not. For this reference can be made to Article 6 of DTAA between India and Australia which reads as under (PB 17):-

*“1. Income from real property may be taxed in the Contracting State in which that property is situated.”*

2. To understand the meaning of the word ‘may be taxed’, it would be relevant to also refer to other article of DTAA namely Article 7, 8, 10 & 12, the relevant part of which is as under:-

*Article 7- Business Profits (PB 18-19)*

*(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.*

*Article 8- Ships and Aircraft (PB 20)*

*1. Profits from the operation of ships or aircraft, including interest on funds connected with that operation, derived by a resident of one of the Contracting States shall be taxable only in that State.*

*2. Notwithstanding the provisions of paragraph (1), such profits may be taxed in the other Contracting State where they are profits from the operations of ships or aircraft confined solely to places in that other State.*

*Article 10- Dividends (PB 21)*

*1. Dividends paid by a company which is a resident of one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.*

*2. Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.*

*Article 12- Royalties (copy enclosed)*

*1. Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.*

*2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed .....*

3. From the close reading of above articles it can be noted that wherever the treaty intends to tax a particular income in both the contracting states, it has been specifically mentioned in the article. Thus the business profits, profit from operation of ships & aircrafts, dividend income and royalty income is taxable in both the contracting states by specifically providing it in the article. However, in Article 6 it is provided that income from real property may be taxed in the contracting state in which that property is situated but it is not provided that it may also be taxed in other contracting state of which the person is resident whereas such clause is specifically provided in Article 8, 10 & 12. Thus the rental income can be taxed only in the contracting state in which that property is situated and the same cannot be taxed in the contracting state of which the person is resident.
4. In this connection reliance is placed on the decision of Hon'ble ITAT Delhi Bench in case of Natasha Chopra Vs. DCIT (2022) 196 ITD 185 (PB 22-25) where it held that the expression 'may be taxed' cannot be construed to mean 'shall be taxable only in the resident State'. The relevant para 4 to 10 of this decision is reproduced hereunder:-

*“4. The assessee is a Director in N&N Chopra Consultants Private limited and has derived salary and rental income from this company. During the year under consideration, the assessee has also earned income from house property and income from other sources being bank interest. The assessee was also earned income from house property situated in Australia and United Kingdom.*

*5. The pertinent points required for adjudication of the issue are that,*

*6. The assessee is a tax resident of India received rental income from the properties outside India held by her in England and Australia and declared the rental income received by her in her return of income filed in Australia and United Kingdom. The AO has brought the amount of the rental income to tax notwithstanding the fact that the assessee has declared rental income from properties situated in England and Australia.*

*7. While making the addition, the AO relied on the Article 6(1) of DTAA with UK which reads “income from immovable property may be taxed in contracting state in which such property situated”. The AO referred to the Notification No . 91/2008 dated 28.08.2008 and construed the words “may be taxed” as “shall be taxed”*

*8. We have gone through the provisions of Section 90(1) and Section 90(3), and the notification of the CBDT and impact of MLIs.*

.....

*9. Thus, we find that in the absence of an express provision, the right of the resident country to tax its residents cannot be taken away under the DTAA. Therefore, the expression “may be taxed” cannot be construed to mean “shall be taxable only in the resident state” , unless it is expressly stated . Provisions of Section 90(1)(a)(i) is clearly applicable to the facts of the case .*

*10. In the result, both the appeals of the assessee are allowed.”*

In the above decision, one of the properties is situated in Australia and the Hon'ble ITAT held that income from house property offered in the income tax return in Australia cannot be taxed in India by allowing the appeal of assessee.

5. The Ld. CIT(A) has distinguished the above case only for the reason that the decision of Mumbai ITAT in case of Essar Oil Ltd. and Shah Rukh Khan has not been considered in this decision. However, in holding so it ignored the fact that the

decision in case of Essar Oil Ltd. (PB 32-36) is in respect of DTAA between India and Oman/Qatar and the issue was with reference to Article 7 dealing with business profits and thus this case is not applicable. Similarly the decision in case of Shah Rukh Khan (PB 37-40) is in respect of DTAA between India and UAE and the issue was with reference to Article 6, i.e. Income from immovable property which provided that *'income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.'* Thus this article specifically provides for taxation of the immovable property situated in other contracting state i.e. the contracting state of resident, whereas Article 6 of DTAA with Australia do not provide for taxation of income from immovable property in the contracting state of resident. Thus this decision is also not applicable on the assessee.

6. It would be relevant to refer to the decision of Hon'ble ITAT, Mumbai Bench in case of Ms. Pooja Bhatt Vs. DCIT (2009) 22 DTR 458 (PB 26-31), the held part of which reads as under:-

*On an analysis of various articles contained in Chapter III, it is found that the scheme of taxation is divided in three categories. The first category includes art. 7 (business profits without PE in the other State), art. 8 (air transport), art. 9 (shipping), art. 14 (capital gains on alienation of ships or aircrafts operated in international traffic), art. 15 (professional services), art. 19 (pensions) which provide that income shall be taxed only in the State of residence. The second category includes art. 6 (income from immovable property), art. 7 (business profits where PE is established in other Contracting State), art. 15 (income from professional services under certain circumstances), art. 16 (income from dependent personal services where employment is exercised in other Contracting State), art. 17 (director's fees), art. 18 (income of artistes and athletes), art. 20 (Government service) which provide that such income may be taxed in the other Contracting State, i.e., State of income source. The third category includes art. 11 (dividends), art. 12 (interest), art. 13 (royalty and fee for technical services), art. 14 (capital gains on other properties) and art. 22 (other income) which provide that such income may be taxed in both the Contracting States. Intention of parties to the DTAA is very clear. Wherever the parties intended that income is to be taxed in both the countries, they have specifically provided in clear terms. Consequently, it cannot be said that the expression "may be taxed" used by the contracting parties gave option to the other Contracting States to tax such income. The contextual meaning has to be given to such expression. If the contention of the Revenue is to be accepted then the specific provisions permitting both the Contracting States to levy the tax would become meaningless. The conjoint reading of all the provisions of articles in*

*Chapter III of Indo-Canada treaty leads to only one conclusion that by using the expression "may be taxed in the other State", the contracting parties permitted only the other State, i.e., State of income source and by implication, the State of residence was precluded from taxing such income. Hence, the contention of the Revenue that the expression "may be taxed in other State" gives the option to the other State and the State of residence is not precluded from taxing such income cannot be accepted. The reliance of the Revenue on art. 23 is also misplaced. It has been contented that art. 23 gives credit of tax paid in the other State to avoid double taxation in cases like the present one. Such provisions have been made in the treaty to cover the cases falling under the third category mentioned in the preceding para i.e., the cases where the income may be taxed in both the countries. Hence, the cases falling under the first or second categories would be outside the scope of art. 23 since income is to be taxed only in one State.*

Thus the articles of DTAA specifically provides for certain income which shall be taxed only in the state of resident, certain income to be taxed in other contracting state, i.e. state of income source and certain income which may be taxed in both the contracting states. In the present case, Article 6 of DTAA with Australia in respect of income from immovable property specifically provides that such income to be taxed in other contracting state, i.e. in Australia and therefore, in the absence of any article in DTAA, the same cannot be taxed in India.

In view of above, AO be directed not to include the income from house property situated in Australia in computing the total income of assessee in India.”

6. In addition to the above written submission, the Id. AR of the assessee submitted that wherever the treaty intends to tax a particular income in both the contracting states, it has been specifically mentioned in the article. Thus the business profits, profit from operation of ships & aircrafts, dividend income and royalty income is taxable in both the contracting states by specifically providing it in the article. However, in Article 6 it is provided that income from real property may be taxed in the contracting state in which that property is situated but it is not provided that

it may also be taxed in other contracting state of which the person is resident whereas such clause is specifically provided in Article 8, 10 & 12. Thus the rental income can be taxed only in the contracting state in which that property is situated and the same cannot be taxed in the contracting state of which the person is resident. In this connection reliance is placed on the decision of Hon'ble ITAT Delhi Bench in case of Natasha Chopra Vs. DCIT (2022) 196 ITD 185 and Hon'ble ITAT, Mumbai Bench in case of Ms. Pooja Bhatt Vs. DCIT (2009) 22 DTR 458.

6.1 In this appeal the Id. AR of the assessee submitted a detailed paper book and the same is extracted here in below :

S. No.	Particulars	Pg No.	Filed before AO/CIT(A)
1	Copy of Index of Paper Book filed before Id. CIT(A)	1	CIT(A)
2	Copy of return filed in India	2-4	Both
3	Copy of Form No. 67 filed in Australia	5-14	Both
4	Copy of Form No. 67 filed in India	15-16	Both
5	Copy of Article 6,7,8 & 10 of DTAA between India and Australia	17-21	Both
6	Copy of decision of Hon'ble ITAT Delhi Bench in case of Natasha Chopra vs. DCIT(2022) 196 ITD 185	22-25	Both
7	Copy of decision of Hon'ble ITAT Bench in case of Ms Pooja Bhatt vs. DCIT (2009) 22 DTR-458	26-31	Both
8	Copy of decision of Hon'ble ITAT Mumbai Bench in case of Essar Oil Ltd. vs. Addl. CIT (2013) 28 ITR (Trib.) 609	32-36	Both
9	Copy of relevant part of decision of Hon'ble ITAT Mumbai Bench in case of Shah Rukh Khan vs. ACIT (2017) 150 DTR (Trib.) 25	37-40	Both

7. Per contra, the Id. DR submitted that once tax is payable or paid in the country of source then the country of resident denied of right to levy tax

on such income or the said income cannot be included in the return of income filed in India would no longer apply after insertion provision of sub-section 3 of section 90 with effect from 1<sup>st</sup> April, 2004 relevant to A.Y 2004-05. The argument made by the assessee is not valid law and therefore, she relied upon late decision in the case of ***Bank of India vs. ACIT [2020] 122 taxmann.com 247 (Mumbai-Trib.)*** in addition to what has been detailed discussed in the order of Id. CIT(A) and therefore, relying on this decision find of Id. CIT(A). The Id. DR submitted that the appeal of the assessee is not maintainable.

8. Heard the parties, perused the material and judicial decision cited before us to drive home to the respective contentions so raised by the parties. In the instance case the only short grievance of the assessee is that the lower authority has erred in confirming the addition of Rs. 15,22,442/- under the head income from house property in respect of rental income received from two properties situated in Australia. On this issue the assessee contended that the same is not required to be included because as per Article 6 of DTAA such income is taxable in Australia and not in India.

8.1. The brief fact of the case is that the assessee is resident of India deriving foreign income from two sources i.e. interest from deposit in bank account at Australia and rental income from two properties situated at 26, Shirley St, Australia and 9, Blenheim Avenue Australia respectively. She filed her return of income on 24.08.2018 (PB 2-4) declaring total income of Rs.6,57,090/- which includes interest income from bank deposit in Australia of Rs.7,37,194/-. The rental income from Australian property was not included in the Indian income tax return in view of Article 6 of DTAA and in respect of the rental income, tax of 4698.16 Australian dollars was paid in the income tax return filed in Australia (PB 5-14).

8.2 In the assessment proceeding Id. AO observed that assessee in her return of income has not shown Income from two house properties situated at Australia considering Article 6 of DTAA with Australia. Thus, the assessee was confronted on the issue, the assessee vide reply dated 25.12.2020 submitted that as per section 9 of the Act income arising from any property situated in India shall be deemed to income accrue or arise in India. She further submitted that as Article-6 of DTAA with Australia specifically provides the income from real estate property may be taxed in

the contracting state in which property is situated. Thus, property which is located outside India and let outside India is not liable for tax in India. Thereby the assessee has paid tax on rental income in Australia itself and not in India.

8.3 The Id. AO did not accept the contention of the assessee stated in the order that Article 6 of DTAA only states that the income from real estate property **may** be taxed in the contracting state and it does not preclude the taxation of the same in the other contracting state in respect of which the assessee is a resident with relevant credit for tax paid in the contracting state where the property is situated. The Id. AO referring to the provision of section 5(1)(c) of the Income tax Act stated that the assessee's case falls within that provision. Based on that provision of law Id. AO made addition of rental income of Rs.15,22,442/- by taking the amount of rent for the period 01.07.2017 to 30.06.2018 (Australian FY) as calculated at Pg 6-8 of the order.

8.4 In the first appeal the Ld. CIT(A) from Pg 19 to 31 of the order after referring to section 90(3) of the Act, CBDT Notification No.91/2008 dt. 28.08.2008, decision of Mumbai ITAT in case of Essar Oil Ltd. Vs. Addl.

CIT 42 taxmann.com 21 which is extensively quoted at Pg 20- 28 of the order and the decision of Mumbai ITAT in case of Shah Rukh Khan Vs. CIT 79 taxmann.com 227 after distinguishing the decision of ITAT, Delhi Bench in case of Natasha Chopra Vs. DCIT 196 ITD 185 on the ground that this decision has not considered the decision of ITAT, Mumbai Bench in case of Essar Oil Ltd. and Shah Rukh Khan held that income from property in Australia is also liable to be taxed in India. Thus upheld the order of AO.

8.5 Now, the assessee has challenged the finding of the lower authority for single pointed issue that whether the rental income received from the properties situated at Australia on which income tax is paid in Australia could be also taxed in India or not. Here it is not under disputed that the assessee is tax resident of India. To decide this issue, we carefully considered the arguments of both the parties, persuaded the orders relied upon. The issue of interpretation of phrase “may be taxed in other contracting States”, as used in different Articles including Article 7 in the DTAA has been discussed in detailed by the Tribunal in Essar Oil Ltd. (supra) after taking into consideration various decisions of the High Court, Supreme Court, effect of amendment in section 90(3) and notification dated 28th August 2008, issued by the Central Government. The Id. DR in addition to the judgment relied upon by the Id. AO and that of the Id. CIT(A)

has also relied upon the judgment of the Bank of India Vs. ACIT [ 122 taxmann.com 247 ] wherein the judgment and circular relied upon by the Id. AR of the assessee is discussed at length and even though the decision is given in the favour of the revenue by holding that as a result of the amendment w.e.f. 01.04.2004 by which section 3 to section 90 has been brought to tax in the statute from the assessment year 2004-05 there is a clear departure from the earlier position wherein the courts have interpreted the expression “may be taxed” in as much as now the central government which is one of the contracting state has been empowered to assign meaning to the various terms and expressions and used in the agreement. The relevant part of the detailed discussion relied upon by the Id. DR in the case of Bank of India Vs. ACIT [ 122 taxmann.com 247 ] is reiterated here in below :

**2.** These appeals raise two interesting issues, with wider ramifications, for our adjudication- first, whether or not the income of the assessee bank from its foreign branches, amounting to Rs. 1,408.32 crores, is required to be excluded from its income taxable in India; and, second, whether or not the assessee bank is liable to subjected to Minimum Alternate Tax under section 115 JB, and, if so, whether the income of the foreign branches, amounting to Rs. 1,408.32 crores, and, provision for bad doubtful debts amounting to Rs. 5,359.64 crores in required to be excluded from the computation of book profits computed under section 11JB of the Act. Let us take up these two issues first, and then we will proceed to take up the remaining issues raised in the appeal.

**3.** So far as the first issue is concerned, *i.e.* exclusion of profits of foreign branches from taxable income in India, this is certainly an issue of wider ramification touching the assessment of every Indian enterprise which has branch offices abroad inasmuch as whatever we decide in this case of a public

sector undertaking will have equal application in other cases of Indian companies having branch offices abroad in the countries with which India has entered into the double taxation avoidance agreements. The related grounds of appeal are as follows:

"3. On the facts and in the circumstances of the case and in law, the learned ACIT has erred in disallowing exclusion of profits of branches of the Appellant Bank situated in countries with whom India has entered into a Double Taxation Avoidance Agreement (DTAA) namely United Kingdom, France, Belgium, Kenya, Japan, United States of America, Singapore, China and South Africa (herein after referred to as "foreign branches of the Appellant Bank") aggregating to Rs. 1408,32,77,584 and the Hon'ble CIT(A) has erred in upholding the decision of the learned ACIT. The learned ACIT be directed to allow deduction for exclusion of profits of foreign branches of the Appellant Bank aggregating to Rs. 1408,32,77,584 and reduce the total income accordingly.

3A. Without prejudice to Ground no. 3 above, assuming without accepting that the exclusion of profit of the aforesaid foreign branches aggregating to Rs. 1408,32,77,584 is not allowed and therefore, taxed in India, then the Appellant Bank prays that the credit for taxes paid by the said branches in their respective countries be allowed as a deduction while determining tax liability in India in accordance with sec.90 of the Act."

4. The assessee bank has branches abroad, in Belgium, China, France, Japan, Kenya, Singapore, South Africa, United Kingdom, and United States of America. During the relevant financial period, the assessee earned income aggregating to Rs. 1408,32,77,584 (*i.e.* Rs. 1408.32 crores) from these foreign branches. While filing its income tax return, however, the assessee did not include this income of Rs. 1,408.32 crores in its taxable income. The plea of the assessee was that since India has Double Taxation Avoidance Agreements with all these countries, the right to tax the profits of these foreign branches exclusively vests with the respective tax jurisdictions and these profits cannot be taxed in India. This plea was negated by the Assessing Officer on the ground that, under the scheme of the law as it prevails- particularly in the light of the provisions of section 90(3) read with notification no SO 2123(E) dated 28th August 2008, entire global income of an Indian resident assessee is to be taxed in India and that where a DTAA provides that "any income of a resident of India 'may be taxed' in the other country, such income shall be included in his total income chargeable to tax in India, in accordance with the provisions of the Income-tax Act, 1961, and relief shall be granted in accordance with the method of elimination or avoidance of double taxation provided in such agreement". Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. The assessee is not satisfied and is in further appeal before us.

5. Learned counsel's contention, as articulated in the written note filed before us, is that the issue in appeal is covered, in favour of the assessee, by decisions of the coordinate benches in two immediately preceding assessment years, namely

2013-14 and 2014-15, wherein the matter has been remitted back to the file of the Assessing Officer in the light of certain directions. It is thus contended that when profits of a branch abroad has been subjected to tax abroad, under article 7 of the applicable double taxation avoidance agreement, the same income cannot again be taxed in India. On the first principle, the merits of this argument, merit if there is any, could only be its simplicity, or naivety- to be more apt, in its approach. It proceeds on the fallacy that there is only one method of relieving double taxation of an income, due to inherent conflict of the source taxation vs residence taxation rule, and that method is exemption method, and that is the method of relieving double taxation of income in the Indian tax treaties as well. Nothing can be farther from the truth. Not only that credit method is an equally, even if not more, effective a method of relieving double taxation of income in a cross border situation, that is the method which is used in an overwhelming majority of the Indian tax treaties- including, of course, all the tax treaties that we are concerned about in this case. What essentially follows is that the so far income of the branches, which are subjected to tax abroad under the respective tax treaties, is to be included in the taxable income of the assessee, and so far as taxes paid abroad are concerned, credit for the taxes so paid abroad is to be given to the assessee, in computation of its Indian income tax liability, in accordance with the provisions of the related tax treaty. Having so set out the correct position from an academic point of view, we may hasten to add that there is indeed a judicial precedent from Hon'ble Supreme Court, in the case of *CIT v. PVAL Kulandagan Chettiar* [[2004\] 137 Taxman 460/267 ITR 654 \(SC\)](#)], which touches a different chord, but then, in the light of subsequent legal amendments, the impact of this judicial precedent stands nullified. What is thus correct on the first principles and as per the text books, is also the binding legal position.

6. When we put our above understanding to the learned counsel in the beginning of hearing on this issue, learned counsel did fairly admit that, even on the same facts of the case this issue was decided in favour of the assessee by the coordinate benches, this issue is now covered against the assessee, by a rather recent coordinate bench decision in the case of *Technimont (P.) Ltd. v. Asstt. CIT* [[2020\] 116 taxmann.com 996/184 ITD 474](#)]. Learned counsel frankly submits that the reasoning adopted by those coordinate benches, in the light of this recent decision, does not hold good, and he has nothing to say on the same on the same-except for one new reason which we will take up a little later. In the case of *Technimont (P.) Ltd. (supra)*, the coordinate bench, speaking through one of us (*i.e.* the Vice President), has, *inter alia*, observed, and we are in considered agreement with these observations, as follows:

"4. To adjudicate on the issue on merits, only a few undisputed material facts need to be taken note of. The assessee before us is an Indian company with branch offices in UAE and Qatar. The assessee has earned profits aggregating to Rs. 11,91,18,391 in these branches, which, for the purposes of the provisions of the respective tax treaties, constitute permanent establishments. The claim of the assessee, as noted by the DRP at page 10, is that "the foreign branches create permanent establishments (PEs) in the foreign countries, the income from

the same is liable to tax in these foreign countries, *i.e.* source states, and, hence, the income from aforesaid foreign branches should be exempt in India as per Article 7 of the tax treaties". The assessee has further contended that "according to many judicial precedents cited below, it has been held that under a tax treaty, it has been provided that tax 'maybe' charged in a particular state in respect of specified income, it is implied that tax will not be charged by the other state in respect of such income". As noted in the DRP's order, further at page 11, the contentions of the assessee have been that "it has been held that once an income is held to be taxable in a particular jurisdiction under a tax treaty, unless there is a specific mention that it can be taxed in the other jurisdiction as well, the latter is denuded of the powers to tax such income" and that "accordingly, income earned by the foreign branches in UAE and Qatar where the assessee was forming PE should not be liable to tax in India based on relevant tax treaties". The assessee has also relied upon a large number of judicial precedents, including the judicial precedents in the cases of *PAVL Kulandayan Chettiar v. ITO* [[1983](#)] [3 ITD 426 \(Mad.\) \(SB\)](#), which has been upheld right upto Hon'ble Supreme Court *P.V.A.L. Kulandayan Chettiar (supra)* and a review petition has also been dismissed by Hon'ble Supreme Court *CIT v. P.V.A.L. kulandayan Chettiar* [[2008](#)] [300 ITR 5](#), *CIT v. Bank of India* [[64 taxmann.com 335 \(Bom\)](#)], *CIT v. VRSRM Firm* [[1994](#)] [208 ITR 400 \(Mad.\)](#), *CIT v. R M Muthiah* [[1993](#)] [67 Taxman 222/202 ITR 508 \(Karnataka\)](#), *Dy. CIT v. Patni Computer Systems Ltd.* [[2008](#)] [114 ITD 159 \(Pune\)](#), *Apollo Hospitals Enterprises Ltd. v. Dy. CIT* [[2012](#)] [23 taxmann.com 168/53 SOT 103 \(Chennai\)](#)], *Dy. CIT v. Turquoise Investments & Finance Ltd.* [[2008](#)] [168 Taxman 107/300 ITR 1 \(SC\)](#), *Ms. Pooja Bhatt v. DY. CIT* [[2008](#)] [26 SOT 574 \(Mum.\)](#), *Dy. CIT v. Mideast India Ltd.* [[2009](#)] [28 SOT 395 \(Del.\)](#), *CIT v. Patni Computer Systems Ltd.* [[2013](#)] [33 taxmann.com 3/215 Taxman 108](#) Hon'ble Bombay High Court and *Apollo Enterprises Ltd. v. (supra)*

5. Learned counsel for the assessee has more armoury in store. He begins by inviting our attention to a coordinate bench decision in the case of *Bank of India v. Dy. CIT*, and vice versa [IT Appeal Nos. 5977 and 6016 (Mum.) of 2011, order dated 26-7-2017] wherein it has been held that the income of the foreign branches, covered by tax treaties with respective jurisdictions, is to be excluded from total income of the assessee and is to be held as not taxable in India. It is submitted that this decision is a binding judicial precedent and it is not open to us to deviate from the stand so taken by the coordinate bench. When learned counsel's attention was invited to the provisions of Section 90(3) read with notification no. 91/2008 dated 28th August 2008, and impact of this legal position on the claim of the assessee, he submits that section 90 was re-enacted with effect from 1st October 2009, and the notifications issued prior to re-enacted section 90 will not hold good in law. In support of this proposition, our attention is invited to a coordinate bench decision in the case of *Essar Oil Ltd. v. Addl. CIT* [[2014](#)] [42 taxmann.com 21](#) wherein it is said to have been held, in paragraph no. 76, that notifications issued under earlier section 90 shall hold good till 1st October 2009. As a corollary to this observation, according to the learned

counsel, the notifications issued under earlier section 90 will not hold good after 1st October 2009. He submits that in this view of the matter, nothing really turns on the notification no 91/2008 under section 90(3). He submits that the impact of notification having been nullified by re-enactment of section 90, the law laid down by Hon'ble Supreme Court in the case of *CIT v. PVAL Kulandagan Chettiar* [2004] 137 Taxman 460/267 ITR 654 (SC) will hold the field, and, therefore, income taxable in the source jurisdiction under the treaty provisions cannot be included in total income of the assessee. He hastens to add, and rather curiously so, that he would once again urge us not to decide the matter on merits and simply remit the matter to the file of the Assessing Officer. Learned Departmental Representative, on the other hand, vehemently relies upon the stand of the authorities below, and leaves the matter to us.

6. For the sake of completeness, we may also place on record that the fact that in assessee's own case for the assessment year 2012-13, the Dispute Resolution Panel has given relief of Rs. 10,81,17,104 on this issue, and likewise for the assessment year 2013-14, the Dispute Resolution Panel has given relief of Rs. 28,47,44,212 on the same issue. That is what probably explains the assessee's eagerness to go back to the assessment stage, and claim it as a covered issue before them. The reasoning adopted by the Dispute Resolution Panel, for example for the assessment year 2013-14 (at page 294 of the paper book, and internal page 15 of the respective order), is as follows:

9.1 We have gone through the core objection raised with respect to inclusion of foreign branches income in the hands of the assessee. It is a fact that the assessee has two foreign branches situated in UAE and Bahrain. It is also a fact that there exists a DTAA between India and UAE. Reference is made to the decision of Hon'ble Supreme Court in *PAVL Kulandagan Chettiar's* case (267 ITR 654) wherein Hon'ble Court has upheld the finding of the High Court which took the view that where there exists a provision to the contrary in the agreement, there is no scope for applying the law of any one of the respective contracting states to tax paid on the liability to tax has to work doubt (sic- out) in the manner and to the extent permitted and allowed under the terms of the agreement. The AO is directed to verify the total income of the UAE branch and reduce the same from assessee's total income. The ground of objection is, accordingly, accepted.

9.2 Similar views have been taken in the assessee's case by the DRP during the assessment year 2012-13.

7. Undoubtedly, as a result of Hon'ble Supreme Court's judgment in the case of *PAVL Kulandagan Chettiar's* case (*supra*), the legal position was that once an income is held to be taxable in a tax jurisdiction under a double taxation avoidance agreement, and unless there is a specific mention that it can also be taxed in the other tax jurisdiction, the other tax jurisdiction was denuded of its powers to tax the same. To that extent, the worldwide basis of taxation in the scheme of the Indian Income-tax Act was no longer applicable in a situation

provisions of a double taxation avoidance agreement entered into under section 90 apply. That was the scheme of law, as evident from the following observations, as settled by Hon'ble Supreme Court:

13. We need not to enter into an exercise in semantics as to whether the expression "may be" will mean allocation of power to tax or is only one of the options and it only grants power to tax in that State and unless tax is imposed and paid no relief can be sought. Reading the Treaty in question as a whole when it is intended that even though it is possible for a resident in India to be taxed in terms of sections 4 and 5, if he is deemed to be a resident of a Contracting State where his personal and economic relations are closer, then his residence in India will become irrelevant. The Treaty will have to be interpreted as such and prevails over sections 4 and 5 of the Act. Therefore, we are of the view that the High Court is justified in reaching its conclusion, though for different reasons from those stated by the High Court.

8. We are, at this stage, not concerned about how the above legal position was at some variance with the first principles and what impact the aforesaid decision had on the workability of the double taxation relief mechanism. It would appear that the very scheme of tax credit, as envisaged in the international tax treaties, was perhaps rendered redundant. There was no question of tax credits being granted in India in view of the fact that any income taxed by source jurisdiction abroad was held to be exempted from taxation in India, and if these tax credits were to be granted it would have resulted in plain and simple refund of the taxes paid abroad since the incomes relating thereto were held to be not at all taxable in India. A double dip of losses abroad, howsoever inappropriate on the first principles, was actually possible, and was approved by the coordinate benches of this Tribunal, as in the case of *Patni Computers (supra)*, wherein speaking through one of us (*i.e.* the Vice President), the legal position was respectfully followed nevertheless and it was also observed thus:

The law laid down by the Hon'ble Supreme Court in binding on us under Article 141 of the Constitution of India. The prevailing legal position, therefore, is that once an income is held to be taxable in a tax jurisdiction under a double taxation avoidance agreement, and unless there is a specific mention that it can also be taxed in the other tax jurisdiction, the other tax jurisdiction is denuded of its powers to tax the same. To that extent, the worldwide basis of taxation in the scheme of the Indian Income-tax Act is no longer applicable in a situation provisions of a double taxation avoidance agreement entered into under section 90 apply. The law laid down by the Hon'ble Supreme Court in binding on us under Article 141 of the Constitution of India. The prevailing legal position, therefore, is that once an income is held to be taxable in a tax jurisdiction under a double taxation avoidance agreement, and unless there is a specific mention that it can also be taxed in the other tax jurisdiction, the other tax jurisdiction is denuded of its powers to tax the same. To that extent, the worldwide basis of taxation in the scheme of the Indian Income-tax Act is no longer applicable in a

situation provisions of a double taxation avoidance agreement entered into under section 90 apply.

9. The development of law, however, did not stop at that.

10. It may be recalled that, with effect from 1st April 2004, a new sub-section 3 was inserted in Section 90, and this new sub-section provided that "(a)ny term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf". In exercise of the powers so vested in the Central Government, *vide* notification no. 91 of 2008 dated 28th August 2008, it was notified as follows:

In exercise of the powers conferred by sub-section (3) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that where an agreement entered into by the Central Government with the Government of any country outside India for granting relief of tax, or as the case may be, avoidance of double taxation, provides that any income of a resident of India "may be taxed" in the other country, such income shall be included in his total income chargeable to tax in India in accordance with the provisions of the Income-tax Act, 1961 (43 of 1961), and relief shall be granted in accordance with the method for elimination or avoidance of double taxation provided in such agreement.

11. The effect of Hon'ble Supreme Court's judgment in *Kulandagan Chettiar's* case (*supra*) thus was clearly overruled by the legislative developments. It was specifically legislated that the mere fact of taxability in the treaty partner jurisdiction will not take it out of the ambit of taxable income of an assessee in India and that "such income shall be included in his total income chargeable to tax in India in accordance with the provisions of the Income-tax Act, 1961 (43 of 1961), and relief shall be granted in accordance with the method for elimination or avoidance of double taxation provided in such agreement". A coordinate bench of this Tribunal, in the case of *Essar Oil Ltd (supra)* also proceeded to hold that this notification was retrospective in effect inasmuch as it applied with effect from 1st April 2004 *i.e.* the date on which sub-section 3 was introduced in Section 90.

12. When we invited learned counsel's attention to these legal developments, he submitted that as Section 90 has now been redrafted and a new section 90 is in place, with effect from 1st October 2009, the notification issued under old section 90(3) ceases to be relevant. The legal position is, as he contended, that as on now there is no notification is in force under the present section 90, and, therefore, Hon'ble Supreme Court's judgment in the case of *Kulandagan Chettiar (supra)* still holds good in law. In support of this proposition, learned counsel for the assessee relies upon an observation by the coordinate bench, in the case of *Essar Oil Ltd. (supra)* to the effect that "We are, therefore, of the considered view that the substitution of Section 90, which has come into effect from 1st April

2004, and notification issued therein shall continue to hold at least upto 1st October 2009". By implication, therefore, according to the learned counsel, the notification issued under old section 90(3) will not hold good in law after 1st October 2009, unless such notification is reissued on or after 1st October 2009.

13. The argument of the learned counsel is only fit to be noted and rejected. It is only elementary that merely because a section is amended or even substituted, whether by repeal of the legislation itself or by amendment in the legislation, the notifications, circulars and instructions issued therein do not cease to hold good. Section 297(2)(k) of the Income-tax Act, 1961, specifically provides that notwithstanding the repeal of Income-tax Act, 1922, "any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly". On a similar note, under section 24 of the General Clauses Act, "Where any Central Act or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted....." The scheme of law is thus unambiguous. Its only when an notification issued under the old statutory provision, whether repealed or modified, is inconsistent with the corresponding new statutory provisions, that such an notification ceases to hold good in law. In a rather recent judgment in the case of *Fibre Boards (P.) Ltd. v. CIT* [2015] 62 taxmann.com 135/[2017] 376 ITR 596 (SC), Hon'ble Supreme Court has reiterated this principle, and, *inter alia*, observed as follows:

34. In *CIT v. Venkateswara Hatcheries (P.) Ltd.* [1999] 237 ITR 174/103 Taxman 503 (SC), this Court was faced with an omission and re-enactment of two Sections of the Income-tax Act. This Court found that section 24 of the General Clauses Act would apply to such omission and re-enactment. The Court has stated as follows:

"As noticed earlier, the omission of Section 2(27) and re-enactment of Section 80-JJ was done simultaneously. It is a very well-recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of the re-enacted provision. Viewed in this background, the effect of the re-enacted provision of section 80-JJ was that profit from the business of livestock and poultry which enjoyed total exemption under section 10(27) of the

Act from Assessment Years 1964-65 to 1975-76 became partially exempt by way of deduction on fulfilment of certain conditions." (At para 12)

35. For all the aforesaid reasons, we are therefore of the view that on omission of section 280ZA and its re-enactment with modification in section 54G, section 24 of the General Clauses Act would apply, and the notification of 1967, declaring Thane to be an urban area, would be continued under and for the purposes of section 54A.

14. When such are the views of Hon'ble Supreme Court in respect of validity of notifications in respect of amendment in law by re-enactment of the statutory provisions under the Income-tax Act, in which these provisions are of similar nature though by way of different provisions, it is futile to argue that when re-enactment of law has exactly the same provisions, so far as the related notification is concerned, the mere fact of re-enactment of law will be fatal to the notification. As regards learned counsel's reliance on observations made by a coordinate bench, in the case of *Essar Oil (supra)*, to the effect "We are, therefore, of the considered view that the substitution of Section 90, which has come into effect from 1st April 2004, and notification issued therein shall continue to hold at least upto 1st October 2009", the import of words "at least" is being missed out. The issue for consideration by the coordinate bench was pre 1st October 2009 situation, and the coordinate bench was of the view that "at least" for this period, the validity of notification cannot be called into question. As held by Hon'ble jurisdictional High Court in the case of *CIT v. Sudhir Jayantilal Mulji [1996] 84 Taxman 205/[1995] 214 ITR 154 (Bom.)*, a judicial precedent is only "an authority for what it actually decides and not what may come to follow from some observations which find place therein". The issue regarding validity of notification after 1st April 2009 was not before the coordinate bench, and these observations thus have no relevance on the proposition being canvassed before us. The law laid down by Hon'ble Supreme Court, as analysed above, is against the plea advanced by the learned counsel. In any case, the argument of the learned counsel, howsoever absurd, destroys his own case. If all the notifications under the old section 90 are to be held to be not good in law under the present section 90, the assessee cannot claim the benefits of the related tax treaties either since these treaties were also notified prior to 1st April 2009.

15. Let us now turn to judicial precedents cited by the learned counsel.

16. None of these judicial precedents take into account the developments with respect to the provisions of section 90(3) and the notification issued thereunder. The only exception is a coordinate bench decision in the case of *Bank of India (supra)* wherein the issue of notification was specifically raised but then the coordinate bench, following Hon'ble jurisdictional High Court's judgment in assessee's own case for the assessment year 2003-04 and without realizing that the amendment in law was effective 1st April 2004 *i.e.* assessment year 2004-05, decided the issue in favour of the assessee. The impact of amendment with effect from 1st April 2004 not having been noted or having been brought to the

notice of the coordinate bench, this decision is clearly per incuriam and, as such, not a binding judicial precedent. As a matter of fact, when subsequent assessment years of this very assessee came up for consideration of another bench, the said precedent was not followed and, *vide* order dated 30th November 2018, it was observed that "the decision of the Hon'ble High Court in assessee's own case pertained to the assessment years 2001-01 and 2003-04 and the Hon'ble High Court never had any occasion to examine the taxability of income of foreign branches in India keeping in view provisions of section 90(3) read with the Government notification dated 28th August 2008" and that " we are unable to accept the submission of the learned authorised representative that the issue is covered earlier decisions of the Tribunal". The assessee, therefore, does not derive any benefit from this legal precedent relied upon. All other judicial precedents hold good in respect of the pre-amendment law, but then the legal position, as analysed above, has changed, and, under the changed legal position, these judicial precedents do not hold good. As regards the DRP decisions for the immediately two preceding assessment years, we have noted that the post amendment legal position was not even brought to the notice of the Dispute Resolution Panel. There is not even a whisper of a suggestion that the amendment in law in Section 90(3) and the post amendment notification was brought to the notice of the DRP. Learned counsel's arguments before the DRP simply proceeded on the basis that there was no change in statutory provisions after the Kulangadan Chettiar's judgment. That is simply unacceptable. While we restrain from making any observations on the conduct of the representatives of the assessee, we find it difficult to believe that a big-4 accounting firm, as the assessee's representative before the DRP, as indeed before us, is, would really be oblivious of the correct legal position and it was anything less than a calculated ignorance, before the DRP, on the basic legal position. Advising the correct legal position and then making whatever aggressive claim one makes is one thing, but not explaining the correct legal position and then hoping to succeed with the claim, by keeping the adjudicator in dark about the statutory developments, is quite another. The path chosen by the assessee could have fallen in the first category if submissions were made before the DRP about the amendment in law by way of Section 90(3) and notification thereunder, and yet the exemption claim was to be justified due to no fresh notification being issued after the substitution of section 90(3) with effect from 1st October 2009. That is not the case. In any case, the DRP decisions cannot fetter our adjudication.

17. We have also noted that, as per details furnished before us at pages 327 to 376 of the paper-book, the Assessing Officer has accepted the claim of the assessee, in the assessment year 2016-17, for exclusion of Rs. 56,39,11,560 from its taxable income on the ground that it pertains to the profits of its branches in Italy, UAE, Qatar and Saudi Arab and India has DTAA's with these countries. This decision by the Assessing Officer, whatever its merits, certainly does not constitute any estoppel against the statute, and, in any case, there is no *res judicata* in the income tax proceedings. Just because the Assessing Officer himself has allowed a relief to the assessee, which, in our humble understanding

of law- whatever is its worth, is patently inadmissible in law, we are not obliged to give the assessee the same relief. If at all the stand of the Assessing Officer indicates or explains anything, it explains the anxiety of the assessee to go back to the assessment stage on this issue. We are, however, not inclined to follow the plan so laid out.

18. In the light of the above discussions, as also bearing in mind entirety of the case, ; we reject the claim of the assessee on merits. No matter how tempting is it to get a quick disposal by remitting the matter to the assessment stage, as the matter was not adjudicated on merits at that stage, when, in our considered view, quite clearly it is a patently inadmissible claim, we have to hold so and thus decline to remit it to the assessment stage."

7. Learned counsel has shown, in accepting the fact that even though the issue is covered in favour of the assessee by earlier decisions of the coordinate benches, these coordinate bench decisions cease to be binding judicial precedents inasmuch as reasoning adopted therein does not hold good any longer in the light of the decision in the case of *Technimont (P.) Ltd. (supra)*, admirable grace. It is not clear to us whether this approach is to preempt a detailed discussion on merits of the matter, or whether this approach is indeed *bonafide* stand of the assessee. That does not, however, matter much at this stage, as all the facets of this matter are covered above nevertheless. The basis on which the relief was granted in the earlier years has been examined and that basis being *ex facie* incorrect and even rendered by inadvertence is glaring in the analysis that has been extensively reproduced above. Learned counsel for the assessee, however, does not give up; he has an even more innovative plea now. He submits that above decision is *per incuriam* for some other reason, which has not been discussed in any judicial precedent so far, inasmuch as it overlooks the fact that the notification dated 28th August 2008 was not issued in the context of the business income, and, should accordingly not be applicable so far as business income earned abroad, as in this case, is concerned. We see no substance in this plea either. The notification deals with connotations of the expression "may be taxed", appearing in the tax treaties entered into by India, and there is absolutely no basis whatsoever to support the proposition that the effect of the notification has to be restricted in its application to non-business income only. No such differentiation in treatment of business and non-business income is envisaged in the said notification, nor do we see any justification for inferring the same. Learned counsel does not have any material whatsoever in support of the proposition canvassed by him, nor does this proposition make any sense on the first principles- inasmuch as once the notification is issued without any such specific restriction for application to business income, we cannot infer a restriction in its application. We, therefore, reject the plea of the assessee, and thus decline to interfere in the matter. We uphold the action of the Assessing Officer in including the profits of the assessee's overseas branches, amounting to Rs1,408.32 crores, in its taxable income in India.

**8.** So far as the tax credit for the taxes paid abroad is concerned, the assessee has not given specific details of the taxes so paid abroad in respect of which tax credit is sought. On a perusal of the material before us, we find that the assessee has claimed a deduction of Rs. 46,96,14,034 in connection with the taxes paid abroad which has been granted by the Assessing Officer, though under section 91. It is not clear whether this tax credit is in respect of the income of the overseas branches in question of the assessee, or in respect of some other income. We, therefore, direct that in case the assessee furnishes the requisite details of the taxes paid abroad in respect of the profits of these branches, no tax credit has been claimed in respect of the same so far, and in case the claim so made is admissible in terms of the provisions of the related double taxation avoidance agreement, the Assessing Officer will allow the tax credit, to the extent admissible, for the taxes so paid abroad on incomes of the branches abroad earned in tax jurisdictions with which India has entered into double taxation avoidance agreement. While granting the tax credit, the Assessing Officer will examine the provisions of the respective tax treaty, and compute the admissible tax credit separately for each jurisdiction in accordance with the scheme of related treaty. With these directions, the matter stands restored, for the limited purposes of granting tax credit, in terms of the related double taxation avoidance agreements, if, and to the extent, admissible.

**9.** The action of the authorities below is thus upheld in principle, but its clarified that the tax credits for the taxes paid abroad, in treaty partner countries, will be admissible in terms of the provisions of the respective treaty.

Thus, respectfully following the above detailed decision where in all the facets of the issue involved is discussed and held that Once the tax is payable or paid in the country of source, then country of residence is denied of the right to levy tax on such income or the said income cannot be included in return of income filed in India, would no longer apply after the insertion of provision of sub-section (3) of section 90 w.e.f. 1st April, 2004, i.e. Assessment Year 2004-05. Based on these finding we see no reasons

to interfere with the finding of the lower authority and therefore, we see no merits in the appeal of the assessee and the same is dismissed.

In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 09/11/2023.

Sd/-

( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठौड कमलेश जयंतभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 09/11/2023

\*Ganesh Kumar, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt. Irvind Kaur Gujral, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 1(3), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 477/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar