IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI

BEFORE,
SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.537/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Singapore PTE. Ltd. C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 **PAN-AADCH 6267Q**	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.596/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Technologies Italy S.p.A (Successor of HCL Italy S.R.L.) C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 **PAN-AAECH 9672A**	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.563/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Technologies Tehnologies Malaysia SDN BHD (Formerly known as HCL Axon Malaysia SDN BHD) C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 **PAN-AAFCH 0074H**	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.564/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Australia Services Pty Ltd. C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 **PAN-AAFCH 0704C**	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.543/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Technologies Philippines Inc. C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 **PAN-AAFCH 1422H**	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.544/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Technologies France C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 PAN-AAECH 9154K	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.559/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Technologies Germany Gmbh (Successor of HCL Gmbh) C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 PAN-AADCH 4642P	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.593/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Hong Kong SAR Limited C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 PAN-AAECH 9152R	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.594/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Mexico S. De R.L. C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 PAN-AAFCH 7530N	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.595/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Technologies Belgium BVBA (Successor of HCL Belgium N.V.) C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 PAN-AAECH 8945A	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.561/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Canada Inc. (Formerly known as HCL Axon Technologies Inc.) C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi

PAN-AAECH 9151N		
(Appellant)		**(Respondent)**

ITA No.562/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL (Brazil) Technologia Da Informacao Eireli C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 PAN-AAFCH 1401A	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.560/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Poland Sp. Z.o.o C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 PAN-AAECH 9671D	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.528/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Technologies Denmark Aps C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 PAN-AAFCH 0075G	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.565/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Technologies B.V. *[Successor of HCL (Netherlands) B.V.]* C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 PAN-AAECH 9092E	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.566/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Technologies (Shanghai) Limited C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 PAN-AAFCH 0076F	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

ITA No.567/Del/2021
(ASSESSMENT YEAR 2012-13)

HCL Technologies (Proprietary) Limited *(Formerly known as HCL Axon Proprietary Limited)* C/o HCL Technologies Ltd, 806, Siddharth 96, Nehru Place New Delhi-110 019 PAN-AAECH 9153Q	Vs.	Asst. CIT Circle International Taxation2(1)(1) New Delhi
(Appellant)		**(Respondent)**

Appellant by	Sh. Ajay Vohra, Sr. Adv. Sh. Neeraj Jain, Adv. Sh. Aditya Vohra, Adv. and Sh. Arpit Goyal, CA
Respondent by	Sh. D.K. Srivastav, Sr. DR

Date of Hearing	15/09/2023 & 18/12/2023
Date of Pronouncement	20/12/2023

ORDER

PER M. BALAGANESH AM:

1. These are the bunch of seventeen appeals filed by the Assessee against the separate orders of Learned Commissioner of Income Tax, International Taxation, 2(1)(1), New Delhi for Assessment Year 2012-13. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

ITA No. 537/Del/21 – HCL Singapore Pte Ltd – Asst Year 2012-13

2. The assessee has raised the following grounds of appeal before us:-

"1. That on the facts and circumstances of the case and in law, assessment order passed under section 144C(13)/147/ 143(3) of the Income-tax Act, 1961 ("the Act") for assessment year 2012-13 assessing the total income of the Appellant at Rs.26,17,66,998 is without jurisdiction, illegal, void ab initio and therefore, liable to be quashed.

2. Reassessment proceedings initiated under section 147 of the Act are without jurisdiction

2.1 That on the facts and circumstances of the case and in law, the reassessment proceedings undertaken by the assessing officer culminating in final assessment order are without jurisdiction, void ab initio and bad in law..

2.2 That on the facts and circumstances of the case and in law, the assessing officer erred in passing final assessment order without appreciating that there exist no reasons to believe that income of the Appellant for the relevant assessment year has escaped assessment warranting initiation of reassessment proceedings.

2.3 That on the facts and circumstances of the case and in law, the assessing officer erred in initiating the proceedings under section 147 of the Act on the basis of reasons recorded which are not only arbitrary and erroneous but contrary to facts on record as evident from statements recorded in the survey proceedings in the case of a third party, viz., HCL Technologies Ltd.

2.4 That on the facts and circumstances of the case and in law. the DRP/ assessing officer erred in not holding reassessment proceedings as invalid on the ground that the reasons recorded by the assessing officer were undated.

2.5. That on the facts and circumstances of the case and in law, the DRP/ assessing that on the did not holding the reassessment proceedings as invalid on the ground that survey report and statements recorded during survey, basis which reassessment proceedings were initiated, were never supplied to the Appellant.

2.6 That on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in not holding the reassessment proceedings as invalid on the ground that no valid sanction under section 151 of the Act was accorded.

2.7 That on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in holding the reassessment proceedings as invalid on the ground that Explanation 2(a) to section 147 of the Act regarding deemed escapement of income is not applicable in absence of any income chargeable to tax.

3. HCL group entities operate as a consortium; services not rendered by one entity to another

3.1 That on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in not taking a holistic view of the Master Service Agreement entered into between HCL Technologies Ltd and its AEs, including the appellant and in not holding that the same is in the nature of business arrangement with dominant intention of coming together and serving the overseas customers of HCL group; therefore, payment received by the Appellant from HCL Technologies Ltd was not for services rendered by the Appellant to the latter, but rather was in the nature of payment under a revenue sharing arrangement.

3.2 That on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in not appreciating that HCL group entities operate as a consortium, services in which are performed partly offshore and partly onshore and instead, erred in interpreting the pooling of interests by HCL Technologies Ltd and its AEs for the purpose of serving overseas customers directly, as one entity providing services to the other entity:

4. Payments not chargeable to tax under section 9(1)(vii) of the Act

4.1 That on the facts and circumstances of the case and in law, the DRP/ assessing officer erred on facts and in law in holding that payments received by the Appellant during the relevant previous year from HCL Technologies Ltd, an Indian resident, were chargeable to tax in India.

That on the facts and circumstances of the case and in law, the assessing officer erred in not appreciating that the amount received by the Appellant were in respect of services performed by the Appellant outside India and delivered directly to the overseas customers for utilization in their business carried on outside India and therefore, did not accrue or arise in India so as to be chargeable to tax in India in terms of section 9(1)(vii) of the Act.

4.3 That on the facts and circumstances of the case and in law, the assessing officer erred in arbitrarily alleging in the assessment order that services were rendered by the Appellant to HCL Technologies Ltd. and not to the overseas customers, which is in directly in contravention of the findings recorded by the DRP in paras 3.3.6 and 3.3.7 that "Under the software services category, both the onsite and offsite services are delivered to the customer directly".

4.4 That on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in not appreciating that the exception provided in the source rule in section 9(1)(vii) of the Act has two limbs, the first one provides a functional test for deeming the place of accrual of income based on utilization of the services in a business or profession carried on by such resident outside India, and the second limb provides a purpose test of payment fee for the purposes of making or earning any income from any source outside India, irrespective and independent of the construct or form of the agreement.

4.5 That more specifically, on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in not appreciating that the payments received by the Appellant were not chargeable to tax in India in view of the exclusion provided in section 9(1)(vii)(b) of the Act, considering that the amount received for onsite services rendered by the Appellant in foreign jurisdiction(s), were:

a. for services utilised in a business or profession (of providing onsite services by HCL Technologies Ltd.) carried on outside India, and/ or:

b. for the purposes of making or earning income from a source outside India (by providing onsite services).

4.6 That on the facts and circumstances of the case and in law, the DRP/ assessing officer grossly erred in holding that for the purposes of exception in section 9(1)(vii) of the Act, it is to be determined whether services are utilized in a business carried on by the 'recipient of income' outside India, as against well- settled law that the said exception applies where payment is made in respect of services utilised in a business carried on by the 'payer' outside India.

5. Payments not chargeable to tax under the India-Singapore Double Taxation Avoidance Agreement ("DTAA")

5.1 Without prejudice and in the alternate, that on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in not holding that the amount received by the Appellant, a resident of Singapore, for onsite services was not liable to tax in India, in terms of the applicable DTAA as such services did not make available any technical knowledge, skill or experience or consist of the transfer of any technical plan or design to the HCL Technologies Ltd.

5.2 Without prejudice and in the alternate, that the DRP/ assessing officer erred on facts and in law in not appreciating that the amount received for some of the onsite services rendered by the Appellant were in respect of those categories of Application & Engineering Services', viz., Application Support and Maintenance Services, Application Support and Enhancement Services and Others/ Residuary Application Services, which did not involve coding/ designing/ development and were not liable to tax in India in terms of the applicable DTAA as such services did not make available any technical knowledge, skill or experience or consist of the transfer of any technical plan or design.

5.3 Further without prejudice, that on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in holding that 'make available' clause does not apply in respect of development and transfer of technical plan or design.

6. Infrastructure Services

6.1 That on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in arbitrarily observing that it was submitted by the Appellant that Infrastructure Services was akin to software services rendered by the HCL, Technologies Ltd.

6.2 That on the facts and circumstance of the case and in law, the DRP/ assessing officer erred in holding that the payment received by the Appellant for certain categories of 'Infrastructure Services', not excluded from scope of Fees for Included Services ("FIS") by the assessing officer in remand report submitted before the DRP, were in the nature of FIS under section 9(1)(vii) of the Act and also under the DTAA and therefore, were liable to tax in India in the hands of the Appellant.

6.3 That on the facts and circumstances of the case and in law, the assessing officer erred in not following/ accepting the binding directions recorded by the DRP to verify whether Problem Management Services' were provided in succeeding years and whether they pass the test of 'make available' as contained in the DTAA and in instead, arbitrarily and wrongly holding that Problem Management Services' was not part of the services which DRP had directed to exclude.

7. Statements not considered in correct perspective

7.1 That on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in arbitrarily referring upon parts of cherry-picked statements of some of the employees of HCL Technologies Ltd, i.e., employees of a third party and not of the Appellant, to draw adverse conclusions/return findings, which are contrary to facts on record and are not supported/ corroborated from the categorical averments made by the employees in such statements.

7.2 That on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in not affording an opportunity an opportunity to cross examine the deponents of ex-parte statements before seeking to draw adverse conclusions therefrom.

8. That on the facts and circumstances of the case and in law, the DRP/ assessing officer erred in arbitrarily alleging in the assessment order that:

a. the Appellant and HCL Technologies Ltd. were not working independently but working in tandem for developing an integrated software product;

b. the Appellant was not doing any independent business but was only dependent upon HCL, Technologies Ltd. for generation of revenue;

c. all risk, reward and liability in respect of the services performed by the Appellant in respect of the contracts entered into with foreign clients was borne by HCL Technologies Ltd.;

d. source of income of the Appellant is in India;

e. the entire responsibility of execution vis-à-vis foreign client remains with HCL Technologies Ltd.;

f. project heads of all the projects are located in India and therefore, any work carried out by the employees of the Appellant are being supervised by the project heads of HCL Technologies Ltd.;

g. not only the source code is made available by the Appellant but even the knowledge with adequate documentation has been transferred and is available to the employees of HCL Technologies Ltd.:

h. employees of HCL Technologies Ltd have been enabled to apply the technology by the employees of the Appellant and HCL Technologies Ltd. after being so enabled has rendered the services to foreign client and raised invoices on them.

9. Without prejudice, that on the facts and circumstances of the case and in law, the assessing officer erred in levying surcharge and education cess on the income-tax determined under the provisions of the DTAA on the total income of the non- resident Appellant.,

10. That on the facts and circumstances of the case and in law, the assessing officer erred in levying interest under section 234A and 234B of the Act."

2.1. Both the parties before us fairly stated that HCL Singapore Pte Ltd in ITA No. 537/Del/2021 be taken as the lead case and the decision rendered thereon would apply with equal force for other assessees also in the same group in view of identical facts , except with variance in figures. Accordingly, we proceed to take up the appeal in ITA No. 537/Del/2021.

3. The assessee is a tax resident of Singapore engaged in the business of providing Information Technology (IT) and Information Technology Enabled Services (ITES). A survey operation was carried out in the premises of HCL Technologies Ltd (in short HCLT), Noida u/s 133A of the Act on 22.1.2019 and ended on 28.1.2019. The case of the revenue is that certain remittances were made by HCLT to the assessee. These payments were sought to be categorized as fee for technical services in the hands of the assessee taxable u/s 9(1)(vii) of the Act. These payments were made by HCLT to the assessee without deduction of tax at source. The case of the assessee was sought to be reopened by issuance of notice u/s 148 of the Act on 29.3.2019. In response to the said notice, the assessee filed its income tax return under protest on 26.4.2019. The assessee requested for copy of reasons recorded for reopening the assessment together with the documents seeking approval u/s 151 of the Act from the competent authority. The ld. AO furnished the reasons together with the copy of approval obtained u/s 151 of the Act to the assessee vide letter dated 12.6.2019. The assessee filed objections to the initiation of reopening proceedings before the ld. AO vide letter

dated 22.10.2019. The ld. AO disposed of those objections by a separate speaking order dated 2.12.2019. The ld. AO thereafter passed a draft assessment order dated 31.12.2019 wherein the amount received by the assessee for HCLT amounting to Rs 54,99,08,620/- was held to be taxable as Fee for Technical Services (FTS) u/s 9(1)(vii) of the Act and also under the Double Taxation Avoidance Agreement (DTAA). The assessee filed objections before the Dispute Resolution Panel (DRP) and the same were disposed of by the DRP vide its directions dated 8.3.2021 giving partial relief to the assessee. Pursuant to the directions of the ld. DRP, the ld. AO passed the final assessment order on 23.4.2021 determining the income of the assessee at Rs 26,17,66,998/- for the Asst Year 2012-13. Aggrieved, the assessee is in appeal before us.

4. We have heard the rival submissions and perused the materials available on record. The assessee and HCLT are part of the HCL group with the assessee being a subsidiary and Associated Enterprise (AE) of HCLT. HCL America (HCLA) provides services to clients of HCLT outside India as per agreement entered into with HCLT. The assessee company provides the marketing and sales support as well as onsite services. HCL group is engaged in the business of development and export of software and rendering ITES which is categorized into the following lines of business:-

a) Software Services (including Engineering Services)

b) Infrastructure Services

c) Business Process Outsourcing (BPO)

4.1. Software, Engineering and Infrastructure Services are provided to the customers located outside India under a Global Delivery Model wherein services are provided partly from India (offshore services) and partly from the office of the assessee or at the client's location (onsite services). The onsite services are also provided through the nearshore development centers. The onsite services, requiring physical presence of Engineers onsite due to customer preferences / security reasons/ time zone

requirements are performed by the employees of the assessee either at customer location or nearshore delivery centers.

4.2. Under the Software Services category, both the onsite and offsite services are delivered to the customer directly. The employees of HCLT as well as the assessee provide services in a very secure IT environment, wherein both the teams access the customer's server directly and write the software codes on such server. The assessee generally works from the customer's location with direct coordination with them.

4.3. In the Software / Application design (mostly by HCLT) , the software program is broken down into modules for coding. A single team, either HCLT or the assessee, provides end to end development services on a specific module of the software directly on customer's server. Accordingly, no 'software code' comes to India in tangible or intangible form (email etc). All documentation, design and codes are directly captured in the customer code repository residing in customer's server located outside India and the working team, both HCLT and the assessee, work directly on the customer's server. The service deliverables are directly transferred to the customers located outside India. HCLT and the assessee serve independently to the customer with coordination between them regarding the project.

4.4. In this background, it was submitted that under a Global Delivery Model, the assessee performs services outside India in connection with contracts entered into by HCLT with foreign customers. No service or deliverable is provided by the assessee to HCLT and work is directly performed onsite at the foreign customer's location or nearshore delivery centers. Accordingly, it was pleaded that the assessee does not provide any services to HCLT and that the services are rendered by the assessee directly to the customers located outside India. It was submitted that no part of the services rendered by the assessee are transferred to India. As per the business model, the onsite services are entirely performed by the assessee from outside India and

delivered for ultimate consumption or utilization by foreign clients in their business outside India and both entities perform work directly on the server of the foreign customers. It is not in dispute that the assessee furnished before the ld. AO the income tax return filed with the foreign tax authorities and the copy of tax residency certificate (TRC) issued by the competent authority for the relevant year.

5. It would be relevant to understand the various contracts / agreements signed between the parties. A Master Service Agreement dated 1.7.2010 had been entered into between HCL Singapore Pte Ltd (assessee herein) and HCL Technologies Ltd, India (HCLT) . Certain relevant clauses of the said agreement are reproduced below:-

"a) HCL Singapore and HCLT are in the business of providing software and IT services (Services) to their customers.

b) HCLT is desirous of utilizing expertise of HCL Singapore and to engage HCL Singapore to perform the 'Services' for its customers on its behalf.

c) HCL Singapore has agreed to such engagement subject to the terms of this Agreement.

Clause 4 – OBLIGATIONS OF HCL SINGAPORE AND HCLT

4.1. In the event that any change to the nature or scope of the services is identified as being desirable by either HCLT or HCL Singapore , a request may be submitted to the other party to effect such change. Any such request shall be sufficiently detailed to enable the other party to assess the impact of the proposed change. No such change will become effective until agreed in writing between the parties.

4.2. HCLT shall reimburse to HCL Singapore the travel and other incidental expenses which are incurred by HCL Singapore in connection with travelling by HCL Singapore's employees to any place other than the regular place of work.

Clause 5 – OBLIGATIONS OF HCL SINGAPORE

In addition to its obligations set out elsewhere in this Agreement, HCL Singapore shall:

5.1. Take on the responsibility for performance of software and IT Services in accordance with the obligations undertaken in the agreements entered into with customers.

5.2. Have the necessary skill and expertise to provide the Services on the terms as set out in this Agreement.

5.3. Reimburse to HCLT all the travel and other expenses incurred by HCLT on behalf of HCL Singapore.

5.4. Advise HCLT, through its legal / technical / commercial cell, on various aspects of contracting with the customers "Software and IT Service' Business.

5.5. Support HCLT's marketing initiative through specific sales support services and showcasing HCL Singapore's expertise appropriately.

Clause 7 – INTELLECTUAL PROPERTY RIGHT

7.1. The Parties acknowledge that performance of this Agreement, may result in discovery, creation or development of inventions, methods, techniques, improvements, software designs, computer programs, strategies, data and other original works of authorship (collectively, the "Work Results") , which shall fully vest with HCL Singapore on creation and be the property of HCL Singapore.

7.2. The parties acknowledge that HCL Singapore has certain proprietary techniques, knowhow, strategies and business practices that it will employ in performing the Services. Intellectual Property Rights that HCL Singapore or its licensors have developed other than during the course of performing Services shall be referred to as "Existing Intellectual Property Rights". HCL Singapore may use Existing Intellectual Property Rights in the development of software pursuant to the performance of Services under this Agreement. HCL Singapore shall remain the exclusive owner of such rights, including any modifications or enhancements thereto that may be developed in the course of providing the Services under this Agreement.

Clause 9 – REMUNERATION

9.1. In consideration for the Services rendered by HCL Singapore hereunder, HCL Singapore shall charge the fee from HCLT which shall be determined based on total cost incurred in the provision of services plus an agreed mark up. The mark up shall be agreed between the parties by mutual consent from time to time.

9.2. It is agreed that HCLT shall withhold taxes as applicable at the time of making payment to HCL Singapore for the Services rendered by HCL Singapore under this Agreement.

Clause 10 – TAXATION

Both parties, hereby, agree that all direct tax (WHT) levies shall be on account of payee (service provider) and all indirect tax (service tax, VAT, GST or similar indirect tax) levies shall be on account of payer (service recipient).

Clause 11 – LIMITATION OF LIABILITY

In no event, shall HCLT be liable for any indirect, incidental, consequential or special damages (including lost profits), whether in contract or tort (including negligence and strict liability) and whether or not such damages are foreseen. The liability, if any, arising on account of non payment by any customer shall vest with HCLT. However, the liability shall vest with HCL Singapore if it is due to performance issues related to HCL Singapore's employees.

Clause 12 – INDEMNIFICATION

HCL Singapore agrees to indemnify and hold harmless unconditionally and irrevocably HCLT against all or any damages, claims, demand, liabilities , cost and expenses arising due to errors or performance problems of HCL Singapore's employees.

Clause 13 – GENERAL

13.1. The relationship between HCLT and HCL Singapore established by this Agreement is that of independent contractors, and nothing in this Agreement shall be construed to :

i) give either party the power to direct and control the day-to-day activities of the other;

ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a common undertaking;

iii) constitute either party to be an agent of the other within the meaning of any relevant or applicable law ;

iv) allow either party to create or assume any obligation on behalf of or in the name of the other party, except as expressly provided herein; or

v) prevent either party from entering into any business.

…….

6. We find that the ld. AO had sought to examine the agreement entered into with one of the customer i.e. Cisco Systems Inc. by the assessee during the course of assessment proceedings. It would be pertinent to reproduce certain relevant clauses in the said agreement :-

ORIGINAL DESIGN AND MANUFACTURING AGREEMENT DATED 10.10.2007

Entered into between Cisco Systems, Inc., a California corporation having its principal place of business at 179, West Tasman Drive, San Jose, CA 95134 and

HCL Technologies Ltd, India (hereinafter referred as 'Designer')

Design and License Agreement Terms and Conditions

A. Cisco is in the business of designing, manufacturing and selling hardware and software products for use in computer and communication networks.

B. Designer is in the business of designing network software applications.

C. Cisco and Designer desire that Designer design the Product (as defined herein) on the terms and conditions set forth herein.

1.0. DEFINITIONS

1.1. ***Affiliate*** *in the case of Cisco shall mean any entity, whether incorporated or not, which is controlled by , under common control with, or controls Cisco, where 'control'*

means the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise.

Affiliate in the case of Designer , shall mean an entity directly or indirectly controlling, controlled by or under common control of Designer where control means the ownership or control, directly or indirectly of at least 50.1% of the voting power, but only for so long as ownership remains at 50.1% or above.

(emphasis supplied by us)

…….

1.3. Cisco shall mean Cisco Systems, Inc., and its Affiliates.

1.4. Cisco Property shall mean such items provided by Cisco or its Affiliate, Including but not limited to those items described in Exhibit A to each Product Project Specifics, any and all pre-existing technology of Cisco and its Affiliates, Foreground Property and all Intellectual Property Rights related thereto. Cisco Property may also include third party software or tools if specifically identified by Cisco. Cisco Property shall include any derivatives, improvements or modifications thereto or thereof and any Intellectual Property Rights related thereto. Cisco Property will also include any hardware or equipment provided by Cisco to Designer for the performance of Designer's obligations hereunder.

1.5. Deliverables shall mean any tangible or intangible items to be developed and delivered by Designer to Cisco pursuant to and as identified in the Product Project Specifics. (emphasis supplied by us)

1.6. Designer Property shall mean such items provided by Designer or its Affiliates as listed and described in Exhibit B to each Product Project Specifics, any and all Background Property, and all Intellectual Property Rights related thereto. Designer Property may include third party software or tools if specifically identified by Designer and agreed upon by Cisco and will be listed and described in Exhibit B to each Product Project Specifics and any Intellectual Property Rights related thereto.

……..

1.10. Intellectual Property Rights shall mean all current and future worldwide patents and other patent rights, utility models, copyrights, mask work rights, trade secrets, and all other intellectual property rights and the related documentation or other tangible expression thereof.

…….

1.14. Product shall mean the product which is achieved upon completion and acceptance of the Product Project Specifics, including Cisco Property, Designer Property and any third party property incorporated into such product.

1.15. Product Project Specifics shall mean the document describing any requirements, Specifications, Deliverables, schedules, acceptance criteria, acceptance testing, go to market pricing, termination or expiration compensation and other pertinent information regarding the Product that are the result or output of such processes. A form of the Product Project Specifics is attached as Exhibit G. The actual Product

Project Specifics for any particular Product shall be attached to this Agreement as consecutively numbered Exhibit G's, i.e. G-1, G-2, G-3, et. seq.

1.16. Property shall mean the information and technology provided by the parties in connection with this Agreement and all Intellectual Property Rights with respect thereto.

1.17. Source Code shall mean a fully documented human-readable source code form of the Product, including programmer's notes and materials and Documentation, sufficient to allow a reasonable skilled programmer to understand the design, logic, structure, functionality, operation and features and to use, operate, maintain, modify, support and diagnose errors.

1.18. Specifications shall mean the acceptance criteria and technical and other specifications for the Product, as may be set forth in, and/or which are the result of, the Product Project Specifics.

2.0 DESIGN EFFORT

2.1 DESIGN EFFORT

Designer shall design and deliver the Deliverables in accordance with the Specifications set forth in, or agreed upon as a result of, the Product Project Specifics, provided, however, that the due date for any Deliverable, performance of which was delayed on account of failure of Cisco to complete any of its prerequisite obligations in a timely fashion, may be extended up to one day for each day of Cisco's lateness. Each Deliverable shall be delivered in such format and on such media as may be reasonably requested by Cisco. Designer Property shall not be included, incorporated or embedded in a Product unless the parties have expressly agreed upon and identified the specific Designer Property to be included: incorporated or embedded in a Product and set forth in a Product Project Specifics.

If Designer fails to deliver a Deliverable to Cisco within twenty (20) business days of the scheduled delivery date set forth in, or agreed upon as a result of, the Product Project Specifics and such delay is for reasons attributable to Designer, Cisco shall be entitled, in its sole discretion to: (a) grant Designer additional time to complete the Deliverable; or (b) accept the Deliverable in its current state, subject to a reasonable adjustment of the royalties associated with the Deliverable; or (c) perform or have performed the necessary tasks to complete the Deliverable and charge Designer the costs thereof; or (d) terminate the applicable Product Project Specifics upon written notice to Designer and seek available remedies for material breach. ***Unless otherwise provided for in a Product Project Specifics, the Designer may engage the services of its Affiliates, in the design and the development of the Product. (emphasis supplied by us)***

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2.11. DELIVERY OF PRODUCT

Designer shall provide the Product and Documentation described in each Product Project Specifics, in Object Code and Source Code, in accordance with the schedule in the Product Project Specifics. Accompanying the Source Code, Designer shall deliver and include all firmware, linking, compiling and building instructions, all embedded

programmer comments, all schematics, design drawings, part lists, vendor lists, and any other tools, materials, verification suites, instructions and collectively sufficient to enable Cisco to compile the Source Code into Object Code.

3.0 OWNERSHIP

3.1 OWNERSHIP BY DESIGNER

Designer shall retain all right, title, and interest in the Designer Property and Cisco shall have no ownership interest therein.

3.2. OWNERSHIP BY CISCO

Designer acknowledges and agrees that Cisco is and shall remain the sole owner of all right, title, and interest in the Deliverables, Product, Cisco Property, and all Intellectual Property Rights therein, except the Designer Property. Designer further acknowledges and agrees that upon creation of any Deliverables, Product or Cisco Property, Cisco shall be the sole owner of all rights, title and interests in and to such Deliverables, Product (except the Designer Property), and Cisco Property and all Intellectual Property Rights therein. Designer hereby irrevocably transfers, conveys, and assigns, and agrees to transfer, convey, and assign, to Cisco all of its right, title, and interest in the Deliverables, Product (except the Designer Property), and Cisco Property free and clear of all liens, encumbrances, claims and rights of third parties whatsoever. Further, Designer agrees that such assignment is and shall be perpetual and the assignment shall not lapse under any circumstances including non-exercise of such assignment by the assignee for any period of time. Cisco shall have the exclusive right to apply for or register any patents, mask work rights, copyrights, and such other proprietary protections with respect thereto. Designer shall execute such documents, render such assistance, and take such other actions as Cisco may reasonably request, at Cisco's expense, to apply for, register, perfect, confirm, and protect Cisco's rights in the Deliverables, Product and Cisco Property. Without limiting the foregoing, Cisco shall have the exclusive right to commercialize, prepare and sell products based upon, sublicense, prepare derivative works from, or otherwise use or exploit the Product. If Designer has any rights to the Deliverables, Product or Cisco Property (including without limitation, all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights") that cannot be: (a) assigned to Cisco, Designer unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against Cisco with respect to such rights, and agrees, at Cisco's request and expense, to consent to and join in any action to enforce such rights; and (b) waived by Designer, Designer unconditionally and irrevocably grants to Cisco during the term of such rights, an exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free transferable license, with rights to sublicense through multiple levels of sub-licensees, to reproduce, create derivative works of, distribute, publicly and/or digitally perform and publicly and/or digitally display by all means now known or later developed, such rights. During the term of this Agreement and thereafter, the Designer shall not: (i) claim, or represent to any other person, firm or entity that Designer has any rights, title or interest in or to any of the Deliverables, Product (except Designer Property) or Cisco Property or any Intellectual Property Rights therein; or (ii) take any action which, in the reasonable opinion of Cisco, may impair any of Cisco' rights, title or interests in and to the Deliverables, Product (except Designer Property) or Cisco Property or any Intellectual Property Rights in or to any of the foregoing. Designer hereby

acknowledges and agrees that it does not, and shall not, have any rights, title or interests in or to the Deliverables, Product (except Designer Property) or Cisco Property or any Intellectual Property Rights therein, except as specifically provided herein Without limiting the generality of this Section 3.2, the Designer shall not adopt any trademark, service mark, trade name, or logo which is substantially similar to any trademark, service mark, trade name, corporate name or logo of Cisco. In the event that Designer requires use of Cisco trademarks, Designer shall register with Cisco's Logo Program at: http://www.cisco.com/logo/index.html.

3.3. OWNERSHIP OF RELATED TECHNOLOGY

Subject to the ownership rights specified in Sections 3.1 and 3.2, any technology (i) which is not incorporated in the Product and does not constitute Cisco Property, Designer Property, or Foreground Property, and (ii) which is jointly created, conceived and reduced to practice, designed, or prepared by the parties pursuant to this Agreement or conceived, designed, or prepared by Designer as a direct result of Designer's efforts hereunder shall be owned by Cisco. Cisco hereby grants Designer and/or its Affiliates a royalty-free, perpetual and irrevocable, worldwide, non-exclusive license to use, reproduce and distribute (in both Object Code and Source Code format) products developed by Designer incorporating or using said technology.

3.7. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Designer shall immediately notify Cisco of any and all events that threaten the integrity of any and all of Cisco's Intellectual Property Rights including, but not limited to, any Intellectual Property Rights in any Products or Cisco Property, which come to the attention of the Designer during the term of this Agreement. Cisco shall be responsible for taking any action, in the courts, administrative agencies, or otherwise, to prevent the threat to the integrity of Cisco's Intellectual Property Rights, and the Designer shall provide Cisco with such assistance, at Cisco's cost, as Cisco shall reasonably request in connection with any such action. All costs and expenses incurred in connection with any such action shall be borne by Cisco: provided, however, that the Designer shall defend, indemnify and hold Cisco and its Affiliates harmless against any and all such costs and expenses to the extent such threat to the integrity of Cisco's Intellectual Property Rights is attributable to the acts, omissions or negligence or willful misconduct of the Designer Cisco shall immediately notify Designer of any and all events that threaten the integrity of any and all of Designer's Intellectual Property Rights including, but not limited to, any Intellectual Property Rights in any Designer Property, which come to the attention of Cisco during the term of this Agreement. Designer shall be responsible for taking any action, in the courts, administrative agencies, or otherwise, to prevent the threat to the integrity of Designer's Intellectual Property Rights, and Cisco shall provide Designer with such assistance, at Designer's cost, as shall reasonably request in connection with any such action. All costs and expenses incurred in connection with any such action shall be borne by Designer; provided, however, that Cisco shall defend, indemnify and hold Designer and its Affiliates harmless against any and all such costs and expenses to the extent such threat to the integrity of Designer's Intellectual Property Rights is attributable to the acts, omissions or negligence or willful misconduct of Cisco.

8.0. PROHIBITION ON USE OF CONTRACTORS: COMPLIANCE WITH LAWS

8.1. Designer may not retain third parties to furnish services to it in connection with the performance of its obligations hereunder. However, for the purposes of this Agreement, Designer's Affiliates shall not be considered as third parties. Designer hereby guarantees the performance and obligations of its Affiliates and agrees that a breach by an Affiliate may be deemed by Cisco to be a breach by Designer.

(emphasis supplied by us)

10.0. INDEMNITY BY DESIGNER AND CISCO

10.1. GENERAL INDEMNIFICATION BY DESIGNER

Designer will indemnify, defend, and hold harmless each of Cisco and its Affiliates and each of their officers, directors, employees, successors and assigns (collectively the "Indemnified Parties") from and against all third party claims, suits, demands and actions brought against the Indemnified Parties or tendered to the Indemnified Parties for defense and/or indemnification (collectively "General Claims"), and for all damages, losses, costs, and liabilities (including reasonable attorney and professional fees) that result or arise from General Claims (collectively "General Losses"), which in whole or in part, directly or indirectly, allege that one or more Products, or any part thereof, have caused bodily injury (including death)..

10.2. INTELLECTUAL PROPERTY INDEMNIFICATION BY DESIGNER

Designer will indemnify, defend, and hold harmless the Indemnified Parties from and against all third party claims, suits, demands and action brought against the Indemnified Parties or tendered to the Indemnified Parties for defense and/or indemnification (collectively "IP Claims"), and for all damages, losses, costs, and liabilities (including reasonable attorney and professional fees) that result or arise from IP Claims (collectively "IP Losses"), which in whole or in part, directly or indirectly allege that one or more Products, or any part thereof, infringe, misappropriate, or violate any Intellectual Property Rights of any third party, except as provided in Section 10.5 (Exceptions to Designer's Indemnity).

10.3. TERMS OF DEFENSE AND INDEMNIFICATION

Cisco will promptly notify Designer, in writing, of any Claim for which Cisco seeks indemnification (provided that Cisco's failure to provide such notice or to provide it promptly will relieve Designer of its indemnification obligations only if and to the extent that such failure prejudices Designer's ability to defend the Claim(s)) Cisco may employ counsel at its own expense to assist it with respect to any such Claim; provided, however, that if such counsel is necessary because of an unresolvable conflict or interest of either Designer or its counsel or because Designer does not assume control, Designer will bear the expense of such counsel. Cisco shall have no authority to settle any claim on behalf of Designer. Notwithstanding anything else in this Section, if the Claim is one of multiple claims in a lawsuit against Cisco and/or its Affiliates, some of which claims may not be subject to the indemnity obligation under this Section, Cisco may, at its sole discretion, elect to solely control the defense, settlement, adjustment or compromise of the Claim, in which event: (a) Designer agrees to cooperate with Cisco's sole control and provide any assistance as may be reasonably necessary for the defense, settlement, adjustment or compromise of any such controversy or proceedings, and (b) Designer shall not be relieved of its

indemnification and hold harmless obligations under this Section 10.3., and Designer shall remain responsible for its proportionate share of the losses, damages, liabilities, settlements, costs and expenses relating to the Claim and attributable to Designer

10.4. DESIGNER'S EFFORTS

In addition to Designer's obligations under Section 10.2, if the manufacture, use or distribution of the Product is enjoined or becomes the subject of a Claim of infringement, Designer shall, at its sole expense, obtain such licenses, or make such replacements or modifications, as are necessary to the continue the manufacture, use, import, service, support, or distribution of the Product without infringement and in compliance with the Product Project Specifics and Specifications within thirty (30) days (or such longer period as determined by Cisco in good faith) after the holding of infringement or the entry of the injunction, as applicable in the event that it is not commercially practicable for Designer to obtain such licenses or make such replacements or modifications. Designer shall provide Cisco with prompt written notice thereof, and shall refund to Cisco the full amount of all amounts paid by Cisco with respect to such Product within thirty (30) days after the date of such written notice. Designer hereby acknowledges and agrees that, in the event that Cisco is subject to any General Losses that are within the scope of Designer's indemnity in Section 10.1. Designer's obligations under this Section 10.4 are in addition to, and not in lieu of, Designer's obligations under that Section 10.1. Furthermore, nothing in this Section 10.4 shall limit any other remedy of Cisco

10.5. EXCEPTIONS TO DESIGNER'S INDEMNITY; AND OBLIGATIONS UNDER SECTION 10.4

Designer shall have no obligation under Section 10 2 and/or Section 10.4 of this Agreement to the extent any claim of infringement is caused by (1) use or sale of the Product in combination with any other products not provided or combinations that may not be reasonably anticipated in the Product Project Specifics or by Designer if the infringement would not have occurred but for such combination; (ii) any material alteration or modification of the Product not intended, authorized by Designer, or subsequently incorporated into the Product by Cisco, if the infringement would not have occurred but for such alteration or modification; or (iii) Designer's compliance with Cisco's unique written specifications if the infringement would not have occurred but for such unique written specifications excepting any implementation thereof by Designer, or (iv) Cisco's failure to substantially comply with Designer's reasonable written instructions which if implemented would have rendered the Product non-Infringing, provided that a sufficient time period is given to Cisco to enable it to implement the written instructions and that Designer remains obligated under Section 10 2 with respect to any infringement occurring up to the end of such time period, or (v) Cisco Property or part thereof incorporated into the Product.

10.6. INDEMNITY BY CISCO

Except to the extent covered by Designer's obligations under Section 10.2. Cisco shall defend any claim, suit or proceeding brought against Designer, its Affiliates and each of their officers, directors, employees, successors and assigns to the extent that it is based on (i) a claim arising from or attributable to personal injury (including death) to any person or injury or damage to any property arising from any act of gross negligence or intentional misconduct by a Cisco employee or contractor, or (ii) a claim

that Designer's internal use of the Cisco Property (excluding the Foreground Property) provided to Designer by Cisco for the design of a Product infringes any United States, European Union, India, or Japanese Intellectual Property Right of a person, firm, or entity who is not a party to this Agreement. As a condition to such defense, Designer will provide Cisco with prompt written notice of the claim and permit Cisco to control the defense, settlement, adjustment or compromise of any such claim provided, however, that Designer shall provide Cisco with assistance, at Cisco's expense, as Cisco shall request, in connection with the defense, settlement or discharge of the claim. Designer may employ counsel at its own expense to assist it with respect to any such claim. Designer shall have no authority to settle any claim on behalf of Cisco. The foregoing slates Designer's sole and exclusive remedy and Cisco's entire liability to Designer arising from or relating to the use of the Cisco Property by Designer hereunder

11.0. LIMITATION OF LIABILITY

EXCEPT IN CONNECTION WITH INDEMNITY OBLIGATIONS UNDER SECTION 10 (INDEMNITY), AND DESIGNER'S OBLIGATIONS UNDER SECTION 2.10 (USAGE OF OPEN SOURCE) AND SECTION 7 (CONFIDENTIALITY), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER IN CONNECTION WITH A PRODUCT OR ITS PRODUCT PROJECT SPECIFICS FOR ANY AMOUNTS IN EXCESS OF THE GREATER OF: (A) THE AGGREGATE OF THE FEES PAID BY CISCO TO DESIGNER FOR SUCH PRODUCT OR UNDER ITS PRODUCT PROJECT SPECIFICS DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE, OR (B) TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000 US). THIS SECTION DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR DAMAGES RESULTING FROM INTENTIONAL MISCONDUCT.

EXCEPT IN CONNECTION WITH INDEMNITY OBLIGATIONS UNDER SECTION 10 (INDEMNITY), AND DESIGNER'S OBLIGATIONS UNDER SECTION 2.10 (USAGE OF OPEN SOURCE) AND SECTION 7 (CONFIDENTIALITY), UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT. THIS SECTION DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR DAMAGES RESULTING FROM INTENTIONAL MISCONDUCT.

14.9. ASSIGNMENT

Designer may not assign its rights or delegate its obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of Cisco. Any attempted assignment or delegation without Cisco's prior written consent will be void. Cisco may, in Cisco's sole discretion, assign this Agreement or any rights granted herein, in whole or in part, to any Cisco subsidiary or Affiliate. The rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns.

(emphasis supplied by us)

15. INSURANCE

Designer (and/or its applicable Affiliate) shall, at its own expense, at all times during the term of this Agreement and after the termination of this Agreement (as explained more fully below) provide and maintain in effect those insurance policies and minimum limits of coverage as designated below, and any other insurance required by law in any jurisdiction where Designer provides services under this Agreement, in insurance companies authorized to do business in the jurisdiction where the work is to be performed and which maintain an AM Best rating of A-VII or higher, where applicable, and will comply with all those requirements as stated herein. In no way do these minimum requirements limit the liability assumed elsewhere in this Agreement, including but not limited to Designer's defense and indemnity obligations.

15.1. Workers' Compensation, Social Scheme and Employer's Liability Insurance Workers' Compensation and Employer's Liability insurance shall be provided as required by any applicable law or regulation and, in accordance with the provisions of the laws of the nation, state, territory or province having jurisdiction over Designer's employees. If any such applicable jurisdiction has a mandatory social scheme to provide insurance or benefits to injured workers, Designer must be in full compliance with all laws thereof, including by way of example, Workers' Accident Compensation insurance and Employer's Liability Insurance.

15.2. Commercial General Insurance Designer shall carry Public Liability or General insurance covering all operations by or on behalf of Designer arising out of or connected with this Agreement including coverage for bodily injury. property damage, personal and advertising injury, products liability, completed operations liability and contractual liability with limits of not less than the local currency equivalent of US$1,000,000 each occurrence. If "claims made" policies are provided. Designer shall maintain such policies for at least one year after the termination or expiration of this Agreement

15.3. Automobile Liability Insurance. If Designer is required to utilize any motor vehicles in the performance of the Services then Designer shall carry Comprehensive Automobile Liability insurance, including bodily injury and property damage for vehicles with limits not less than those required by law, regulation or statute where services are to be provided hereunder. If injury to third-party passengers of such vehicles is not covered by such Automobile Liability insurance, then Designer shall also maintain separate insurance to cover injury to such passengers. In the event that Designer's employees or agents are required to use their own vehicles in performance of services, Designer shall require such employees or agents to carry automobile liability insurance meeting these requirements. In the event that Designer's employees or agents rent or lease vehicles for use in performance of the services, Designer shall require that the employees or agents using such vehicles ensure that the vehicles are properly insured by the owners of such vehicles.

15.4. Errors and Omissions Liability Insurance (Professional Liability). Designer shall carry insurance for design and/or professional liability (errors and omissions) with limits of not less than the local currency equivalent of US$2,000,000 per occurrence or per claim. Such insurance may be on an occurrence" basis or claims-made" basis. If Designer carries the Professional Liability insurance required under this Agreement on an "occurrence" basis, then Designer shall continue to maintain such insurance for one year following completion of and acceptance of the Services by Cisco or the

termination/expiration of this Agreement, whichever is earlier. If, however, Designer carries the Professional Liability insurance required under this Agreement on a "claims-made basis, then Designer shall continue to maintain such insurance for three years following completion of and acceptance of the Services or the termination/expiration of this Agreement, whichever is earlier. Designer shall furnish Certificates of Insurance (or other authenticated evidence of coverage) annually to Cisco at the beginning of each of these subsequent years at Cisco's request, as evidence of this required insurance.

15.5. Additional Requirements.

(a) Additional Insured. Cisco, its subsidiaries, and their respective officers, directors, employees and agents shall be named as Additional Insureds for the Public Liability (or Commercial General Liability) policies required to be maintained by Designer under this Agreement. The policies shall be endorsed to stipulate that Designer's insurance shall be primary to and noncontributory with any and all other insurance maintained or otherwise afforded to any of them.

(b) Certificates of insurance. Certificates of Insurance or other formalized evidence of the coverages required above, shall be furnished by Designer to Cisco when this Agreement is signed, or within a reasonable time thereafter, and within a reasonable time after such coverage is renewed or replaced. If reasonably requested by Cisco, a certified copy of the actual policy(s) with appropriate endorsement(s) shall be provided to Cisco.

7. Yet another agreement examined by the ld. AO was the *Outsourcing Master Services Agreement signed on 14.12.2009 with Deutsche Bank AG (acting through its London Branch) with*

a) HCL Technologies Limited

b) HCL Great Britain Limited

c) HCL America Inc.

d) HCL Comnet Systems & Services Limited

e) HCL Singapore Pte Limited

f) HCL GmbH

Here, the parties mentioned in items (b) to (f) were collectively and individually categorized as "Supplier" for the purposes of this Agreement.

7.1. ***INTRODUCTION:***

(A) Under this Agreement, Deutsche Bank (DB) intends to establish a framework within which it may invite Supplier to submit proposals to provide IT, business process and / or other services to support the DB Group's projects from time to time and which governs the relationship between the Parties in respect of those projects.

(B) The Parties wish to establish a flexible contractual framework that will enable DB Group Members to obtain from Supplier those Services that are agreed from time to time in writing by the relevant Parties in a Framework Service Description.

(C) The Parties agree, in the context of their desire to establish a business relationship on a global basis, that it is advantageous for all Parties to work from standard terms and conditions that apply to that relationship so far as that is practicable.

(D) Each Framework Service Description will constitute a distinct contract incorporating the terms and conditions of this Agreement and each Party thereto may enforce its rights under each Framework Service Description in relation to the relevant Services. (emphasis supplied by us)

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8. In the similar way, an agreement for Framework Service Description was entered in *April 2011 between Deutsche Bank AG (acting through its London Branch) with*

a) HCL Technologies Limited

b) HCL Great Britain Limited

c) HCL America Inc.

d) HCL Comnet Systems & Services Limited

e) HCL Singapore Pte Limited

f) HCL GmbH

g) Axon Solutions Limited (trading as HCL Axon)

Here also, the parties mentioned in items (b) to (g) were collectively and individually categorized as "Supplier" for the purposes of this Framework Service Description.

8.1. ***INTRODUCTION:***

(A) Deutsche Bank AG (acting through its London Branch) and Supplier entered into an Outsourcing Master Services Agreement dated 14 December 2009 (the "Agreement").

(B) The Parties to the Agreement also entered into an Interim Services Letter dated 22 December 2010 (the "Letter"). The Letter extended the term for the provision of certain services under a number of Statements of Work, Framework Service Descriptions and Project Descriptions (each entered into and defined under either the Agreement or an earlier Outsourcing Master Services Agreement between the Parties dated 5 February 2008 ("MSA 1.0.")) (the "Current Services") until 31 December 2011 (or until the date of execution of this Framework Services Description, if earlier). The Letter also provided for the commencement of the provision of service desk services (under MSA 1.0.) by Supplier to DB from 1 January 2011. The service desk services will be included in the definition of Current Services.

(C) DB is in the process of consolidating the number of Suppliers providing Applications support services to its Capital Markets Production Management unit. DB Production Management intends to transition the support of certain Applications provided by certain third party vendors to the Supplier and to one other supplier in order to reduce the overall cost of these services without any degradation or services provided.

(D) As such, this Framework Service Description governs the arrangement whereby Supplier will continue to provide the Current Services and will also provide SERvices that are transitioned to Supplier from third party service providers (the "Transitioned Services", together with the Current Services, the "Services").

(E) Those Services are to be provided in relation to a suite of Applications that will be supported under this Framework Service Description by Supplier which are listed in the In-Scope Applications Matrix at Exhibilt L (the "Supported Applications") . The Supported Applications will change from time to time as Applications are added to and / or removed from the scope of this Framework Service Description in accordance with paragraph 9.

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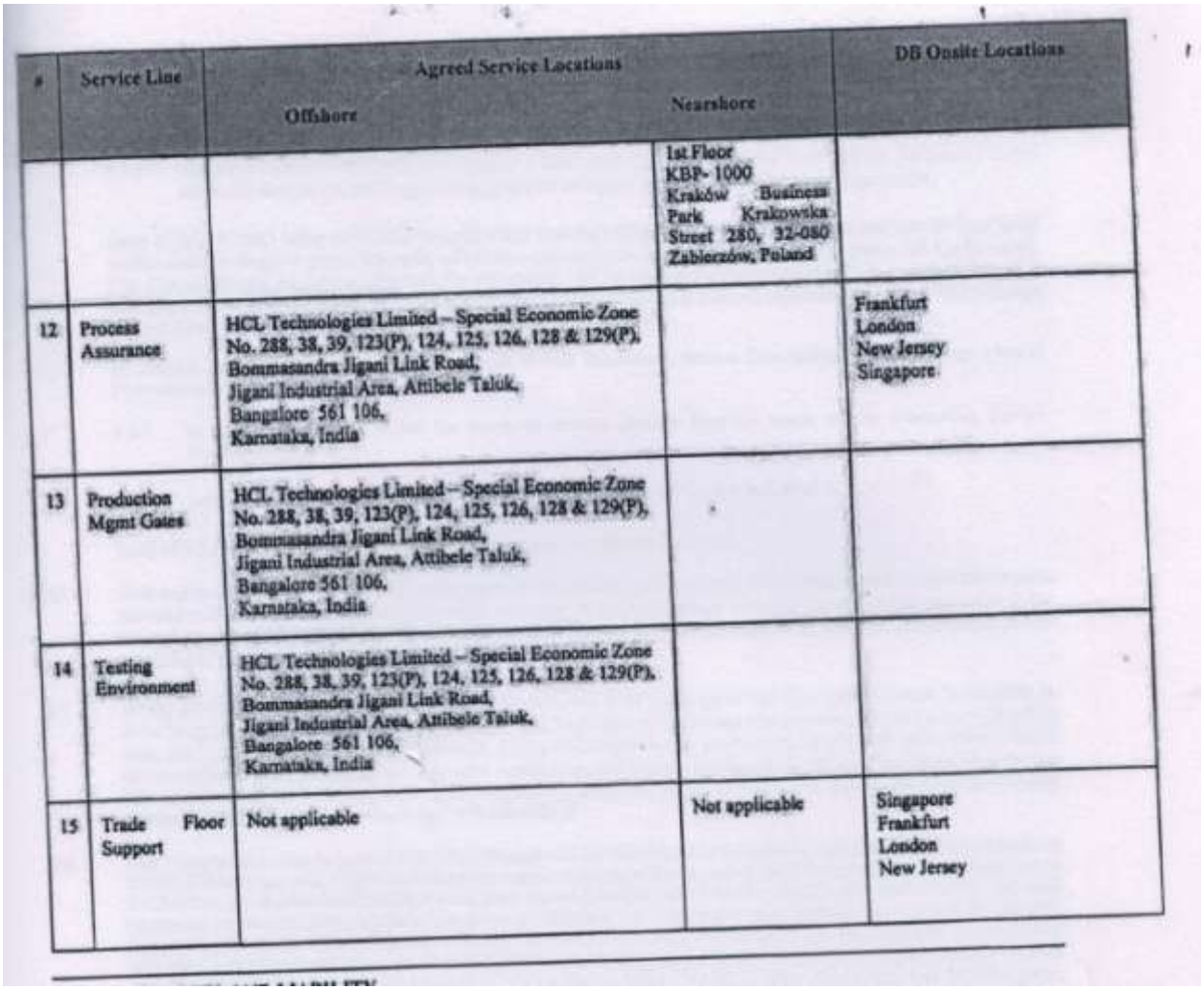
(8) AGREED SERVICE LOCATIONS

#	Service Line	Agreed Service Locations		DB Onsite Locations
		Offshore	Nearshore	
1	Access Mgmt	HCL Technologies Limited – Special Economic Zone No. 288, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India		
2	Capacity Mgmt	HCL Technologies Limited – Special Economic Zone No. 288, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India		
3	Change Mgmt	HCL Technologies Limited – Special Economic Zone No. 288, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India		
4	Configuration Mgmt	HCL Technologies Limited – Special Economic Zone No. 288, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India		
5	Deployment Mgmt	HCL Technologies Limited – Special Economic Zone No. 288, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India		
6	Event Mgmt	HCL Technologies Limited – Special Economic Zone No. 288, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India		Frankfurt London New Jersey Singapore
7	Implementation Mgmt	HCL Technologies Limited – Special Economic Zone No. 288, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India	HCL America, Inc. 11000 Regency Park, Suite 10 Cary, North Carolina 27518	London
8	Incident Mgmt	HCL Technologies Limited – Special Economic Zone No. 288, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk,		

11

#	Service Line	Agreed Service Locations		DR Onsite Locations
		Offshore	Nearshore	
		Bangalore 561 106, Karnataka, India		
9	Level 1 (Service Desk)	HCL Technologies Limited – Special Economic Zone No. 28B, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore –561 106, Karnataka, India	HCL Poland Sp. zoo 1st Floor KBP- 1000 Kraków Business Park Krakowska Street 280, 32-080 Zabierzów, Poland HCL America, Inc. 11000 Regency Park, Suite 10 Cary, North Carolina 27518 HCL Singapore Pte Ltd 31 International Business Park #05-02, Creative Resource Singapore 609921	
10	Level 2 (Service Operations)	HCL Technologies Limited – Special Economic Zone No. 28B, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India	HCL America, Inc. 11000 Regency Park, Suite 10 Cary, North Carolina 27518 HCL Singapore Pte Ltd 31 International Business Park #05-02, Creative Resource Singapore 609921 HCL Poland Sp. zoo 1st Floor KBP- 1000 Kraków Business Park Krakowska Street 280, 32-080 Zabierzów, Poland	
11	Problem Mgmt	HCL Technologies Limited – Special Economic Zone No. 28B, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India	HCL America, Inc. 11000 Regency Park, Suite 10 Cary, North Carolina 27518 HCL Singapore Pte Ltd 31 International Business Park #05-02, Creative Resource Singapore 609921 HCL Poland Sp. zoo	

12



#	Service Line	Agreed Service Locations		DB Onsite Locations
		Offshore	Nearshore	
			1st Floor KBP- 1000 Kraków Business Park Krakowska Street 280, 32-080 Zabierzów, Poland	
12	Process Assurance	HCL Technologies Limited – Special Economic Zone No. 288, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India		Frankfurt London New Jersey Singapore
13	Production Mgmt Gates	HCL Technologies Limited – Special Economic Zone No. 288, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India		
14	Testing Environment	HCL Technologies Limited – Special Economic Zone No. 288, 38, 39, 123(P), 124, 125, 126, 128 & 129(P), Bommasandra Jigani Link Road, Jigani Industrial Area, Attibele Taluk, Bangalore 561 106, Karnataka, India		
15	Trade Floor Support	Not applicable	Not applicable	Singapore Frankfurt London New Jersey

(10) INVOICING

10.1. The Supplier will invoice the relevant branch of DB (as indicated in the table at Exhibit H) directly for the relevant proportion of the Charges.

10.2. In accordance with Clause 12.1. of the Agreement (but subject always to Clause 12.2. of the Agreement), DB will pay the relevant Charges (and taxes, where applicable) through the relevant branch to the Supplier.

10.3. The total amount payable by DB to Supplier in any month is the amount set out for that month in Exhibit H. When DB has paid such amount to Supplier, DB will have discharged all of its liabilities for the Charges to Supplier for that month under this Framework Service Description.

9. This goes to prove that intention is only to be nearer to the client location. Accordingly all the Group Companies of the assessee collectively render services as per their own skill sets.

10. It is pertinent to note that the assessee had received remittances from various parties including from HCLT during the year under consideration. The details of various remittances received by the assessee from various parties for various projects are enclosed in pages 80 and 81 of the paper book.

Details of Remittances received from India during FY 2011-12

Annexure E

Name of Assessee	Name of the Party from whom remittance was received	Name of remittances	Address	Amount	Offered to tax (Yes/ No)	Reason for not offering for tax
HCL Singapore Pte Limited	HCL Technologies Limited	Application	806, Nehru Place 9G, New Delhi - 110019	238,970,736	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	HCL Technologies Limited	Infrastructure	806, Nehru Place 9G, New Delhi - 110019	297,481,576	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	NetApp India Pvt. Ltd.	Material	NetApp India Pvt. Ltd.,3rd floor Fair Winds Block,Bangalore,IN	$ 394,798	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	ASHOK LEYLAND LTD	Material	ASHOK LEYLAND LTD,No.1, Sardar Patel Road,Guindy, Chennai - 600032,IN	$ 232,833	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	LARSEN & TOUBRO INFOTECH LIMITED	Material	LARSEN & TOUBRO INFOTECH LIMITED,BUILDING NO - 3, SERENE PROP SEZ,NAVI MUMBAI,IN	$ 5,500	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	LARSEN & TOUBRO INFOTECH LIMITED	Material	LARSEN & TOUBRO INFOTECH LIMITED,TTC ELECTRONICS ZONE, PLOT NO EL200, SHIL MAHAPE ROAD,NAVI MUMBAI,IN,	$ 2,802	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	LARSEN & TOUBRO INFOTECH LIMITED	Material	LARSEN & TOUBRO INFOTECH LIMITED,SOUTH BLOCK, GATE NO.7,MUMBAI,IN,	$ 49,810	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	MAKEMYTRIP (INDIA) PRIVATE LIMITED	Material	MAKEMYTRIP (INDIA) PRIVATE LIMITED,TOWER A, SP INFOCITY,PLOT NO 243,GURGAON,IN,	$ 36,187	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	RELIANCE INDUSTRIES LTD	Material	Reliance Industries Limited,Ground Floor, Building no 8,Wing-A RCP, Thane Belapur Road,Navi Mumbai,IN,	$ 360,280	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	SATYAM BPO LIMITED	Material	SATYAM BPO LIMITED,LEVEL 5 , BLOCK II,CYBERPEARL,HYDERABAD,IN,	$ 35,833	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	US TECHNOLOGY INTERNATIONAL (P) LTD	Material	US TECHNOLOGY INTERNATIONAL (P) LTD,721 NILA, TECHNOPARK CAMPUS,TRIVANDRUM,IN,	$ 120,540	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	US TECHNOLOGY INTERNATIONAL (P) LTD	Material	US TECHNOLOGY INTL. PVT. LTD.,14TH F, TOWER B,BANGALORE,IN,	$ 41,723	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	US TECHNOLOGY	Material	US TECHNOLOGY INTL. PVT. LTD.5TH FLOOR	$ 111,340	No	

Name of Assessee	Name of the Party from whom remittance was received	Name of remittances	Address	Amount	Offered to tax (Yes/ No)	Reason for not offering for tax
HCL Singapore Pte Limited	Financial Technologies India Ltd.	Material	Financial Technologies India Ltd.,FT TOWER, CTS NO 256 & 257,MUMBAI,IN,	$ 2,286	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	MSC SOFTWARE CORPORATION INDIA PVT LTD	Material	MSC SOFTWARE CORPORATION INDIA PVT LTD,Software Development Centre, 6th Floor,PUNE,IN,	$ 5,435	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	ST ERICSSON INDIA PRIVATE LTD.	Material	ST ERICSSON INDIA PRIVATE LTD.,WIRELESS WING, OFFICE BLOCK BUILDING,GREATER NOIDA,IN,	$ 13,928	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	FIRST ADVANTAGE OFFSHORE SERVICES	Material	FIRST ADVANTAGE OFFSHORE SERVICES,LEVEL 1, EXPLORER BUILDING INTERNATIONAL TECH PARK,BANGALORE,IN,	$ 12,864	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	ST MICROELECTRONICS PRIVATE LTD.	Material	ST MICROELECTRONICS PRIVATE LTD.,PLOT NO1,KNOWLEDGE PARK -III,UTTAR PRADESH,IN,	$ 15,861	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'
HCL Singapore Pte Limited	ROBERT BOSCH ENGG & BUS.SOLUTIONS LTD.	Material	ROBERT BOSCH ENGG & BUS.SOLUTIONS LTD.,123, INDUSTRIAL LAYOUT,BANGALORE,IN,	$ 7,467	No	Tax not applicable under the provision of 'Income Tax Act, 1961' or 'DTAA'

11. We find that the assessee in the transfer pricing documentation had stated that HCLT is responsible for formulation of the overall group strategy ; that it assists its

Associated Enterprises (AEs) in their business operations ; that the activities relating to market research are undertaken by HCLT India's employees and these include research relating to the current industry trends, customer requirements etc ; that these activities provide the basis information on the industries to focus on and the nature of services that can be offered by HCLT Group ; that HCLT India being the entrepreneurial entity of the group takes the strategic decision of the industry / verticals to focus on and service offerings ; that the AEs track the requirements of the market and communicate group's service offerings and value propositions to the prospective clients ; that given the proximity to the clients, it is the responsibility of the AEs to provide feedback on market conditions to HCLT India so that it can be considered while devising the strategy ; that HCLT India primarily performs strategic and corporate functions such as legal and regulatory affairs, designing group policy, human resource management. Statutory and management accounting , treasury management, routine administration, and management of information systems for the AEs; that HCLT India is responsible for the overall supervision of the activities performed by offshore personnel to ensure that the services are performed as per the prescribed delivery schedules ; that the AEs are responsible for the overall supervision of the activities performed by onsite personnel apart from being responsible for day to day delivery of those services that cannot be provided remotely ; that the onsite personnel typically update the offshore project manager to ensure that there is a seamless delivery to the client. This style of functioning of HCLT India and the AEs (including the assessee herein) are not disputed by the revenue.

12. We find that HCLT India performs the entire billing and collection functions for itself as well as on behalf of the AEs (including assessee) by using its collection team which contacts the end customers of HCLT India as well as end customers of AEs directly for service fees collection. However, the entire billing and collections are made / received in the name of entity which has entered into contract with the end customer. Further Service liability lies with the entity signing the contract . Thus, for contracts where HCLT India has entered into contract, it bears the service liability risk on its own. Where AEs have entered into contracts, the AEs bear the service liability

risk. From an operational standpoint, the AEs bears the performance risk for services provided under the onsite billing model, which they perform using their own resources or resources hired from a third party contractor. However, HCLT India being the principal entity of the group is responsible for performance and delivery schedules, providing the relevant R&D and offshore services. Accordingly, HCLT India bears the primary risk of cost over-runs, loss of customer or possible legal action from customers if it does not meet customer expectations.

13. The main case of the revenue and the arguments of the ld. DR to treat the remittances made by HCLT to assessee as FTS are for the following reasons :-

i) Remittances have been made by HCLT to the assessee for providing technical services by the assessee for the contracts entered into by HCLT for which invoices were raised on the foreign clients and therefore, the business and profession of HCLT with respect to the remittances for the services rendered by the assessee is carried out in India.

ii) The statements recorded during survey proceedings reveal that entire responsibility of execution vis-à-vis foreign client remains with Indian team i.e. HCLT.

iii) The Project Heads of all the projects are located in India and therefore, any work carried out by the assessee's employees are being supervised by the Project Heads of HCLT, which shows that remittances are not for earning any income from a source outside India.

iv) The employees of HCLT have been enabled to apply the technology by the employees of the assessee and HCLT, after being so enabled, has rendered the services to client and raised invoices on them.

v) The statements recorded during the survey proceeding make it clear that Indian Project Heads have recruited the employees of the assessee and entire responsibility for execution remains with HCLT.

vi) Services have been made available in India.

vii) The remittances were in the nature of Fees for Technical Services/ Fees for Included Services, which has been made available by the employees of the assessee.

viii) Make available clause in the DTAA is not required to be satisfied in the case of transfer of technical plan or technical design.

14. The ld. AR before us met each of the aforesaid observations of the ld. AO by submitting as under:-

1. *Remittances have been made by HCLT to the assessee for providing technical services by the assessee for the contracts entered into by HCLT for which invoices were raised on the foreign clients and therefore, the business and profession of HCLT with respect to the remittances for the services rendered by the assessee is carried out in India.*

Reply: Services were performed by the assessee independently outside India and were also delivered directly to the overseas customers outside India, and no part of services were rendered in India. Such remittances were in connection with services utilized in a business or profession carried on by the customer outside India and services were neither delivered to HCLT nor were utilised in any business in India.

Invoices were raised by HCLT for services performed in the course of the business carried on by the assessee outside India and utilized in the business or profession carried on by the foreign customer outside India.

2. *The statements recorded during survey proceedings reveal that entire responsibility of execution vis-à-vis foreign client remains with Indian team i.e. HCLT.*

Reply: Both onsite and offsite personnel of the assessee and HCLT respectively are responsible for writing the code. The offshore teams of HCLT work directly with customer managers or through project managers in India and the onsite team engineers belonging to the assessee company work directly with foreign customer's managers.

In majority of the projects, the entire development environment is owned by foreign customer. The code and test scripts are worked on from foreign customers' servers and persisted directly on said servers. The integration is normally done through Customer build machines that integrate the various units of code into a solution.

Services were performed by the assessee independently outside India and were also delivered directly to the overseas customers outside India, and no part of services were rendered in India.

3. *The Project Heads of all the projects are located in India and therefore, any work carried out by the assessee's employees are being supervised by the Project Heads of HCLT, which shows that remittances are not for earning any income from a source outside India.*

Reply: As has been in the statements of the employees of HCLT recorded by the ld. AO and which allegedly is the basis for reopening the assessment, depending upon the situations, either the project manager sits in India or abroad. The offshore project lead or project manager of HCLT manages his offshore team in India, whereas the assessee's project lead manages his team independently, which executes work from the overseas locations directly on the customer's server. Both the project managers/ leads only coordinate with each other on need basis.

4. *The employees of HCLT have been enabled to apply the technology by the employees of the assessee and HCLT, after being so enabled, has rendered the services to client and raised invoices on them.*

Reply: Incorrect, as the assessee did not render any services to HCLT but rendered services directly to overseas customers outside India. The services were delivered directly on customers' servers and the assessee itself did not make it available to HCLT.

5. *The statements recorded during the survey proceeding make it clear that Indian Project Heads have recruited the employees of the assessee and entire responsibility for execution remains with HCLT.*

Reply: Factually incorrect. Indian company did not recruit employees for the assessee. Each team of HCLT and the assessee develops the particular modules as assigned to them, therefore, the delivery heads of respective teams of the assessee company and HCLT issues directions to their respective teams and the assessee was responsible for performance and execution of services delivered from its end.

6. *Services have been made available in India.*

Reply: Factually incorrect. Services have been rendered entirely outside India and delivered directly to the overseas customer.

7. *The remittances were in the nature of fee for technical services / fee for included services, which has been made available to HCLT by the employees of the assessee.*

Reply: The assessee did not render any services to HCLT but rendered services directly to overseas customers outside India.

8. *Make available clause in the DTAA is not required to be satisfied in the case of transfer of technical plan or technical design.*

Reply: Incorrect and arbitrary belief entertained by the ld. AO which is contrary to the correct legal position in this regard.

15. From the perusal of the Master Service Agreement wherein certain relevant clauses have already been reproduced above, we find that as per clause 5, the assessee has the primary responsibility for performance of software and IT services in respect of agreements entered into with overseas customers of HCL Group ; that as per clause 7, the assessee and HCLT acknowledge that performance of obligations under the Master Service Agreement may result in discovery, creation or development of inventions, methods, techniques, improvements, software designs, computer programs, strategies, data and other original works of authorship, which shall fully vest with the assessee on creation and be the property of the assessee and it is also acknowledged that the existing Intellectual Property Rights of the assessee, including any modifications or enhancements thereto that may be developed in the course of providing services under the Master Service Agreement would remain under the exclusive ownership of the assessee; that in case of default on the part of the assessee in performance of services, clause 11 of the Master Services Agreement unequivocally provides that the liability shall vest with the assessee itself ; that in case any damages, claims, demands, liabilities, costs and expenses arise due to errors or performance problems of the assessee's employees, clause 12 of Master Service Agreement again fixes the liability on the assessee to indemnify HCLT, unconditionally

and irrevocably ; that clause 13 of the Master Service Agreement further establishes that both parties, i.e., the assessee and HCLT are independent contractors and no party has supervisory power over the other. We find that this agreement is the foundation defining the scope of services to be performed by the assessee and HCLT duly defining their respective obligations to the overseas customers. We find that this agreement has not been treated by the revenue as sham or an agreement entered into for the purpose of evasion of tax. Rather the revenue has taken cognizance of this agreement and had only interpreted the contents thereon in a different manner so as to bring the activities carried out by the assessee within the ambit of domestic taxation as well as taxability under the Treaty. In our considered opinion, under the Global Delivery model, HCL group entities operate as independent contractors and services are not rendered by one entity to another. While the assessee performs services outside India in connection with contracts entered into by HCLT with foreign customers, no service or deliverable is provided by the assessee to HCLT and work is directly performed onsite at the foreign customer's location or nearshore delivery centers. In other words, the assessee does not provide any services to HCLT and the services are rendered by the assessee directly to the customers located outside India, i.e., no part of the services rendered by the assessee are transferred to India. Thus, as per the business model, the on-site services are entirely performed by the assessee from outside India and delivered for ultimate consumption or utilization by foreign clients in their business outside India. Accordingly, we appreciate the arguments of the ld. AR that the overall responsibility with HCLT is only to facilitate common linkage between HCLT, HCL group entities and customers and that the fact that HCLT is the facilitator or single contact point for the end customer does not lead to the conclusion that services are being provided by the assessee to HCLT ; that such arrangement is entirely meant for administrative convenience of the end customers, so as to circumvent the need to approach multiple entities time and again for the desired services. All the services are facilitated from one place by HCLT, which acts like the leader in a consortium. We are of the considered opinion that the Master Service Agreement entered into between HCLT and the assessee, including other HCL group entities is in the nature of a business arrangement, by which the dominant intention

of the parties to come together and serve the overseas customers is fulfilled. Receipt of payment from the overseas customer by HCLT which further distributes the same to the group entities, including the assessee, for their share of the work, cannot be held to be income in the hands of the assessee and liable to tax in India. In our view, the payment received by the assessee from HCLT is only in the nature of revenue share and should not be construed to mean that services were provided by the assessee to HCLT. This view of ours is further fortified by the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs NIIT Ltd reported in 318 ITR 289 (Del). It would be relevant to address the primary facts and dispute that arose in the case of NIIT Ltd to understand as to how the said decision applies to the facts of the present case before us. In the case of NIIT Ltd, it was engaged in business of providing computer education and training and had entered into agreements with franchisees for running education centers at various metro cities. Under the said agreements, franchisees were providing NIIT courses under license from the assessee and the franchisees were to pool their independent resources for purpose of providing computer education to students and were further required to provide infrastructure facilities like classroom facility, equipment, furniture, fixture, administrative set-up, etc. Fees collected from students were deposited in the account of NIIT and then the same was shared with the franchisees in accordance with the terms of the franchisee agreement. NIIT for the purpose of its convenience had categorized the said fees shared as marketing claim and infrastructure claim. The assessing officer treated infrastructure claim paid to franchisees as rent paid and held that NIIT was liable to deduct tax therefrom u/s 194-1 of the Act. The Hon'ble Delhi High Court, affirming the decision of the Tribunal, held that having regard to the intent of the parties in coming together and the dominant purpose, the arrangement between the parties was a franchisee agreement and not a lease agreement; accordingly, it could not be said that rent was being paid by NIIT to the franchisees.

16. We find that extensive arguments were advanced by both the parties before us regarding the taxability under the domestic law in respect of the amounts received by

the assessee from HCLT. We deem it fit to address the same with regard to specific provisions of the domestic law as under:-

a) As per the provisions of section 5 of the Act, the total income of a non-resident will include all income which are:

- received or deemed to be received in India; or
- accrues or arises or is deemed to accrue or arise in India

In the instant case, there is no dispute that the amounts were received outside India by the assessee. Hence the provisions of section 5(2)(a) of the Act are not applicable. Since there is no dispute that the services were rendered outside India to the customers outside India, no part of the income accrues or arises or deemed to accrue or arise in India and accordingly the provisions of section 5(2)(b) of the Act are not applicable in the instant case.

b) Section 9(1) of the Act specifies the incomes which would be deemed to be accrue or arise in India. The case of the revenue is that amounts received by assessee from HCLT falls under the category of 'fee for technical services (FTS)' taxable u/s 9(1)(vii) of the Act. Let us examine the same now. Section 9(1)(vii) reads as under:-

> *"(vii) income by way of fees for technical services payable by-*
>
> *(a) the Government or*
>
> *(b) a person who is a resident, except where the fees are payable in respect of services utilized in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or*
>
> *(c) a person who is a non-resident, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India."*

16.1. In the instant case, HCLT is an Indian entity and had paid monies to the assessee (overseas entity). So it falls under the 'Source Rule' in clause (b) of section 9(1)(vii) of the Act supra. But the said provision contain an exception, wherein it

provides that FTS payable by an Indian resident shall not be chargeable to tax in India in the hands of the overseas recipient if –

i) fee is payable in respect of services utilized in a business or profession carried on by such resident outside India , or

ii) fee is payable for the purposes of making or earning any income from any source outside India.

16.2. In the instant case before us, both the aforesaid conditions provided in exception to section 9(1)(vii)(b) of the Act stand fulfilled. Hence it cannot be taxable as FTS under section 9(1)(vii) of the Act.

17. We find that the ld. AR before us made an alternative argument on **without prejudice basis**, HCLT provides both onsite and offshore services to the customers outside India. Onsite services are carried out through a separate business segment. Such business carried on by the HCLT outside India utilizes the services of the assessee to provide onsite services outside India, therefore the payments are made by the HCLT to the assessee for services utilized business of HCLT carried by HCLT outside India. On this count also, such payments made by the HCLT to the assessee cannot be construed as FTS in the hands of the assessee. **In any event, since onsite services are carried out through a separate business segment and it is an independent identifiable source of earning income outside India, the income earned from such onsite services is from service rendered outside India and hence automatically the source is also outside India. Hence as per the 'Source Rule' itself, the same would be falling under the exception provided in section 9(1)(vii)(b) of the Act.** In this regard, we find that the reliance placed by the ld. AR on the decision of *Hon'ble Allahabad High Court in the case of Seth Shiv Prasad vs CIT reported in 84 ITR 15 (All)* would be relevant wherein the expression 'source of income' was defined and discussed as under:-

"Section 6, Indian Income-tax Act, 1922, enumerates the heads of income chargeable to income-tax. One of the heads is "income from other sources". Sub-section (1) of section 12 provides :

> *"(1) The tax shall be payable by an assessee under the head 'income from other sources' in respect of income, profits and gains of every kind which may be included in his total income (if not included under any of the preceding heads)".*

It is clear that the head contemplates income, profits and gains of different kinds and, therefore, from different sources. The expression "income from other sources" itself indicates that more than one source of income is contemplated.

What is a "source of income"? The expression has been used in several places in the Act. In section 2(11) the definition of "previous year" envisages a different previous year in respect of each separate source of income. Section 4, which is concerned with the application of the Act, declares that the total income of a person includes all profits and gains, from whatever source derived, which falls within the categories set out there. And so on. The first authoritative judicial pronouncement appears in Rhodesia Metals Ltd. (Liquidator)v. Commissioner of Taxes [1941] 9 ITR (Suppl.) 45, 52 (PC), where the Privy Council approved of the passage quoted by Mr. Justice de Villiers from Mr. Ingram's work on income-tax :

> *"Source means not a legal concept but something which a practical man would regard as a real source of income; the ascertaining of the actual source is a practical hard matter of fact".*

This quotation was referred to by a Full Bench of our court in Rani Amrit Kunwar v. Commissioner of Income-tax [1946] 14 ITR 561 (All.) [FB]. In that case the learned Judges considered that an agreement or an order of the court requiring the payment of a periodical sum could be regarded as a source of income. In the case of income from business, which is a separate head under section 6, each business has been treated as a distinct source of income. The decision of the Madras High Court in Commissioner of Income-tax v. E.K. R. Savumiamurthy [1946] 14 ITR 185 (Mad.) proceeds on that basis. In Commissioner of Income-tax v. Lady Kanchanbai [1962] 44 ITR 242 (MP), the Madhya Pradesh High Court observed that each branch of a business could be described as a distinct source of income. A source of income, therefore, may be described as the spring or fount from which a clearly defined channel of income flows. It is that which by its nature and incidents constitutes a distinct and separate origin of income, capable of consideration as such in isolation from other sources of income, and which by the manner of dealing adopted by the assessee can be treated so.

Reverting to section 12, we find that income from dividends has been treated as one kind of income. What is the source of dividend income? It is the shareholding held by the assessee; and there can be as many sources of income as there are shareholdings. Shareholding in different companies constitute different sources of income. The shares of one company may be treated by the assessee as a single shareholding. The

assessee may also, for good reason, treat the shares of the same company as constituting a number of separate and distinct shareholdings. The shares may be divided into groups denned by reference to the circumstances in which they were acquired, or to the purpose for which they were purchased, that is, some as an investment holding and others as a share-dealer's stock-in-trade, or to the category or class to which they belong, for example, whether they are preference or equity. There may be other criteria reasonably defining them into separate and distinct shareholdings, and, therefore, as distinct and separate sources of income.

(emphasis supplied by us)

18. We find that the ld. AR explained the modus operandi of raising of bills by HCLT and its affiliates by submitting as under:-

"Generally in the customer contracts, HCLT and HCL affiliates are the signatories to the Master Service Agreement. Although, there may be cases where only HCLT signs the agreement or where only HCL affiliate signs the agreement, but the onsite services are normally performed by HCL affiliates and offshore services are performed by HCLT. The invoices are raised based on the Statement of Work ("SOW") / Purchase Order ("PO") issued by the customer under the Master Service Agreement signed between HCL Group and the customer.

Notwithstanding that the offshore services are provided by HCLT, onsite services are rendered by HCL affiliates, depending upon the SOW/ PO issued by the customer, the following scenarios emerge:-

- *HCLT raises consolidated invoice on customers, HCL affiliates raise invoice on HCLT for on-site services.*
- *HCL affiliates raise consolidated invoice on the customer and HCLT raises invoice on the respective HCL affiliate for offshore services;*
- *Both, HCLT and HCL affiliate raise separate invoice to the customer for the respective services rendered - such cases may be few and far between.*

In the first scenario as described above, where HCLT raises a consolidated invoice to the customer, HCLT receives the entire consideration for both, offshore services performed by itself as also for on-site services rendered by HCL affiliates. HCLT, accordingly, pays to HCL affiliates for the on-site services rendered by HCL affiliates directly to the customers, which is billed as part of the consolidated invoice raised by HCLT on the customers. In the case of the assessee, no part of assessee's work is sent to India for utilization of services in India; the entire onsite services or software program developed by the assessee directly gets integrated into the client's server abroad, hence, the question of utilization of services within India does not arise at all."

19. It is not in dispute that both the onsite and offsite team of HCL group duly possess their own technical skills of their qualified Engineers and are independently capable of rendering respective services. From the above modus operandi, it is clear that both onsite and offsite team comprises of their own technically qualified engineers who have independent know how and capabilities. Onsite services are separately identifiable and independently reviewed as well as approved by the client, basis which the billing is done. **The mere fact that HCLT has raised a composite invoice for administrative convenience of its customers for the aforesaid joint efforts of both the teams, should not necessarily do away the independence of the onsite services. As stated earlier, it is an independent identifiable segment capable of earning source of income outside India for services rendered outside India.** The payments received by the assessee from HCLT are for services that are rendered to the customers located outside India and that contract for providing such services has been effectively concluded outside India. Further, the onsite services are rendered by the assessee to the foreign customers directly. These services inevitably require the physical presence of Engineers at the site due to customer preferences or security reasons or time zone requirements, as the case may be. The place of rendering 'onsite software services' will always be outside India. In that view of the matter, the onsite software services are entirely performed and delivered outside India for ultimate consumption or utilization by non-resident customers for their business outside India. **(emphasis supplied by us)**

20. The ld. AR before us met each of the observations made by the ld. AO to record a contrary findings in the final assessment order as under:-

> (i) *Observation: The ld. AO has alleged that the assesee was only responsible for providing services to HCLT and that, therefore, technical services were rendered to HCL Technologies Ltd. Further, it is alleged that there was complete interdependence between the assessee and HCLT and without the technical inputs from the assessee, HCLT would not be able to complete the project as per the needs, requirements and specifications of the client.*

Rebuttal: In this regard, it is submitted that while the two parties coordinate with each other and perform the specific leg of services assigned to them simultaneously, they are completely independent of each other, transact on arm's length basis, and do not supervise the activities of one another. Further, the two parties provide services to the foreign clients directly by performing services on the servers of such clients located abroad. The same is supported by the relevant clauses of the Master Services Agreement reproduced above as well as the business model explained above.

(ii) Observation: The allegation in the assessment order that the Project Heads of HCLT who sit in India, supervise the work done by the assessee, is baseless and unsubstantiated.

Rebuttal: It is submitted that the Project Heads are merely to ensure that the services as have been contracted with the end-customers are delivered in the manner it has been agreed. The Project Heads merely ensure proper co-ordination of services between HCLT and the assessee which is to be delivered to the end-customers. It is reiterated that the employees of the assessee do not provide any services to employees of HCLT. Both the teams undertake their work independently and there is no case that the employees of the assessee render services to employees of HCLT only pursuant to which employees of HCLT are enabled to render the services to the end-customers. Therefore, it is submitted, that HCLT in no way whatsoever exercises supervisory jurisdiction over the assessee.

(iii) Observation: It is further alleged in the assessment order that majority of the work, major part of the workforce, and major value creation in respect of services performed for foreign clients is in India and that therefore the source of income is in India.

Rebuttal: In this regard, it is submitted that the factors considered by the ld. AO for arriving at a conclusion that the source of income is in India are irrelevant and in the teeth of settled judicial position. Further, the aforesaid findings of the ld. AO are based on the statements recorded of the employees of the said company during the course of survey in the case of that company, which, it is submitted, cannot be the basis for determining income chargeable to tax in India in the hands of the assessee. In any event, the statements recorded from employees actually support the contentions of the assessee.

(iv) Observation: In the assessment order, following adverse observations have been made by relying exclusively on the agreement with CISCO:

> *"From the above discussion, it emerges that it is HCLT which is responsible to the client for the development and delivery of the final product to the client as per the specifications and requirements provided by the client. The regular periodic monitoring of the progress of the work by HCLT shall be done by the client by way of meetings conferences and presentations etc. The penal damages/ indemnification liabilities shall lie on HCLT. There is a continuous,*

dynamic and active engagement between HCLT and the client for the purpose of development and delivery of the product. HCLT may, at its discretion, sub-contract development of a part of the product to its AE. The AE in that regard shall remain responsible in performance of its duties towards HCLT directly and not to the client. The AE does not assume or bear any liability with regard to penal damages/ third party indemnification towards the client. The above facts clearly reveal that the AE is rendering services to HCLT for its part of the performance of sub-contract between AE and HCLT. The AE receives payment from HCLT with regard to performance of such services for HCLT. The source of income for the AE, therefore, lies in India."

Rebuttal: Firstly, by any stretch of imagination, the assessee cannot be deemed to be sub-contractor in the view of the fact that as explained hereinabove, both the assessee and HCLT perform the respective onsite and offshore work independently and the respective portion of the work so performed is delivered directly to the customer. Further, we would like to reproduce below Clause number 1.6. of CISCO agreement which clearly implies the intention of CISCO to treat both the assessee and HCLT as "Joint/ Co- Executors" rather than "Sub-contractors":

"Designer Property shall mean such items provided by Designer or its Affiliates as listed and described in Exhibit B to each Product Project Specifics, any and all Background Property, and all Intellectual Property Rights related thereto."

Clause 14.9 of the agreement with CISCO, as reproduced in the assessment order by the ld. AO, clearly states that the designer may delegate the rights to develop and deliver the product with the prior permission of the customer. The said clause is reproduced hereunder:-

"14.9 ASSIGNMENT

Designer may not assign its rights or delegate its obligation hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of Cisco. Any attempted assignment or delegation without Cisco's prior written consent will be void. Cisco may, in Cisco's sole discretion, assign this Agreement or any rights granted herein, in whole or in part, to any Cisco subsidiary or Affiliate. The rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns."

21. In view of the above, we are unable to comprehend ourselves to accept to the argument of the ld. DR before us that since payer of income (i.e HCLT) to the assessee is in India and accordingly the source of income is to be construed as arising from India. In our considered opinion, the place of location of the payer (i.e HCLT) is

an irrelevant consideration. Undoubtedly, the contract is concluded with the customer in the country of the customer which is outside India; customer is located outside India ; source of income is outside India and services are rendered outside India to Cisco and Deutsche Bank (i.e two agreements examined by the ld. AO). Both HCLT and the assessee work on the server of the customer located outside India and there is no transmission of data or server from the customer location to India. Both HCLT and the assessee jointly render the services to the customer located outside India and they do not render any services to each other.

22. In our considered opinion, the broad perusal of the agreements entered into between the parties clearly postulate a situation that both HCLT and the assessee are jointly rendering services to the customer located outside India ; billing is done on a consolidated basis on the customer by HCLT (including the services rendered by the assessee to the customer located outside India) ; payments are received by HCLT from the customer located outside India and thereafter the revenue is shared by the HCLT with the assessee for the proportionate volume of services rendered by the assessee to the customer. **It is effectively the sharing of revenue between HCLT and the assessee qua the customer located outside India**. HCLT is answerable to the client located outside India and the assessee is answerable to HCLT for any mistakes pursuant to indemnification clause agreed upon in their agreement. Further the agreement with Cisco and Deutsche Bank (which had been considered by the ld. AO) specifically prohibits sub-contracting activity by the HCLT. However, the said agreement permit HCLT to use the services of its affiliates situated across the globe for rendition of services in a seamless and smooth manner.

23. We find that the ld. DRP vide para 3.3.7. of its directions u/s 144C(5) of the Act had stated as under:-

> *"3.3.7. In brief, both HCLT and the assessee (HCL Singapore Pte Ltd.) work on the server of the client. Major part of the development of modules and writing of the software application codes is carried out by HCLT and some part of it is being done by*

the assessee (HCL Singapore Pte Ltd.). Both the HCLT and the assessee (HCL Singapore Pte Ltd.) are working together on the server of the client to develop a final product which is to be delivered to the client."

23.1. In view of the above, we find the allegation leveled by the ld. AO in his order that services were rendered by assessee to HCLT is in direct contravention to the findings recorded by the ld. DRP. Needless to mention that the observations of the ld. DRP are binding on the ld. AO as per section 144C(10) of the Act.

24. We further find that if the contention of the ld. AO i.e., the amount paid to the assessee by HCLT is to be considered towards the onsite software services provided by HCLT in the course of carrying on its business of onsite services were to be accepted, such business of providing onsite services would be considered as outsourced by HCLT to the assessee. Such business of providing onsite services is carried on outside India, in as much as such onsite services are performed outside India and is also delivered directly to the customers outside India. HCLT as a corollary would be considered as having availed the services of the assessee outside India in respect of and for the purpose of business of providing such onsite services to the customer outside India. Therefore, the amount paid by HCLT to the assessee is for the services utilized for business of onsite services carried on by HCLT outside India. Thus, such receipts in the hands of the assessee would not be taxable in India in view of first limb of the exception carved out in clause (b) of section 9(1)(vii) of the Act and cannot be deemed to accrue or arise in India.

25. Even if it has to be assumed that the payment made by HCLT for onsite services rendered by the assessee is to be construed as FTS, in any event, we find that Section 9(1)(vii)(b) of the Act carves out a second exception to the taxability of FTS paid by a resident, wherein the fee for technical services payable in respect of services utilized for the purpose of making or earning any income from any source outside India is not an income within the ambit of section 9 of the Act. We find that HCLT had concluded

its agreements with the customers in the country of the customers which is situated outside India; that the onsite services are rendered by the assessee outside India at the customer's location and no part of the service/ software program is sent or performed in India ; the services are directly performed on the customer's server located abroad and delivered directly to them outside India ; and that the payment for onsite services is also received by HCLT from outside India in foreign exchange from the foreign customers. Hence it is very clear that the source for making or earning any income of the payer of fee for technical services, in the present case, is outside India, and therefore not taxable in India. In this regard, we find that the ld. AR rightly placed reliance on the decision of co-ordinate bench of *Delhi Tribunal in the case of Chander Mohan Lall vs ACIT reported in 134 taxmann.com 292 (Delhi Trib)* wherein the issue of making payment by resident Indian lawyer to the foreign attorneys for certain services rendered by them (i.e foreign attorneys) outside India were sought to be treated as FTS was subject matter of consideration. The Tribunal held as under:-

> ***"21.*** *At this stage, we must observe, learned Departmental Representative has submitted before us that the payments made by the assessee being in the nature of FTS are taxable by applying the source rule. In our view, even assuming that payments made by the assessee come within the ambit of section 9(1)(vii) of the Act, nonetheless, the exception provided under clause (b) to Section 9(1)(vii) would apply. We have already examined the nature of services provided by the foreign attorneys. It is a fact that Indian/overseas clients engage the assessee for availing certain services. In turn, assessee engages the foreign attorneys to perform certain services which are required to be performed in foreign jurisdictions. There is no privity of contract between the assessee's clients and foreign attorneys. In fact, the clients are no way concerned, whether the assessee does the work himself or engages others. Thus, the source of income of the assessee through services rendered by non-resident attorneys in foreign jurisdictions is located outside India. That being the case, exception provided in clause (b) of section 9(1)(vii) would apply. Hence, the payments are not taxable as FTS.*
>
> ***22.*** *In any case of the matter, the departmental authorities have disallowed a part of the expenditure for the only reason that assessee failed to furnish the TRC of the payees. The departmental authorities have not at all examined the taxability of payments under the applicable DTAAs.*
>
> ***23.*** *Be that as it may, on overall analysis of facts and applicable statutory provisions as well as keeping in view the ratio laid down in the decisions cited before us, we hold that the payments made to foreign attorneys are not chargeable to tax under the provisions of the Act, in terms of section 195 of the Act. Therefore, the assessee was*

not required to withhold tax on the payments made. Accordingly, we delete the disallowance made under section 40(a)(i) of the Act."

25.1. We find that similar view was also taken by the *Hon'ble Gujarat High Court in the case of PCIT vs Motif India Infotech (P) Ltd reported in 409 ITR 178 (Guj)*. In that case, that assessee was engaged in the business of software development and was providing software related services to its overseas clients. It hired services of a Philippines company for rendering human resource and infrastructure services to its foreign based client. The Hon'ble Gujarat High Court held that FTS paid by that assessee to the Philippines company clearly fell in the exception contained in section 9(1)(vii)(b) of the Act. It was held that such fee was paid by the assessee for the purpose of making or earning any income from a source outside India. The source of income, namely that assessee's customers, being the foreign based companies.

25.2. Respectfully following the aforesaid decisions that are binding on us, it emerges that source of income refers to something from where the income flows. In the present case, the fact that the services rendered by the assessee were utilized in respect of customers of HCLT located outside India ; the ultimate delivery of the software was outside India, i.e., at the customers' location; the contract was effectively concluded outside India; that no part of the services rendered by the assessee are transferred to India; that the source of income of the payer in respect of which payment was made to the assessee was outside India and hence, the said payment in the hands of the assessee did not accrue or arise in India in terms of section 9(1)(vii)(b) of the Act.

26. The ld. AR submitted that the onsite software services are essentially and invariably performed onshore at the customer's location or nearshore delivery centers, directly by the employees of the assessee. These services inevitably require the physical presence of engineers at the site to customer preferences or security reasons

or time zone requirements, or for any other reasons, as the case may be. The services of the onsite of the assessee, inter alia, include the following:

- Liaising with the overseas customers for gathering their requirements;
- Software module development and coding;
- Application operation, application maintenance, application development and testing, etc;
- Support services during specific country's business hours.

26.1. We find that the aforesaid activities are performed by the assessee onshore at the location of the customers or at the customer's server located abroad, which is not disputed before us. The requirement analysis and application design documents prepared by the onsite team are stored in client's environment itself and can be accessed by the HCLT offshore team only upon client granting permission or access. The mere fact that the assessee is engaged in understanding the requirements of the customers and passes on the requirement plan to respective development teams for designing and coding the software module does not, per se, constitute an inter-dependent function of the HCL group. Rather, it has to be understood in a holistic manner that these are well-coordinated activities, meant to support the entire group in delivering quality products and services to the ultimate customers. All the software development work is generally divided between onsite and offsite team based on discussion with customers. The respective onsite and offsite engineers work directly with the customer's engineers and managers. The entire development environment is customer owned. On the basis of the discussions with the customer's project manager, the software work is broken into different modules and each team of HCL group of companies is allocated the development of their own module based on which entire software product is developed. It is reiterated that no team is dependent on any other team's technical capabilities or work. At best, the teams are dependent upon each other for business reasons as independent partners who have come together to provide holistic service to the client. It is submitted that both onsite and offsite team comprises of their own technically qualified engineers who have independent technical knowledge and capabilities.

27. We find that onsite software services represent a separate and independent function of the overall business and therefore, income earned by the assessee from such activities from customers located outside India has its source outside India. As a corollary, the payments received by the assessee from HCLT for performance of the above onsite services are essentially fees for services utilized for the purpose of earning income from a source outside India by HCLT. We have already held supra that onsite services are an independent identifiable source of income. Similar is the case of with offshore services also. Hence we find lot of force in the argument of the ld. AR that HCLT maintains a clear demarcation between these activities as the team size allocated at respective onsite and offsite location is always pre-determined and agreed by the customers. Hence, the entire development process is customer driven and all projects are undertaken under the oversight of the customer's project manager. Further, such division is based on the roles and responsibilities of each team. Under the terms of SoW, both teams work independently on the client's server and the customers are billed according to the time and efforts of each team.

28. Hence it could be safely concluded that the income of the assessee from providing onsite services constitutes a separate source of income and independently identifiable source of income. Accordingly the amount paid by HCLT to the assessee, even if construed as fee payable in respect of the services utilized in a business carried on by HCLT outside India and for the purpose of earning any income from any source outside India, stands squarely covered by the exceptions carved out under section 9(1)(vii)(b) of the Act and therefore, does not partake the character of income deemed to accrue or arise in India in the hands of the assessee.

29. The ld. DR before us vehemently submitted that in the light of amendments in section 9 of the Act, first by insertion of Explanation to the said section by Finance Act, 2007 w.r.e.f. 01.06.1976 and subsequently by substitution of the same by

Finance Act, 2010 w.r.e.f. 01.06.1976, the rendition of services outside India by the assessee on the server of foreign client is irrelevant and, therefore, services provided by the assessee to HCLT is taxable in India under section 9 of the Act. In other words, the ld. DR argued that the place of rendition of services is not relevant for the purpose of exclusion clause under section 9(1)(vii) of the Act. In this regard, we find that the *Hon'ble Supreme Court in the case of Ishikawajima Harima Heavy Industries Ltd vs DIT reported in 288 ITR 408 (SC)* had held that fees for technical service would be liable to tax in India only when the services are rendered in India and utilized by the recipient in India. This decision was admittedly rendered prior to the amendment brought in section 9(1)(vii) of the Act by the Finance Act 2007 and Finance Act 2010. In this regard, it would be relevant to reproduce the Explanation inserted in section 9(2) with retrospective effect from 01.06.1976 as under:-

> *Explanation- For the removal of doubts, it is hereby declared that for the purposes of this section, income of a non-resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of sub-section (1) and shall be included in the total income of the non-resident, whether or not.-*
>
> *(i) the non-resident has a residence or place of business or business connection in India, or*
>
> *(ii) the non-resident has rendered services in India*

30. In our considered opinion, the aforesaid amendment vide insertion of Explanation to section 9 does not nullify the exception provided in section 9(1)(vii)(b) of the Act. In other words, even where the non-resident has provided services outside India and received payment therefore, the payment would not be deemed to accrue or arise in India, if the services provided by the non-resident are utilized by the resident in a business carried on outside India and/ or for the purposes of earning income from any source outside India. This view of ours is further fortified by the decision of *Hon'ble Bombay High Court in the case of CIT vs IndusInd Bank Ltd reported in 415 ITR 115 (Bom)*, wherein, in the context of the obligation to deduct tax at source u/s 195 of the Act after the retrospective amendment in section 9 of the Act made vide Finance Act, 2010 in respect of technical services rendered by the non- resident service provider, the Hon'ble High Court observed that the condition precedent for attracting the

obligation for deduction of tax at source is that the services should be utilized in India, even though the requirement of rendition of services in India is no longer relevant. In that case, the assessee Bank decided to raise capital abroad through the issuance of Global Depository Receipts ("GDRs"). The assessee paid Amas Bank (UAE), agency charges on which tax was not deducted at source on the ground that the foreign payee had no tax obligation in India. The stand of the assessee was negated by their Assessing Officer and CIT(A). The Tribunal, however, reversed the decision of the lower authorities and allowed the bank's appeal, essentially observing that "services rendered by Amas Bank were purely of commercial nature and bore the character of income arising to it wholly outside India, emanating from commercial services rendered by the Bank in the course of carrying on of its business wholly outside India. Such services were neither rendered in India nor utilized in India and therefore, such services did not partake the character of fees for technical services liable to tax in India. On appeal by the Revenue, the Hon'ble High Court dismissing the appeal observed as under:

> ***"6.*** *As is well known, under sub-section (1) of Section 195 of the Act, any person responsible for paying to a non-resident any other sum chargeable under the provisions of the Act (not being income chargeable under the head "salaries"), would at the time of credit of such income to the account of the payee or at the time of payment in cash or by issuance of cheque or draft or by any other mode, whichever is earlier deduct income tax thereon at the rates in force. It is, thus, indisputable that the requirement of deducting tax while making such payment would arise only if payee has the liability to pay tax on such payment. In case of GE India Technology Centre (P.) Ltd. v. CIT [2010] 7 taxmann.com 18/193 Taxman 234/327 ITR 456 (SC), this aspect was elaborately discussed by the Supreme Court. It was held that the expression "chargeable under the provisions of the Act" in Section 195(1) shows that the remittance has got to be of a trading receipt, the whole or part of which is liable to tax in India. It was observed that if the tax is not so assesseable, there is no question of tax at source being deducted. With this background, we may revisit the nature of transaction between the assessee and Amas Bank. We may recall the assessee desired to raise capital through Global Depository Receipts. To assist the assessee in such process, the assessee had engaged Amas Bank for certain financial services. The payment was made for such financial services rendered by Amas Bank. The GDR was issued outside India. The services were rendered by Amas Bank outside India for raising such funds outside India. It was, in this context, the Tribunal had, as noted above, come to the conclusion that the services rendered by Amas Bank were neither rendered in India nor utilized in India and the charterer of income arising out of such transaction was wholly outside India emanating from commercial services rendered by the bank in course of carrying business wholly outside India. The Tribunal was, therefore, correctly of the opinion that such services cannot be included within the*

expression technical services in terms of Section 9(1)(vii)(b) read with Explanation to Section 9.

7. *Learned counsel for the Revenue, however, put stress on two successive amendments. First of inserting the Explanation to Section 9 by Finance Act of 2007 w.r.e.f. 1.6.1976 and subsequently replacing it by by Finance Act of 2010 w.r.e.f. 1.6.1976. By virtue of this explanation, whether or not the non-resident has a residence or place of business connection in India, or had rendered services in India, would be inconsequential when one decides whether in terms of Section 9(1) of the Act, the income was to be charged in India or not. He submitted that Section 9 gives rise to deeming fiction which must be allowed to take its full effect.*

8. *As is well known, Section 9(1) of the Act specifies the incomes which would be deemed to be accrued or arise in India. Clause (vii) thereof reads as under:—*

"(vii) income by way of fees for technical services payable by—

(a)		*the Government ; or*
(b)		*a person who is a resident, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or*
(c)		*a person who is a non-resident, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India."*

9. *An explanation was inserted at the end of Section 9 by Finance Act of 2007, w.r.e.f. 1.6.1976 which reads as under:—*

"Explanation - For the removal of doubts, it is hereby declared that for the purposes of this section, where income is deemed to accrue or arise in India under clauses (v), (vi) and (vii) of sub-section (1), such income shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India."

As per this explanation, where income is deemed to accrue or arise in India under clauses (v), (vi) and (vii) of sub-section (1), such income would be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India. This explanation starts with expression "For the removal of doubts, it is hereby declared……". Through this explanation, thus, the legislature desired to delink the question of income deemed to have accrued or arisen in India from the requirement of the non-resident having a residence or place of business or business connection in India. This, however, did not imply that the basic requirement of income having arisen in relation to the activity in

India and having connection to the consumption of such services in India was totally done away with. This explanation was subsequently substituted by the following explanation by the Finance Act of 2010 w.r.e.f. 1.6.1976:—

"Explanation.-For the removal of doubts, it is hereby declared that for the purposes of this section, income of a non-resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of sub-section (1) and shall be included in the total income of the non-resident, whether or not,—

(i) the non-resident has a residence or place of business or business connection in India; or

(ii) the non-resident has rendered services in India."

Like the previous explanation, the present explanation also contains the expression "For the removal of doubts, it is hereby declared that ….". It provides that for the purpose of the said Section, the income of a non-resident would be deemed to accrue or arise in India under clauses (v),(vi) and (vii) of sub-section (1) and would be included in the total income of the non-resident whether or not such non-resident has a residence or place of business or business connection in India, or, the non-resident has rendered services in India. This explanation further seeks to delink the concept of income deemed to have accrued or arisen in India to the non-resident having rendered services in India. In case of CIT v. Gujarat Reclaim & Rubber Products Ltd. [2017] 79 taxmann.com 352/[2016] 383 ITR 236 (Bom.), this Court had come to the conclusion that payment of commission to non-resident agent which commission was not an income deemed to accrue or arise in India would not invite the requirement of deducting tax at source. In case of Jindal Thermal Power Co. Ltd. v. Dy. CIT (TDS) [2009] 182 Taxman 252/[2010] 321 ITR 31 (Kar.) in the context of Section 9 of the Act, the Karnataka High Court observed that the twin requirement of rendering of services in India and utilization of services in India would have to be satisfied. The Court was examining the effect of the newly inserted explanation to Section 9 by virtue of Finance Act of 2007. We are conscious that subsequent explanation which replaced the previous one by the Finance Act of 2010 has somewhat widened the scope of applicability of Section 9. However, the question of non-resident having rendered services in India is quite different from such services having been consumed by the assessee in India.

***10.** In the result, we do not find any error in the view of the Tribunal. The appeals are dismissed."*

31. Hence the contentions raised by the ld. DR are not accepted herein. In view of the aforesaid observations and respectfully following the various judicial precedents relied upon hereinabove, we hold that the payment made by the HCLT to the assessee cannot be construed as income that accrues or arises in India or deemed to accrue or arise in India and hence cannot be brought to tax as FTS u/s 9(1)(vii)(b) of the Act as it falls under the exceptions thereon.

32. In our considered opinion, the ld. AO was carried away by the statements recorded from the employees during the course of survey conducted on HCLT by the TDS officer. However, we find that the ld. AO had merely cherrypicked part of the statements recorded without considering the statements holistically. We have gone through the statements recorded from Shri Amit Roy, Executive Vice President – Taxation ; Shri Rajesh Gupta , Vice President- Taxation ; Shri Jaishankar Mahadevan , Vice President HCL – Cisco Delivery ; Shri Rajneesh Rathi, Global Technology Director; Shri Ram Rajamanikam, Associate Vice President; Shri Pudur Radhakrishnan Sashikumar ; Shri Sanjay Kumar Kapoor, Global Operation Director ; Shri Salil Kumar Bhattacharjee, Vice President Media Entertainment and Publishing Vertical ; Shri Girish Sundaram, Associate Vice President ; Shri Sreedhar Chittamuri ; Shri Ajay Tomar, Operations Director, Life Sciences ; Shri Madhumit Singh Dixit, Senior Vice President, Consumer Electronics ; Shri Dalip Sachdeva , Director-Taxation; Shri Anil Singh, Director-Taxation; Shri Ravi Bansal, Operation Director and Shri Kaushik Mazumdar. We deem it fit and address the replies given by the employees in response to specific queries raised by the Survey team as under:-

"Statement of Shri Jaishankar Mahadevan, Vice President HCL – Cisco Delivery

Q.6 Please explain the nature of work performed by you in HCL?

Ans. HCL provides software centric services for Cisco Systems, Inc. USA. I head the engineering delivery organization and am primarily responsible for deliverables and customer satisfaction and employee facing activities.

Q.7 What is the Revenue Model of the work performed by your team in HCL of the performance of contract for?

Ans. Largely Time and Material contracts and fixed price projects. We are accountable for timely delivery and quality.

The projects are SOW based and mostly the work distribution is determined by the customer.

Projects invoices are submitted based on customer's billing system.

Expenses are majorly on the people cost.

Q.8 What is the role performed by the HCL America (HCLA) in performance of the contract with CISCO?

Ans. All HCL employees working in US are employees of HCL America. HCL America takes care of all these emplolyee's payrolls and benefits, provide HR and training support, hiring needs, running local development centers administration, IT support, information security support, etc.

Q.10 Please explain with exemples, how the teams onshore and offshore coordinate with each other in execution of contract?

Ans. The nature of work offshore and onshore is similar and related to sustaining Cisco solutions and testing them. The teams work independently with the customer. All the desktop computing, n/w systems, tab equipment is provided by the customers. The offshore team work within dedicated offshore Development Center ODCs and on the customer internet. Onsite teams work from within customer premises.

The teams work directly with Cisco where the projects are jointly executed. In certain cases where a unit of work like a module is fully sustained by offshore team that team is directed by a Cisco Project Manager (CPM) or a Cisco Director. There might be an offshore HCL project lead or manager managing this offshore team.

Q.11 Had HCLT ever developed any solutions for Cisco from scratch?

Ans. Yes, once probably early 2000, but mostly we are sustaining existing Cisco developed solutions and products.

Q.12 I am showing you an email dated 28 Jan 2019 showing a Ratly snapshot on project status. Please explain the contents of the same.

Ans. This is a snapshot showing details of work for a scrum (Agile team) which has a combination of HCL onsite and offshore engineer (one each) and Cisco engineers. The solution being worked on is a software solution used to manage and configure networks. The Scrum master is a Cisco Project Manager (CPM) and he manages this scrum and handles the work allocation and tracks this.

Q.14. Are onsite people also responsible for writing the code, if yes how is it shared with the offshore team and integrated into a final deliverable?

Ans. Yes, onsite people are also responsible for writing the code. The offshore teams work directly with Cisco managers or through HCL project managers, the onsite team engineers work directly with customer managers. The entire development environment is customer owned and all desktop computing and servers and labs are customer provided. The code and test scripts are worked on from Cisco servers and persisted directly on Cisco servers. The integration is done through Cisco build machines that integrate the various units or code into a solution.

Q.15. Do you mean to say that on the basis of the inputs from the onsite team you make the required technological changes for the customer from India.

Ans. In the Cisco case, majority of the team is offshore. Most of the onsite team works directly with the onsite Cisco manager on autonomous units of work. It would be rare for this to happen but not impossible.

Statement of Shri Rajneesh Rathi, Global Technology Director

Q.10 Please explain with examples how the teams onshore and offshore coordinate with each other in execution of contract?

Ans. The teams are structured as required by individual projects delivery requirements and in accordance with customer preference. The teams are global in nature as each site brings their own competency and skills to contribute towards the projects they are involved in. There is coordination and synchronization between the various sites to deliver the services to Nokia. I share two examples to indicate how the teams are structured and working in tandem.

The WCDMA project team has Tier 2 and Tier 3 support done from USA, China and India and Tier 4 support (bug fix) from India. Nokia subject matter experts wroks closely with HCL team in US, China and India for problem resolution. Based on type of issue and Nokia's customer from where an issue is raised, appropriate teams are involved. In example given below the HCL India and US teams are involved with Nokia Subject Matter Expert to resolve an issue for AT & T (Nokia's customer) where WCDMA products are used.

Q.16 Are onsite people also responsible for writing the code, if yes, how is it shared with the offshore team and integrated into a final deliverable?

Ans. Yes, Onsite teams also write code as per the work distribution and competency required to deliver the work. The releases are normally delivered as coordinated effort when work is contributed across sites as per competency.

Release Delivery

The HCL team delivers large releases to Nokia based on cost and time tradeoff decision taken by Nokia after due diligence process. The target feature content in release is selected by Nokia and HCL proposed multiple opinions considering effort speak across sites, time required to deliver the features and tradeoff of not doing some work in case Nokia has budget constraints. The slides in e-mail dated 20th Nov 2017 lists options to achieve target feature contents required Nokia and suggests various budget scenarios with detailed scheduled embedded including low level

milestones. The budget is distributed across India, China and US for this case. Nokia management selected option chat suited to them as per cost and release date. The CDMA SU4 release was targeted for Oct 2018 and it was delivered on time. All these milestones are tracked by Nokia on weekly basis in project review calls. From e-mail content: All names marked are Nokia leadership team that looks into proposal. The e-mail dated 27th Oct., 2018 confirms delivery of CDMA SU4 on time.

Q.17 Do you mean to say that on the basis of the inputs from the onsite team you make the required technological changes for the customer from India.

Ans: *In case of Nokia each site (e.g. HCL China, HCL US, HCL India) has distinct competency that is not replicated across sites. The troubleshooting is coordinated effort (as Tier 2, Tier 3 and Tier 4 teams are split across sites) to identify where problem may reside. The code level troubleshooting gets done by the team that in charge of the particular software component. The software customization project require code changes that gets done in onside (US, Mexico) as per Nokia requirement.*

Statement of Shri Pudur Radhakrishnan Sashikumar

Q.6 Please explain the nature of work performed by you in HCLT?

Ans. I currently manage the delivery of Software services from HCL Technologies for the Deutsche Bank Account. The team delivers Application Operations, Application development and Maintenance, Testing services. The nature of work involves understanding customer requirements, defining service solutions and operating models, post award of work working with talent acquisition teams to build up teams and managing service delivery in line with the contractual commitments.

Q.7 What is the Revenue Model for the work performed by your team in HCL of the performance of contract for?

Ans. As part of the portfolio the revenue model is based on T&M and Fixed price revenue models. The revenue model is based on discussions with customers on the commercial terms and structure.

Q.8 What is the role performed by the HCL America (HCLA) in performance of the contract with Deutsche Bank?

Ans: From a delivery perspective HCL team members located in America deliver services for application operations, application maintenance, application development and testing for Deutsche bank.

Q.9 How many people are associated with the execution of contract for your client from HCLT and HCLA or any other subsidiary.

Ans. The DB Application teams size is of 2715 team members. India (21880, Germany (179), UK (164), Singapore (68), US(111). This is subject to customer assignments and delivery needs based on customer's needs and the project schedule. These teams are delivery services of Application operations Application Development and maintenance. Testing.

Q.10 Please explain with examples how the teams onshore and offshore coordinate with each other in execution of contract?

Ans. Application operations

- *Onsite resources are assigned or pick up a ticket and 3work on resolution of the ticket.*

Application Maintenance & Development

- *Onsite resources are assigned JIRA tickets which are part of a release plan and they work on it.*
- *Where Business analysis and functional definition is done by onsite teams, the onsite BA's prepare functional specifications and place them in the document repository. The development is based on the features outlined in the functional document.*
- *Where onsite and offshore teams are working on a collection of features, they build code and check it into a common repository.*
- *The overall build and deployment is handled by the build and deployment team. These teams are either internal to the bank or IT vendors. For some applications HCL provides deployment services.*

Q.16 Are onsite people also responsible for writing the code, if yes how is it shared with the offshore team and integrated into a final deliverable?

Ans. For work assigned to Application developers onsite, the code is created, enhanced, modified via the common code repository that is located in the clients IT environment. The onsite and offshore teams are assigned tasks that they work on and commit into a common client code database located in the clients IT environment. The final build is triggered by build scripts and deployed into production post testing by the deployments team. The deployments can be done by DB staff or vendor staff basis the service alignment of the service.

Q.17 Do you mean to say that on the basis of the inputs from the onsite team you make the required technological changes for the customer from India.

Ans. Yes, In the case where Business requirements are prepared by onsite team members, the Business requirement specification is provided to offshore teams for Technology development.

Q.21 Please explain in detail the reporting structure of your project with Deutsche Bank?

Ans. The Delivery team is structured around Delivery units associated with DB's respective IT Programs/Portfolios.

The HCL Deutsche Bank Account comprises of Senior DUHs (Delivery Unit Heads) for Application operations, Applications Development, Testing , appSMART.

In application operations we have DUHs (Delivery Unit Heads) for Global Markets, Asset Management, Enterprise Risk Technology, Global Transaction Banking, Chage management, Test and environment Services, Deployment management.

In Application Development, we have DUHs for Global Markets, Global Transaction Banking, Enterprise Risk Technology, Deutsche Wealth Services, Deutsche Retail.

In Application Testing we have a DUH for the complete testing services line.

The appSMART Portfolio is managed by a DUH.

The Senior Delivery Heads and DUHs work along with the respective DB IT Heads for delivering projects in the functional Portfolio/service line. Within each HCL DB Delivery unit we have project teams engaged on delivery services based on the defined scope of the SoW.

The project status is evaluated at defined intervals as agreed between the customer and HCL teams. The overall Governance cadence/meetings are mutually defined and used to govern the portfolios and the overall engagement.

Statement of Shri Sanjay Kumar Kapoor , Global Operation Director

Q.10 Please explain with examples how the teams onshore and offshore coordinate with each other in execution of contract?

Ans. We follow multiple models of operations and co-ordination between onsite and offshore teams:

Example 1 – Application Maintenance and Support Project – Largely, here the Onsite team has responsibility to manage the availability during the US Business Hours and Offshore team has the responsibility to manage the availability during non US Business hours. Both teams typically work on incidents/ tickets assigned to them. In addition, the onsite team also performs activities requiring close interaction with the customer such as co-ordination of Priority I incidents.

Example 2 – Application Enhancement – Largely, here the onsite teams are responsible for activities requiring close interaction with the customer such as requirements finalization, deployment co-ordination, etc.

Q.14 Are onsite people also responsible for writing the code, if yes how is it shared with the offshore team and integrated into a final deliverable?

Ans: Largely onsite teams are involved in activities requiring more customer interaction and co-ordination activities such as requirements gathering, etc. However, they are involved in coding activities where required, for example critical /high priority tickets, HCL onsite and offshore teams work on AIG existing applications residing on AIG systems / environments and use AIG provided tooling such as Code Configuration tools for code management. The integration of code is done by a Release Manager. The release manager can be from HCL or AIG or another vendor whoever has the responsibility for the entire program. The deployment is done by AIG Technical Services.

Q.15 Do you mean to say that on the basis of the imputs from the onsite team you make the required technological changes for the customer from India?

Ans. Largely onsite teams are involved in activities requiring more customer interaction and co-ordination activities such as requirements gathering, etc. There are cases where based on the requirements gathering from customer the offshore teams make technological changes. Also, there are cases where based on the requirements gathering from customer the onsite and offshore teams make technological changes. The onsite and offshore teams also work independently example on tickets, service requests, enhancements, etc. directly assigned to them.

Statement of Shri Salil Kumar Bhattacharjee, Vice President Media Entertainment and Publishing Vertical

Q.8 Please explain how the work is done in above services mentioned in question above.

Ans. Based on customers's requirement, I provide the software solutions through the following models

1. *Application Support and Maintenance*
2. *Application Enhancements*
3. *Application Testing and Implementation*

My customer IGT is an US incorporated organization and is in the business of providing Technology Services to Lotteries, Casinos and Interactive Lotteries to global customers.

We provide IT services to IGT customers through-

1. Offshore teams from India (Chennai, Hyderabad & Madurai)

2. Onsite teams from US, Canada, Mexico, Germany, UK, etc.

Based on the SOW, team location is decided, depending on-

1. Locational constrains as part of customer business eg. Some state govt. in US may enforce that their customization/enhancements can only work from onsite.

2. Due to usage of some new generation equipments that is only available at onsite at customer locations, all work that require usage of that equipments is delivered from onsite.

3. Most of the other work that can be delivered from offshore would require some faceoff time with the customer or their customers, so these role (typically Business Analysis for requirement, Architectural teams) may be required to be operating out of onsite. Customers own the IP and so all code and other relevant deliverables. are stored at customer locations and on their infrastructure. HCL team accesses these either from onsite or from offshore through remote connectivity. No code is stored in any HCL machines and all changes, enhancements etc. are carried out directly on customer's servers.

Q.9 Please provide the details of how work is divided between onshore and offshore entities and how work/software is delivered?

Ans. This is primarily a Time & Material engagement, where based on the work effort estimates, available resources and capability at each location the team is formed. Each individual's tasks are assigned and reported in the client's time sheet system. At the end of the month, the client managers approve these time sheets and that forms the basis for raising the billing request (BRQ)

Q.10 Please provide the details about the interaction that you have with onsite team for timely delivery of services / software.

Ans. Since this is a T&M (time and material) engagement, each resource's tasks are tracked on a weekly basis. My service delivery managers do a weekly status review call with the client stakeholders for all active assignments. In case of any escalation, client may reach out to the client partner from HCL at onsite. My interaction with my team is only with the offshore service delivery managers.

This is an old account and has lot of legacy knowledge that resides within IGT (customer) and within HCL teams. So, to keep these knowledge reusable, all key learnings and project artefacts are stored in customer's repository so that the same can be used to train any new joinee either in IGT or in HCL

Q.11 As you have explained that the work that you are heading is of continuous development/enhancement nature, please elaborate on how the learning at various locations i.c. onsite and offsite is integrated and used in future.

Ans. As I have explained earlier, the IP of the applications and all related artefacts belong to the customer and they are stored in the customer's environment. HCL team including the onsite and offshore teams have both access to the same code base and

repository, so all can have access of the same from anywhere as long as they have the access privileges of the same. These repositories are kept up- to-date through each project work, so that anyone new joining in HCL or Client side (both onsite and offshore) can be trained through these. This way it can be said that if a new knowledge/learning is available to any team at onsite through this repository as well as to the offshore team.

Q.12 Please tell whether there are instances where onsite team provides certain inputs for delivery of work/services from off shore to the client? Please substantiate with some evidence.

Ans. In projects / assignments, where the work is done from offshore, in very rare occasions, the review inputs from our onsite teams are taken. However, if we have someone at onsite who is a subject matter expert of the particular applications/capability may step in on request of the customer to review the deliverables from offshore and provide improvement inputs, which then the offshore team will incorporate.

I am submitting mail communication between (Annex 2 Page 1-8 & 2-8). Balasubramani Kumarasankar (HCL India based) and Andrew Claremont (HCL UK) where the test plan covering testing strategy, execution plan etc.'s internal review was done from onsite for the work that was created at offshore.

(Annex 2 page 3-8 to 5-8), Dinesh Kumar (HCL India based) and Andrew Claremont (HCL UK) - where the portal update project's test plan covering testing strategy, execution plan etc. internal review was done from onsite for the work (in this case the test plan for this project) that was created at offshore. In this mail thread you will also find that the same has been marked to the customers as well - Jason Schurer and Emson Russell.

(Annex 2 page 6-8 to 8-8) Dinesh Kumar (HCL India based) and Andrew Claremont (HCL UK)- where the portal update project's testy plan covering testing strategy, execution plan etc. internal review was done from onsite for the work (in this case the test plan for this project) that was created at offshore. In this mail thread you will also find that the same has been marked to the customers as well - Jason Schurer and Emson Russel.

Statement of Shri Ajay Tomar - Operations Director, Life Sciences

Q.10 You are an employee of HCL Technologies and the contract with Merck is signed by HCL America. Are you involved in all the processes right from bid management to software support?

Ans. Yes. HCL America and HCL Technologies India is one team only though they may be different legal entity but our team is common. I frequently travel to US for client meetings and bid management.

Q.11 What role is played by onsite team in projects?

Ans. Onsite team plays the role of client interaction, attending meetings with users, participating in knowledge transition sessions. The employees of the onsite team are on the payroll of the HCL America.

Q.12 Please provide the flowchart of how the work is executed after bid is awarded to HCL or its foreign subsidiary?

Ans. Resource Management and Knowledge Transition is already explained in prior question. About Knowledge transition, sessions are attended by both onsite and offshore teams. After the knowledge transition session, HCL team take over the control for the scope of services as mentioned in the SOW. Mostly the scope of services are software development, maintenance and support. Most of the software development is done by India team, with some percentage for any critical work being done by onsite team. There are frequent communication between the teams to clarify / understand requirements and work accordingly.

As an example I am showing the printouts of the mail communication (Annexure 1 Page 1-2) that have occurred between one of the onsite coordinators of our US client and Indian team. Please note that certain confidential information has been masked by me using pen and I have countersigned against the information masked. As can be seen from page 1, onsite coordinator located in US at customer site has sent a mail to India project team members where he has made available the information which was brought to his knowledge by customer and directed the team members. After same knowledge/information is brought to Indian team's attention, the corrective measures are taken by the team at India which mainly include software development / maintenance and support.

Q.13 If after the delivery of the software, a problem arises in future. And if that module was developed by foreign entity, how would you resolve the problem?

Ans. All aspects of a particular application is documented like business requirements, architecture, design, test strategy, test plan, user acceptance plan. Both India and US team have access to these documents. Even if any particular module is developed by US team, the knowledge is captured in documents and both teams have access to the source code of the application. In case of any problem or defect in the application, we take the responsibility of fixing it within the warranty period. Within HCL, it is just one team irrespective of the location.

Q.14 What type of penalties may be levied on HCL India, if there is any deficiency with the delivery and / or quality of software developed by you and foreign entity?

Ans. Provision for penalty is agreed with Merck and part of the SOW. That is the case mostly with the Managed Services (fixed price) contract. Our most of the contracts are Time and Material which don't have any such provision. This applies to HCL. It doesn't distinguish between HCL India and other entities.

Statement of Shri Ravi Bansal, Operation Director

Q.8 What is the role performed by the U.S. Entity in performance of the contracts for development of software?

Ans. As answered already, the US entity members help in various roles as given below and same is illustrated through examples also.

1. One of role played by project team members of US entity is w.r.t. coordination. They interact with client representative on regular basis for clarifications, feedback and project status. And then as required, the same is conveyed to project teams which are mainly located in India.

2. In certain instances, when, we have a joint team, e.g. in the case of a California based healthcare client. We have a team of roughly 60-65 people. Out of these 30-32 are based in US and rest 30-32 are based in India. One of the software to be delivered to the client is related 5to Business Work flow automation. For this, client and HCL Technologies Ltd. have divided the work in modules and then these modules are divided between different teams - both offshore and onshore. The division of work is based on various factors, viz. data security, competence / skill set, schedule pressure etc. In some cases, client may demand that due to data security constraints some modules need to be developed onsite only. In some case, where delivery of software is within very short period of time, some critical components of software may be developed onsite and rest in India. In some cases, where the skill set required is not available in India, that module (part of software) may be developed onsite.

In such cases, because, we work in client environment which is accessible over. Web, both teams can work on their respective modules/ assigned tasks simultaneously. After finishing the module assigned same is submitted to centralized depository for integration and build. Same module, if its passes the system, gets automatically integrated; otherwise same is reverted back. In such environment, the modules can be accessed by either team or client can restrict the access, if he desired.

Q.10 Please tell me how the work is divided among different team members and how the coordination takes place between different teams based in different locations?

Ans. Division of work is mentioned in rules and responsibilities as agreed in SOW. The team members based in foreign locations develop the code and deploy the same in repository of client. Similarly, teams based in India develop the module/part of software here also and then deploy it in the repository of client. After automatic integration of different modules, a build is created. Build can be understood as desired application software. Build process will throw errors if it fails to complete successfully. It will show that which part of software is erroneous and same module/part of software needs to be corrected. Preferably, if the foreign team made that erroneous part of software, they will do the needful and if the Indian team made that erroneous part of software, Indian team will do the needful. But if the need arises due to time constraints or unavailability of members at any location, then team at India can also rectify the mistakes in the software part which is hindering the integration and vice versa. Because, team at India has access to the source code/algorithm/logic of the module developed by foreign team. And accordingly, the software can be rectified in customer environment and delivered to the customer."

Q.12 If after the delivery of the software, a problem arises in future. And if that module was developed by foreign entity, how would you resolve the problem?

Ans. If a support team is in place, that will fix a future problem. And even if a part of software/module has been developed by foreign team, it is also visible to Indian development team and support team, same can be rectified in future also. People in India team has knowledge/information about the coding done by the foreign team and so, even if the foreign team is not present at a later date, the problem can be solved by team at India as per customer requirements. "

33. From the perusal of the aforesaid statements of various employees which were recorded during the course of survey by the TDS officers, which were heavily relied upon by the ld. AO by cherry picking some of the questions and answers alone given by them, we find that prima facie all the statements of employees actually support the contentions of the assessee herein. From the aforesaid statements, it emerges that the offshore project lead or project manager of HCLT manages his offshore team in India, whereas the assessee's project lead manages his team independently, which executes work from the overseas locations directly on the customer's server. Both the project managers/ leads only coordinate with each other on need basis; that each team of HCLT and the assessee develops the particular modules as assigned to them; that the delivery team of the assessee reports to the delivery manager who sits in the foreign country and the delivery team of HCLT reports to the delivery manager who sits in India; that both onsite and offsite personnel of the assessee and HCLT respectively are responsible for writing the code; that the offshore teams of HCLT work directly with customer managers or through project managers in India and the onsite team engineers belonging to the assessee company work directly with foreign customer's managers; that in majority of the projects, the entire development environment is owned by foreign customer; that the code and test scripts are worked on from foreign customers' servers and provided directly on the said servers; that the integration is normally done through Customer build machines that integrate the various units of code into a solution.

34. In view of the aforesaid observations and respectfully following the various judicial precedents relied upon hereinabove, we have no hesitation to conclude that the payments made by HCLT to the assessee could not be construed as Fee for technical services and accordingly the same is not taxable in the hands of the assessee in India as per the domestic law. Accordingly, the Ground Nos. 3,4,7 & 8 raised by the assessee are disposed off in the aforementioned terms.

35. Since the payments made by HCLT to the assessee is held not be taxable in India as per the domestic law, the other elaborate arguments by the ld. AR and grounds raised by the assessee on the applicability of Double Taxation Avoidance Agreements (DTAA) benefits ; 'make available clause' in DTAA and 'Most Favoured Nation' (MFN) clause in Protocol etc need not be gone into, as adjudication of the same is merely academic in nature in these appeals. Hence no opinion is rendered by us on the same and they are left open. Accordingly, the Ground Nos. 5 & 9 raised by the assessee are allowed.

36. The Ground No.1 raised by the assessee is general in nature and does not require any specific adjudication.

37. The Ground No. 6 raised by the assessee is with regard to taxability of payments received by the assessee for certain categories of 'Infrastructure Services'.

38. We have heard the rival submissions and perused the materials available on record. We find that the assessee before the ld. DRP had made the following submissions while filing objections in Form 35A :-

> *Kind attention is invited to the Kind attention of your Honours is further invited to the business model of HCL group relating to Infrastructure Services as submitted during the course of reassessment proceedings. The same is reproduced as under:*

"Brief on HCL Infrastructure Services and Delivery Model
1.1. Document Objective

This document shares brief about HCL Infrastructure Services portfolio, delivery model, standard split of services between onsite & offshore with brief of rationale and standard organisation structure.

1.2. HCL's Infrastructure Services Portfolio

Below is HCL Infrastructure Services Mode 1 'Run the Business' pollution which constitutes majority of its business in this line of business:

Data Center Services: *HCL has 300+ Data Center customers supported across the globe including 40+ Fortune 500/ Global 1000 organizations. Customers leverage our Data Center services encompassing day-to-day Operations of servers, DBs, storage & backup systems and Transformations.*

End User Support Services: *HCL has extensive experience in delivering high-performance End User support services globally. We support 33 languages through 32 delivery centres across the globe to provide a Glocalized (Global yet Local) experience for the end users for our customers.*

Network & Security Services: *We deliver services across the Network Lifecycle For Security services we are helping the clients to manage their dynamic security posture through our services we are helping the clients to manage their dynamic security posture through our Strategy & Architecture, Transformation & Integration. HCL has7 of its Cyber Security Fusion Centres which are state of the art facilities for providing these services to our customers.*

Application Operations*: HCL is one of the first few in the industry who came up with the concept of managing Application Operations in a more industrialized way. We came up with the proposition of managing these mundane tasks along with the those which doesn't involve any code level changes. This team in a way took away the burden from developers to manage day to-day operations.*

Cross Functional Services: *Under this we cover both Tools and Processes that we offer as part of our services. We have a very comprehensive autonomics framework and experience in implementing multiple automation tools at all levels, be it Fault & Performance monitoring, Reporting & Dash-boarding etc*

1.3. HCL's Standard Operations Solution

HCL's Solution is generally architects in such a manner that it delivers an infrastructure that is always available and operationally agile to help customers derive the benefits of

this IT outsourcing initiative. In line with customer requirements, HCL normally proposes Hybrid Model of Operations i.e. mix of Onsite & Offshore resources.

All services are intended to be run from Offshore, however for below reasons HCL keeps some people at onsite for majority of services:

- *Generally, customer prefers having L3s closer to them for discussions, comfort and strategic reasons*
- *Handling Critical & High Priority Incidents*
- *Technology changes/improvements/upgrade project support & handover Customers who likes to have more interactions face to face or some activities in specific which needs regular interaction with customer stakeholders*
- *Physical Presence Situations like Facilities Management or Onsite/Field Support which needs HCL employees to provide hands & feet support*
- *Having adequate presence of technical tracks at customer locations lo handle situations like Disaster Recovery*

Service Desk, Remote Desktop and DC Monitoring is normally 100% offshore as it is run 24 X 7 X 365 and those tasks don't need any onsite activities: For providing the offshore support, HCL leverages its state-of-the-art Operations Management Centre (OMC) normally dedicated to individual customer, located at India.

There are customers where HCL choses Nearshore locations (within the geographical continent normally) because of the below reasons:

- *To provide local languages support in Service Desk*
- *To provide capabilities available within the region, but nearshore provides cost arbitrage than keeping around customer location*
- *To provide support using people who were transferred to HCL from customer due to contractual commitments 14.*

1.4 Application Packaging

HCL delivers Application Packaging & Testing as pay-as-you-use service through its offshore Application Packaging Factory (APF) setup. HCL has designed a factory-based model to handle an enterprise's application compatibility, remediation and packaging needs and its entirely done from India. This is part of End user computing services, delivered as pay-as-you use service."

39. The assessee submitted that under the Infrastructure Services category, all services are intended to be run from offshore and the limited support is provided by

onshore teams. Such support services are also rendered by the assessee directly to the customers and no service is provided to HCLT. Thus, there is no question of technology being made available by the assessee to HCLT or there being transfer of technical plan or technical design. Accordingly, the amount received by the assessee from HCLT for the aforesaid services would not be in the nature of Fees for Included Services (FIS) so as to fall within the purview of Article 12 of the DTAA and the same could at the best be said to fall under the head 'Business Profits'. The income arising to a non-resident, which is in the nature of 'Business Profits' , is governed by the provisions of Article 7 of the DTAA. In terms of the said Article, so much of the profits as are attributable to the Permanent Establishment (PE) of the non-resident, if any, in the other Contracting State where the income arises (i.e India) is taxable in such State. Since there is no PE of the assessee in India, therefore, the income arising to the assessee on account of the aforesaid payments is not taxable in India. Accordingly, it was submitted that the amount received by the assessee is neither taxable in India in terms of the domestic law nor under the relevant provisions of the DTAA and that there is no income which accrues or arises, or is deemed to accrue or arise, or is received or deemed to be received by the assessee in India.

40. The ld. AO accepted the contentions of the assessee that the following infrastructure services were provided directly to the customers outside India and hence, payment in respect of the same made by HCLT could not be said to be towards making available technical knowledge, so as to constitute fee for technical services, and hence were not liable to tax in India:-

(i) Providing the Service Desk

(ii) Providing Incident Management Services

(iii) Providing Management Services

(iv) Providing Desktop Management Services

(v) Providing Email Support Services

(vi) Providing Event Monitoring and Management

(vii) Providing Network Management and Connectivity Services

(viii) Providing Security Management Services

41. The above position, however, would equally apply to the remaining category of infrastructure services, which too are rendered directly to the customers outside India and hence, do not make available technical knowledge so as to constitute Fee for Technical Services liable to tax in India. The ld. AR submitted before us that the ld. AO has broadly accepted the contentions of the assessee that Infrastructure Services, being primarily in the nature of helpdesk/incidence management/remote infrastructure support services, are not in nature of "Fees for Included Services". However, the ld. AO has observed in the remand report that the amount paid to the assessee for the following type of Infrastructure Services is in the nature of "Fee for Included Services":

(i) Providing Application Management Services;

(ii) Providing Application Development Services;

(iii) Providing Problem Management Services;

(iv) Data Centre Management; and

(v) Providing Hosting Services.

41.1. The ld. AR submitted that even in the aforesaid categories of Infrastructure Services, no technology/ skill/ know-how, etc., is made available by the associated enterprises to the assessee as explained herein below:-

> *"(i) As regards **Application Development Services**, the assessee seeks to clarify as under:-*
>
> *a) That sometime though the MSA with an end customer may contain the reference of Application Development as a part of "Infrastructure Services", it does not mean that any such services would have been mandatorily performed for the Customer. In fact, largely depends on the Customer's requirement only. For example, in case of an Infra Customer named "Mecom Group Inc.", the MSA was containing the reference of Application Development Services but no such services were performed.*

b) That whenever any such services are performed along with Infrastructure Services for any end customer, the revenue for Application Development Services is shown only under "Application Services" and it is only the revenue from routine Infrastructure Services which is shown under "Infrastructure Services". For example, in case of a Customer named "Deutsche Bank", both Application Development and Infrastructure Services were performed, and the respective portion of the revenue has been shown under "Apps Services" and "Infrastructure Services" respectively.

*(ii) As regards, **Application Management Services**, it is respectfully submitted that such services do not involve any coding, designing or development of Software. These services only involve managing Application Operations in an industrialized way. Under these services, Infrastructure Services Team merely takes away the burden from the Developers of the Applications to manage day-to-day operations of the Applications involved. For example, if there is an upgrade/ update of Microsoft Windows, instead of each user I doing it in his own computer, Infrastructure Services Team does it remotely for all the users forming part of the Customer's environment.*

Further, as regards L3 support provided by Infrastructure Services Team, it is submitted that the onsite presence of the personnel who are engaged in the provision of L3 support services is quite insignificant. In fact, most of the remote infrastructure support which is normally provided as a part of Infrastructure Services is in the nature of L1/L2 Support only normally without involving any technical knowledge, skill or expertise and is more in the nature of helpdesk/trouble shooting kind of activities only. Further, L3 support is normally provided by those personnel who are generally covered under E3 Salary Band. Basis this Chart, it can be inferred that the onshore presence of E3 band personnel is quite insignificant as compared to the respective offshore team and there is no reason to presume that any kind of service is provided by the onsite team to the offshore team. In fact, both the onsite team and the offshore team do execute their own defined scope of work and deliver the services directly to the end customer located outside India.

The rationale behind engaging the onsite team for providing L3 Support lies in the customer's preference to have some onsite personnel for discussions, comfort, and strategic reasons. Such proximity of the onsite team to the customer, it is respectfully submitted, clearly reveals that the onsite support is provided by the onsite team directly to the end customer only and no part of any such support is provided by the onsite team to the Appellant.

*(iii) As regards **Problem Management Services**, it is submitted that such services are the set of processes and activities responsible for managing the lifecycle of all problems that could happen in an IT environment. Problem Management Services include activities required to diagnose the root cause of incidents and determine the appropriate resolution steps that should be taken. The onsite presence is required for the limited purpose of the problem identification and for working with the Hardware Vendor to facilitate a successful hardware part replacement. The assessing officer erred in not following/ accepting the binding recorded by the DRP to verify whether 'Problem Management Services' were provided in succeeding years and whether they pass the test of make available' as contained in the DTAA and in instead, arbitrarily and wrongly holding that 'Problem Management Services' was not part of the services which DRP had directed to exclude.*

In a nutshell, no technical knowledge, skill or experience is made available by the onsite team to the HCLT or even to the end customer in the course of performance of such services.

(iv) & (v). As regards, ***Data Centre Management and Hosting Services****, the assessee seeks to clarify that when the customers don't have the needed infrastructure to host their critical servers, then sometime HCL help provides the Data Centre or Server Hosting service with help of the Data Center hosting service provider partner. In such cases, the Data Centre or Server is generally owned by the hosting service provider partner and the same is always located outside India only."*

42. We find that the assessee had not rendered any services to HCLT under the Infrastructure Services, which is evident from the submissions of the assessee and discussions made by us hereinabove on the earlier grounds raised by the assessee. We have already held that both the assessee as well as HCLT work independently and render services directly to the end customers and that no service is provided by assessee to HCLT. In any case, from the aforesaid facts explaining the activities carried out by the assessee, it is clear that no technical knowledge, experience, skill, knowhow or process is made available and accordingly the payments received does not qualify as FIS within the ambit of the applicable treaty. It is not in dispute that the assessee does not have any PE in India. At best, the payments received could only be construed as 'Business Profits' in terms of Article 7 of the DTAA and in the absence of PE in India, the same cannot be brought to tax even as per the treaty in the hands of the assessee. Hence the Ground No. 6 raised by the assessee is allowed.

43. The Ground No. 10 raised by the assessee is challenging the chargeability of interest u/s 234B of the Income Tax Act, 1961.

44. We have heard the rival submissions and perused the materials available on record. We have already held that the payments made by HCLT to the assessee would not be chargeable to tax in India in the hands of the assessee as per the domestic law. Hence, there is no obligation on the part of the assessee to pay advance tax and consequentially no interest u/s 234B of the Act could be levied. Even if the revenues

received from HCLT by the assessee are to be construed as FTS, then the same would be subjected to deduction of tax at source and accordingly it falls under the ambit of 'tax deductible' by HCLT. We are conscious of the fact that proviso to section 209(1) of the Act has been amended w.e.f. 01.04.2012, wherein, payments made during the said financial year i.e. during the Financial Year 01.04.2012 to 31.03.2013 relevant to AY 2013-14 would be covered by the said amendment in the proviso to section 209(1) of the Act. Since, we are concerned with AY 2012-13 before us, the said amendment also would not be applicable to the assessee. We find that the Hon'ble Supreme Court in the case of DIT Vs. Mitsubishi Corporation reported in 438 ITR 174 had categorically held that prior to FY 2012-13, the amount of tax deductible at source can be reduced while calculating advance tax and therefore, interest u/s 234B of the Act cannot be levied. As stated earlier, even if the entire payment made by HCLT to the assessee is to be construed as FTS (which we have already held that it is not so) still, the entire sum of FTS would be subjected to tax deductible and hence, there will be absolutely no obligation on the part of the non-resident assessee like the assessee before us to pay any advance tax in terms of section 209 of the Act. Hence, there cannot be any chargeability of interest u/s 234B of the act on the assessee.

45. The assessee has also raised a ground stating that interest u/s section 234A of the Act has been incorrectly calculated by the ld AO. This being a mathematical exercise, we direct the ld AO to re-compute the interest u/s 234A of the Act in accordance with law. Accordingly, ground No. 10 raised by the assessee is allowed for statistical purposes.

46. Since, the entire dispute has been ultimately dealt by us hereinabove on merits wherein, relief is granted to the assessee on merits, in our considered opinion, the adjudication of ground No. 2 raised by the assessee challenging the validity of assumption of jurisdiction u/s 147 of the Act on various facets becomes academic in

nature and the same need not be gone into. No opinion is rendered by us on the same and it is left open.

47. In the result, the appeal of the assessee in ITA No. 537/Del/2021 is allowed for statistical purposes

48. As stated at the beginning of this order, the decision rendered by us hereinabove in ITA No. 537/Del/2021 in the case of HCL Singapore Pte Ltd shall apply mutatus mutandis for other appeals for the same HCL group for the years under consideration before us, in view of the identical facts, except with variance in figures.

49. Before we conclude, we would like to place on record our appreciation to the learned CIT DR and learned Senior Counsel for the assessee for providing able assistance to the Bench in these matters by bringing on record fairly all the factual materials that are relevant for adjudication of the disputes.

50. In the result, all the appeals of various assessees as mentioned in the cause title at the beginning of this order, are allowed for statistical purposes.

Order pronounced in the open court on 20th December, 2023.

-Sd/-	-Sd/-
(KUL BHARAT)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 20/12/2023
Pk/ AKK
Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI