INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE
SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA Nos. 2239,884, 885 & 2240/Del/2023
(AYs: 2015-16, 2016-17, 2017-18 & 2020-21)

UK Grid Solutions Ltd, ST Leonards Building, Harry Kerr Dive, Stafford ST161ST, Foreign, United Kingdom (Appellant) **PAN: AAICA6271A**	Vs.	DCIT, Circle International Tax- 3(1)(1), New Delhi (Respondent)

SA No. 200 & 201/Del/2023
(In ITA Nos. 884, 885/Del/2023
(AYs: 2016-17, 2017-18)

UK Grid Solutions Ltd, ST Leonards Building, Harry Kerr Dive, Stafford ST161ST, Foreign, United Kingdom (Appellant) **PAN: AAICA6271A**	Vs.	DCIT, Circle International Tax- 3(1)(1), New Delhi (Respondent)

Assessee by :	Shri Ajay Vohra, Sr. Adv Shri Aditya Vohra, Adv Shri Arpit Goyal, CA
Revenue by:	Shri Vizay B. Vasanta, CIT DR
Date of Hearing	15/12/2023
Date of pronouncement	13/03/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeals in ITA Nos. 2239,884, 885 & 2240/Del/2023 for AYs 2015-16, 2016-17, 2017-18 & 2020-21, arise out of the orders of the ld AO, DCIT, Circle International Tax-3(1)(1), New Delhi [hereinafter referred to as ' AO', in short] dated 29.08.2023 for AY 2015-16, 30.01.2023 for AYs 2016-17 and 2017-18 and

27.06.2023 for AY 2020-21 passed u/s 143(3) read with section 144C(13) Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Identical issues are involved in these appeals and hence they are taken up together and dispose of by this common order for the sake of convenience.

3. The assessee, presently known as M/s. UK Grid Solutions Ltd and erstwhile known as M/s. Alstom Grid UK Ltd filed its return of income for AY 2016-17 on 30.11.2016 declaring total income of Rs. 13,49,87,780/-. The assessee is in the business of designing, manufacturing, testing, post handling and supply of electronic equipment and help in the transmission and distribution of power, commissioning and servicing of transmission and distribution systems on turnkey basis. The assessee stated that it is a foreign company incorporated in United Kingdom (UK) and is tax resident therein. The assessee stated that it had received payments from various customers in India and claimed that certain receipts are not taxable in India on account of India-UK Double Taxation Avoidance Agreement (DTAA). The various receipts of the assessee as disclosed in Form 3CEB and that reflected in Form 26AS are tabulated as under:-

Payer **(a)**	**Total Receipts As Per 26AS** **(b)** **(Rs.)**	**Offered to TAX out of (b)** (C) **(Rs.)**	**Nature and Taxability (as claimed by the assessee in respect of amount in column V)**	**Not offered to TAX by the Assessee in ITR for AY 2016-17** **(e)** **(Rs.)**
(1) GE T&D India Limited	20.84,14.276/-	13.27.70.236/-	**Services provided to theAE**	7.56.44.040/-
(2) **Power Grid Corporation of India Limited**	599,49.48.889/-	**Ml**	**Not offered to tax Claiming to be Bl**	599.49.48.889/-
ACIT. CPC Bangalore	22,17.540/-	22.17,540/-	**Interest Income (IOS)**	**NA**
Receipts from sales of AEs	468,42,64,711/-	Nil	**-**	**468,42,64,711/-**
Total income		13,49,87,776/-		

4. The assessee (then known as Alstom Grid UK Ltd.) was awarded tenders by PGCIL for setting up a 3000 MW HVDC Terminal Package associated with Western

/ Region Interconnector for IPP Projects in Chhattisgarh under "National Grid Improvement Project" and upgradation of 3000 MW HVDC Terminals at Champa Pooling Station and Kurukshetra to 6000.MW under Strengthening in WR-NR Transmission Corridor for IPP Projects in Chhattisgarh. As per page 2 of the said contracts, the scope of contract includes complete project management, design, engineering, manufacturing, testing, supply, port handling and custom clearance for plant and equipments including spare parts, inland transportation, staff training, testing, erection/installation related civil work, and commissioning including performance testing of plant and equipment. Accordingly, the ld AO concluded that contract entered into is a single composite contract awarded on turnkey basis. The assessee has claimed that it is merely acting as a supplier, having no role to play in the onshore project activities. In order to examine the veracity of this claim, it is imperative to study the relevant provisions of the tender awarded to the assessee. Post bidding, the single composite contract was divided into three contracts - Off-shore contract (First contract) for supply of plant and equipment including spares outside India, Type test and Training to be conducted outside India; On-shore Supply Contract (Second contract) for supply of plant and equipment including spares and testing within India and this also includes design, engineering, testing, etc. (Article 6); On-shore Service Contract (Third contract) to perform all services and civil work, testing and commissioning including training of personnel in India. The Second and Third contracts (on-shore supply and on-shore services) were assigned to an associated enterprise namely M/s ALSTOM T&D India Ltd. (ALSTOM- I now known as General Electric T&D India Ltd.) [GETDIL on short].

5. The ld AO concluded that even though the main single contract was artificially divided into three sub-contracts by the assessee, all the responsibilities and liabilities of the project were vested with the assessee itself i.e. UK Grid. The relevant part of the contract is reproduced as under.

> *"Whereas the associate proposed by, ALSTOM ALSTOM (Now UK Grid) has been accepted by the Employer Vas above subject to the condition that ALSTOM (Now UK Grid) shall be overall responsible and liable for the execution of all the three Contracts irrespective of the fact that the*

Employer will enter into the 'First Contract with them and the 'Second Contract' and the 'Third Contract' with ALSTOM-

6. The assessee has claimed that it has only been awarded the First Contract for execution, whereas the Second and Third Contracts have been awarded to its Indian Associate i.e. GE T&D India Ltd. (GE T&D India). Therefore, the assessee's contention is that if it has nothing to do with the other contracts, its taxability should not be affected by the nature or outcome of such contracts.

7. The ld AO further observed that a plain perusal of the tender documents indicate that the tender clearly puts all the responsibilities on the assessee even though there are three contracts. It is clear that the assessee shall be overall responsible to ensure the execution of all the Contracts to achieve successful completion. Further, any default or breach under the Second or Third Contract shall automatically be deemed as a default or breach of the assessee's 'First Contract'. In case of a breach, PGCIL shall have an absolute right to terminate this Contract, at Supplier's risk, cost and responsibility. These clauses clearly indicate that the contract is a single and composite one. Had these been separate contracts, one's default or breach would not affect the contract of PGCIL with the other party.

8. The ld AO observed that the determination of the price of the entire project is to be carried out by the assessee. Had the contracts really been independent of each other, as claimed by the assessee, each independent contractor would have quoted its own price for the contract concerning it. Therefore, it is seen that while the assessee has chosen to call itself a mere supplier of goods/equipment for the purposes of taxation of its receipts from the project, the tender documents define its exact role in the scheme of the project by placing the overall responsibility of execution of the entire scope of work on the assessee. The terms of the tender documents clearly indicate that the assessee's role is an all-encompassing one for the purposes of the project i.e. the onus of completion of every step is on the assessee and it is answerable to PGCIL for the same at all times. Hence, in no way can it be inferred from the tender document that the assessee's association with and its responsibility towards the project restricted to mere supply of,

goods/equipment. The tender with all its components has been awarded in full to the assessee. Further, a plain reading of the tender documents indicates that the entire offshore supply hinges critically and completely on inputs and consequent approval of PGCIL. The entire installation has to be designed in accordance with the specifications of PGCIL taking into account the peculiarities of the subject power project. Hence, the offshore supply component of the project cannot be de-linked with the entire set of activities that contribute to the completion of the project. Rather, the offshore supply is governed by the project site itself.

9. Accordingly, the ld AO concluded that it is established beyond doubt that the assessee company has been awarded a single composite contract in respect of a turnkey power project by PGCIL. This was artificially segregated into three separate contracts offshore and onshore subsequently. Even if the construction of contracts may have been laid out in the tender itself, it is essential to understand the intent of doing so. The segregation, as is clearly evident from the tender and contract documents, is a consequential exercise in the instant case to simply facilitate execution of the contract. It has not been carried out with the intention of carving out an entirely independent role for the assessee that is more restrictive in scope and responsibility than what was originally intended. Further, the tender document does not mandate the involvement of an Indian associate for the completion of work under the contract. It is an option available for the contractor to exercise. The Indian associate, if any, is thus employed by the contractor in exercise of its own discretion based on its commercial considerations and is not envisaged as an independent party to the original tender. The assessee has, however, chosen to utilise this artificial segregation to artificially avoid PE status in India with a primary intention to avoid payment of taxes.

10. With regard to the fact as to whether the assessee would be eligible for India UK Treaty benefits, the ld AO observed that -

- a person who is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of similar nature;
- a person who, being recipient of payments, is the beneficial owner of the payments;

- a person who is a legitimate resident of the contracting State. Therefore, tax motivated incorporation (Treaty shopping) and conduit companies are excluded as tax resident

11. The ld AO concluded that the instant case falls under the first category as examination of its own Financial Statements filed with the UK Companies House reveals that it is an undisclosed agent of GE Energy UK Ltd. upon terms which provide that GE Energy UK Ltd. receives all income and pays all expenditure of the assessee company. It is evident that the assessee company is not a beneficial owner of any income earned by it from its business activities as it is practically fiscally transparent even if the legal form suggests otherwise. Its financials show that it books an amount of expenses entirely equal to the turnover booked by it, thereby indicating that it passes-all the income to its parent company. Further, it possesses no employees and does not remunerate its directors who are remunerated by another group company. Therefore, in view of the assessee not satisfying the conditions enlisted herein above, the assessee company cannot be treated as a tax resident of UK. In view of the same, the assessee company is not entitled to any tax treaty benefits under India-UK DTAA not being a resident for tax purposes. Accordingly, its taxability is to be determined on the basis of the Income-tax Act only.

12. Thereafter, Ld. AO formed an opinion that the Indian Associate was actively involved in soliciting business for the assessee while also taking on the Indian leg of the composite contracts. Thus, concluded that there was a Dependent Agent Permanent Establishment (PE) in India.

13. The ld AO proceeded to tax the receipts from offshore supply under PGCIL Contract amounting to Rs. 599,49,48,889/- u/s 44BBB(1) of the Act by computing profit @10% thereon amounting to Rs. 59,94,94,888/- and taxed the same @40% plus applicable surcharge and cess. In respect of the offshore sales other than the PGCIL contract amounting to INR 468,42,64,711/-, it was held that these also constitute business receipts and are attributable to the business connection of the assessee in India. The profit rate on such receipts was assumed at 10%, being the standard benchmarking followed by the Act in various cases, which worked out to

Rs. 46,84,26,471/- and taxed the same @ 40% plus applicable surcharge and education cess. In respect of the income from the assessee's group company amounting to Rs 20,84,14,276/-, it was held that these are in the nature of Fees for Technical Services u/s 9(1)(vii) of the Act and are taxable as per Section 115A of the Act. The assessee has offered Rs. 13,27,70,236/- out of the said amount. The balance amount of Rs. 7,56,44,040/- is being brought to tax as FTS taxable u/s 115A of the Act.

14. The assessee preferred objections before the ld DRP. The ld DRP held that the assessee is clearly fiscal transparent entity and hence, cannot be treated as tax resident of UK for the purpose of treaty benefit under India UK DTAA. Further, it observed that even though the main single contract was artificially divided into 3 sub contracts by the assessee and all the responsibilities and liabilities of the project were vested with the assessee itself and hence, the contract would have to be construed as a single and composite one. The ld DRP also held that similar directions were given in assessee's own case for AY 2018-19 and 2019-20. The ld. DRP observed that the legal and factual matrix of this order remains the same with that of AYs 2018-19 and 2019-20, it relied on the directions given by it for AYs 2018-19 and 2019-20 and upheld the draft assessment order of the ld AO. Pursuant to this direction of the ld DRP, final order was framed by the ld AO u/s 143(3) read with section 144C(13) of the Act on 30.01.2023 against which the assessee is in appeal before us.

15. The assessee has raised the following grounds of appeal in ITA No. 884/Del/2023 for AY for AY 2016-17:-

> *"1. That on the facts and circumstances of the case and in law, the assessment order dated 30.01.2023 passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 ("the Act") for assessment year 2016-17 assessing the total income of the Appellant at Rs.127,85,53,180 is bad in law, void-ab-initio and therefore, liable to be quashed and/ or set aside.*
>
> *2. That on the facts and circumstances of the case and in law, the assessment order passed under section 143(3) 144C(13) of the Act on 30.01.2023, being barred by limitation, is bad in law and void-ab-initio.*

3. That the assessing officer erred on facts and in law in holding that the Appellant cannot be treated as tax resident of UK and is not entitled to any benefits under the India-UK Double Taxation Avoidance Agreement ("DTAA").

Re: Offshore supply receipts of Rs.599.49.48.889 from PGCIL

4. That the DRP/assessing officer erred on facts and in law in holding that receipts from offshore supplies made by the Appellant to Power Grid Corporation of India Ltd ("PGCIL") are taxable in India under the provisions of the Act.

5. That the DRP/assessing officer erred on facts and in law in arbitrarily holding that the Appellant had business connection in India during the subject assessment year.

6. That the DRP/ assessing officer erred on facts and in law in arbitrarily holding that GE T&D India Limited ("GETDIL") constitutes Fixed Place Permanent Establishment ("PE") of the Appellant in India.

7. That the DRP/ assessing officer erred on facts and in law in arbitrarily holding that GETDIL constitutes Dependent Agent PE of the Appellant in India and that the Appellant has Installation/ Construction PE in India.

8. That the DRP/ assessing officer erred on facts and in law in attributing 100% profits from offshore supplies made to PGCIL to the alleged business connection/ PE.

9. Without prejudice, that the DRP/ assessing officer erred on facts and in law in computing income from offshore supplies by applying section 44BBB of the Act.

10. That the DRP/ assessing officer erred on facts and in law in alleging that the Appellant was awarded single composite contract on turnkey basis, which was artificially split into three separate contracts to avoid establishment of PE in India and to avoid payment of legitimate taxes in India.

11. That the DRP/assessing officer erred on facts and in law in placing reliance on the Base Erosion and Profit Shifting ("BEPS") Action Plan 7 read with Article 13 of Multilateral Instrument, not appreciating that the same has no applicability qua the subject assessment year.

12. Without prejudice, that the DRP/ assessing officer erred on facts and in law in computing receipts from offshore supplies to PGCIL at Rs.599,49,48,889 instead of actual receipts of Rs.479,17,07,585.

Re: Offshore supply receipts of Rs.468,42,64,711 not related to PGCIL contract

13. That the assessing officer erred on facts and in law in holding that receipts from GETDIL and SFO Technologies towards offshore supply were taxable in India, contrary to the binding directions of the DRP.

14. That the assessing officer erred on facts and in law in bringing to tax, receipts from offshore supply made to GETDIL, i.c., customer on the ground that said customer itself constituted Fixed Place and Dependent Agent PE of the Appellant in India.

15. Without prejudice, that the assessing officer erred on facts and in law in bringing to tax receipts towards offshore supply from GETDIL and SFO Technologies by applying section 44BBB of the Act, not appreciating that said offshore supplies were not linked to any turnkey contract.

16. Without prejudice, that the assessing officer erred on facts and in law in arbitrarily computing receipts from offshore supplies other than from PGCIL contract at Rs.468,42,64,711, instead of actual receipts of Rs.75,73,212 from SFO Technologies and Rs.29,58,63,248 from GETDIL.

Re: Global operation fee of Rs.7.56,44,040 received from GETDIL

17. That the DRP/ assessing officer erred on facts and in law in taxing global operation fee of Rs.7,56,44,040 received from GETDIL as Fees from Technical Services ("FTS") under the provisions of the Act and the India-UK DTAA, without appreciating that the provision of said services by the Appellant did not satisfy the 'make available' clause contained in Article 13(4)(c) of the India-UK DTAA.

Re: Levy of interest

18. That the assessing officer erred on facts and in law in levying interest under sections 234B and 234D of the Act."

16. We have heard the rival submissions and perused the material available on record. The ground No. 1 raised by the assessee is general in nature and does not require any specific adjudication.

17. Ground No. 2 raised by the assessee was stated to be not pressed by the ld AR at the time of hearing. The same is reckoned as a statement made from the bar and accordingly, ground No. 2 is hereby dismissed as not pressed.

18. We find that the majority of the other grounds raised by the assessee are covered by the order of this Tribunal in assessee's own case in ITA No. 2087/Del/2022 for AY 2018-19 dated 12.04.2023. For the sake of convenience, the relevant portion of the Tribunal order is reproduced below:-

"9. Ground no 3 to 8.Ld. Sr. Counsel for the assessee/ appellant contended that Ld. Tax Authorities below have erred in understanding the nature of three

agreements entered between the assessee, its associate ALSTOM-I and employer PGCIL. It was submitted that Ld. Tax Authorities have fallen in error in concluding that there was an artificial splitting of the contract between the assessee and ALSTOM-I. Referring to the contracts executed between the assessee and PGCIL, made available on page no. 6 to 249 of the paper book, it was submitted that engaging an Associate was an integral part of the bid proposal and the execution of two separate contracts between PGCIL and ALSTOM-I was part of bidding documents. It was submitted that Ld. Tax Authorities below have selectively construed the recitals of the bid and contract documents.

9.1 It was submitted that tax authorities below have also fallen in error in construing the business connection in India without appreciating that the sales were concluded outside India and the property in goods under the offshore agreement had passed outside India. No payment or consideration was received within India. Specially referring to judgment in Ishika Wasma- Harima Heavy Industries Ltd. vs. DIT: [2007] 288 ITR 408 (SC) Ld. Sr. Counsel submitted that Hon'ble Supreme Court has held in many words that when the transfer of property in goods and the payment are carried out outside India the transactions cannot be taxed in India. In this context, judgment in CIT vs. Hindustan Shipyard Ltd. 109 ITR 158 (AP) was also relied.

9.2 It was submitted that when the scope of work under the bid documents covered off-shores supply and off-shores services as distinguished from on- shore supply and construction work, Ld. Tax Authorities had fallen in error in considering the three contracts to be part of one consolidated contract. It was submitted that in case of contracts by consortium, the law is settled that when a project is executed by consortium then income of foreign entity has to be assessed on the business of income occurring to it in India. Specially referring to Board Circular dated 07.03.2016 he submitted that even the Board recognizes the that in case of projects executed under consortium arrangement and if each member is independently responsible for executing its part of work, thenaccordingly the income is taxable. In this context, he specially refered to judgment of Hon'ble Delhi High Court in Linde AG, Linde Engineering Division vs. DDIT: [2014] 365 ITR 1 (Del) of Income Tax.

9.3 He submitted thatoverstress is laid by Ld. Tax Authorities on the fact that the primary liability of execution of contracts and damage for beach of the contracts being upon the assessee ALSTOM only, so the ALSTOM-I was merely an extended arm. And thus the Ld. Tax Authorities have fallen in error in considering the associate M/s. ALSTOM-I to be Agency PE. It was submitted that there was no legal and financial dependency between the assessee and its associates.

9.4 Ld. Sr. Counsel submitted that the assessee had earned revenues from offshores supplies and no activity was performed in India for earning its revenue. He specifically stressed on fact that no employee of assessee visited India and as such there is no branch or place of business in India.

9.4.1 As with regard to Dependent PE it was submitted the Tax Authorities have not discussed any evidence and an incorrect observation is made by Ld. AO that GE India was actively involved in soliciting business for the assessee as the assessee had procured the contract by way of open bidding.

9.5 It was submitted that the Associate was engaged in independent contracts under the bid and was independent entity. Referring to the financial statements of GE T &D India Limited, available on page no. 429 to 437 for F.Y. 2017-18 and 438-445 for F.Y. 2018-19 it was submitted that related party transactions have been disclosed and it was submitted that the Indian associates has several independent source of revenue. The income earned from the two contracts was independently offered to Tax under the Act.

9.6 As with regard to the Associate constituting a Construction PE,he submitted that the associate was independent and responsible for concluding the contracts and the role of was limited to off-shore supplies. In this context he specifically contended in regard to the findings of construction PE that there was no factual evidence to support the findings. Assessee was not involved into any activity of construction project and as "supply" is not included in the activities taxable in the provisions, so Article 5(2) of the treaty was not

9.7 He also referred to Section 44BBB of the Act and submitted that as assessee was merely a supplier to PGCIL so provisions which are otherwise applicable in case of business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with the turnkey power project is not applicable and the income received against offshore supply of equipments cannot be taxed by virtue of section 44BBB.

9.8 As with regard to the submission that the agreements were not deliberately split for tax avoidance, Ld. Sr. Counsel relied Linde AG, Linde Engineering Division vs DDIT: [2014] 365 ITR 1 (Del) where the Department's SLP dismissed in 242 Taxman 371 (SC). He also relied DIT vs Ericsson AB: 343 ITR 470 (Del).

9.8.1 In support of the submission that there is no business connection of assessee in India, Ld. Sr. Counsel relied, CIT vs. R D Aggarwal and Co. [1965] 56 ITR 20 (SC), CIT vs Hindustan Shipyard Ltd: 109 ITR 158 (AP) and CIT vs Atlas Steel Company Ltd: 164 ITR 401 (Cal).

9.8.2 As with regard to the submission that Offshore supply are not taxable under the Act, he relied Ishikawajma-Harima Heavy Industries Ltd vs DIT: [2007] 288 ITR 408 (SC), DIT vs LG Cable Ltd: [2011] 237 CTR 438 (Del), DIT vs Nokia Networks OY: 358 ITR 259 (Del) and Siemens Mobile Communications SPA vs DCIT: [2020] 182 ITD 479 (Del Trib.)

9.8.3 The non applicability of Section 44BBB qua offshore supply was supported by Ld. Sr. Counsel by relying DDIT vs Mitsui & Co Ltd: 118 taxmann.com 379 (Del Trib.), DOT vs Whessoe Oil & Gas Ltd: 87 taxmann.com 342 (Mum Trib.) and Atomstroy Export vs DCIT: ITA No.6945/Mum/2017 (Mum Trib.)

9.8.4 He supported his contentions with regard to law on Dependent Agent Permanent Establishment ("PE") under the India-UK DTAA he referred to the Copy of India-UK DTAA and section 182 of Indian Contract Act, 1872. He also cited judgments in National Petroleum Construction Company vs DIT: 383 ITR 648 (Del), Western Union Financial Services Incvs ADIT: 101 TTJ 56 (Del Trib.), Mitsui & Co Ltd vs ACIT: ITA No.4764/Del/2016 (Del Trib.), ITO vs International Reinsurance and Insurance Consultancy & Broking Services (P) Ltd: 142 taxmann.com 509 (Mum Trib.), DCIT vs Adobe Systems Software Ireland Ltd: ITA

Nos.1978/Del/2019 &Ors. dated 27.07.2022 (Del Trib.), Net App BV vs DDIT: [2017] 78 taxmann.com 97 (Del Trib.), TVM Ltd vs CIT: 237 ITR 230 (AAR) and KronesAktiengesellschaftvs CIT: ITA No.907/Del/2017 dated 30.12.2022 (Del Trib.)

9.8.5 The Ld. Sr. Counsel stressed that the onus is on Department to prove existence of PE and for that he relied CIT vs eFunds IT Solution: 399 ITR 34 (SC), DIT vs Samsung Heavy Industries Co Ltd: 426 ITR 1 (SC), DIT vs Mitsui & Co Ltd: 399 ITR 505 (Del) and AB SciexPte Ltd vs ACIT: 195 ITD 384 (Del Trib.)

9.8.6 As with regard to principles of attribution to business connection/ PE he relied DIT vs Morgan Stanley & Co Inc: 292 ITR 416 (SC), DIT vs Morgan Stanley & Co Inc: 292 ITR 416 (SC), The Anglo French Textile Co Ltd vs CIT: 25 ITR 27 (SC), Annamalais Timber Trust and Co vs CIT: 41 ITR 781 (Mad), CIT vsBertrams Scotts Ltd: 31 Taxman 444 (Cal), CIT vs Hyundai Heavy Industries Co Ltd: 291 ITR 482 (SC), Samsung Heavy Industries Co Ltd vs DIT: 265 CTR 109 (Uttarakhand), Affirmed by the Supreme Court in 426 ITR 1(SC), DCIT vs Roxon OY: 106 ITD 489 (Mum Trib.)

10. DR however, supported the findings of Ld. Tax Authorities below and submitted that it was not a case of consortium but one consolidated bid was fragmented. was submitted that the PGCIL had invited bid and assessee was the contractor and the Associate, Indian entity was given authority to execute the local work while the responsibility continued to stay with the assessee. He referred to various clauses of agreement trying to show that when over all responsibility was of assessee, then PE has to be presumed.

11. Now, giving thoughtful consideration to the matter on record and the submissions, at the outset, the Bench feels relevant to observe that in the assessment order the Ld. AO has discussed more about the various provisions and principles of law governing the taxability in case of income which is deemed to accrue or arises in India for the purpose of Section 9 of the Act and how there has to be attribution to profit to the PE, without discussing the evidence in the case in hand, to give conclusive findings as to how the Indian associate of the assessee happens to be an agent or construction PE. His primary and ultimate reliance was on the fact that there was single composite contract which was divided into three contracts and that in two contracts, which were to be performed by the Indian entity, the ultimate liability for non-performance or compensation being on assesse, therefore, the Indian entity was a PE and the provisions of profit attribution were applicable.

12 At the same time the Ld. DRP bettered it little while discussing quite more of the recitals of the agreements and contracts but reached same finding that as there was no separate bid for each contract and that in case of any default in second or third contract, it was to be construed to be default of the assessee and result into right of termination and recovery of damages from the assessee by PGCIL, accordingly it too concluded that Associate as PE was involved throughout the contract period. DRP observed that the off-shore supply of equipments by the assessee would have been rendered meaningless in the absence of service of supervision, erection, commissioning etc. all of which was an integral and indivisible part of the contract.

13. So the key question is if this was independent contract as claimed by assessee or there was artificial spilt of one contract to the benefit of assessee. into three contracts leading to evasion of tax. The first and a very important concept that has to kept in mind is that the controversy regarding taxability event, in case of complex arrangement of contacts, may arise at several stages and with different tax incidences. The adjudication of an issue should be on basis of wholesome reading of the contract and context of terms. In regard to this principle of law the Hon'ble Supreme Court in Ishikawajma-Harima Heavy Industries Ltd. (supra) has observed in para no. 60 as follows :-

> *"In construing a contract, the terms and conditions there of are to be read as a whole. A contract must be construed keeping in view the intention of the parties. No doubt, the applicability of the tax laws would depend upon the nature of the contract, but the same should not be construed keeping in view the taxing provisions."*

14. Thus, it will be relevant to reproduce some major clauses of agreements and contracts entered between the PGCIL and the assesse, unlike selectively done by the Revenue Authorities below. The Off-shore contract agreement along with 11 Appendices dated 17.08.2012 is available at page no. 6 to 43 of the paper book and is the basic document and the relevant clauses of same starting from page 9, are reproduced as below :-

> *"WHEREAS the Employer is desirous of setting up ±800kV, 3000 MW HVDC Terminal Package associated with Western / Northern Region Interconnector for IPP Projects in Chhattisgarh under "National Grid improvement Project" and had invited bids for complete project-management, design, engineering, manufacture, testing, supply, port handling and customs clearance for the Plant and Equipment including mandatory Spares to be supplied from abroad, further handling, inland transportation and delivery at destination Site, unloading. storage, handling at site, erection/installation including associated civil works, employer staff training, testing and commissioning including performance testing of Plant and Equipment including mandatory Spares and any other services as required for complete execution of the package.*
>
> *WHEREAS M/S. ALSTOM Grid 'UK Limited participated in the above referred bidding vide its First Stage bid proposal reference rro.T0193 dated 26.11.2011, updated Technical Bid, Compliance to Amendment No.-1 and Clarification to the provisions of the Bidding Documents pursuant to First Stage Bid Evaluation. submitted vide communication reference CC- CS/156-WR1/HVDC-1489/7/G10 dated 12.03.2012 and Second Stage Bid vide ref. No. T0193 dated 21st March 2012 read alongwith discount letter ref no. T-0193/01 dated 22.03.2012.*
>
> *WHEREAS, as per the provisions of the Bidding Documents (Part 1) and confirmations as per the documents referred in Notification of Award mentioned under Article 1.1 below, the construction of contracts shall be as follows:*

First Contract for CIF Indian Port of Entry supply of Plant and Equipment including mandatory Spares from outside India, Type Test and Training to be conducted outside India (also referred to as Off-Shore Contract),

"Second Contract for Ex-works supply of Plant and Equipment including mandatory Spares from within India and Type Test to be conducted within India (also referred to as On- Shore Supply Contract), and

Third Contract for all services to be performed in India covering, inter alia, port handling, port clearance, inland transportation, insurance, delivery at site, handling, storage, erection including associated civil works, testing and commissioning of all equipment and materials, including the equipment supplied under the First Contract end the Second Contract, Training in India etc. (also referred to as On-Shore Services Contract).

WHEREAS M/s. ALSTOM Grid UK Limited in their Bid, had proposed M/s. ALSOM T&D India Limited having its Registered Office at A-18, First Floor, Okhla Noida-201301, U.P. Area, Phase-ll, New Delhi-110020 and business address as A-7, Sector-65, ca-201301, (hereinafter referred to as "ALSTOM-1" as their Associate for the purpose of executing the On-Shore Supply Contract and On-Shore Services Contract) furnished "ALSTOM-1" written unequivocal consent vide their letter dated 26.11.2011 (enclosed in their First Stage to work as Employer's independent Contractor, on the terms and conditions as laid down in the Bidding Documents.

WHEREAS the associate proposed by ALSTOM has been accepted by the Employer, as above, subject to the condition that ALSTOM shall be overall responsible and liable for the execution of all the three Contracts irrespective of the fact that the Employer will enter into the 'First Contract' with them and the 'Second Contract' and the Third Contract' with ALSTOM-1. Further, in the Contract Documents, for 'First Contract' the word 'Contractor' shall mean ALSTOM, who had submitted the bid and shall, for the purpose of 'Second Contract' and 'Third Contract', include' ALSTOM-1- the Permitted Associate of ALSTOM. Accordingly, without prejudice to the overall responsibility and the liability of ALSTOM for the execution of all the three Contracts, the word 'Contractor' wherever appearing in the 'Second Contract'and the Third Contract'shall also mean ALSTOM-1.

WHEREAS the Employer desires to engage the Contractor for the CIF Indian Port of Entry supply of all Plant and Equipment including mandatory Spares inter-alia including Design, engineering, manufacture, testing at manufacturer's works and CIF supply of all off-shore equipment and materials from country(ies) outside India including Type Testing and training to be conducted outside India for the complete execution of the ±800kV, 3000 MW HVDC Terminal Package associated with Western / Northern Region. Interconnector for IPP Projects in Chhattisgarh under "National Grid Improvement Project" as detailed in the Contract Documents ("the Facilities"), and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

Article 6.

ALSTOM having proposed ALSTOM-I as its Associate for the purpose of executing the On-Shore Supply Contract and On- Shore Services Contract and furnished ALSTOM-I's written unequivocal consent to work as the Employer's independent Contractor, on the terms and conditions as laid down in the Bidding Documents and, in accordance with the confirmations as per the documents referred in Notification of Award mentioned under Article "1.1 above, Contract Agreement Nos. CC-CS/156-WR1/HVDC-1489/7/G10/CA-11/4336 and CC- CS/156-WR1/HVDC-1489/7/G10/CA-111/4337 between the Employer and the Contractor's Associate ALSTOM-1 has also been made on 17.08.2012, respectively for the On-Shore Supply Contract (also referred to as the 'Second Contract') and On-Shore Services Contract (also referred to as the Third Contract').

The scope of 'Second Contract' includes Design, engineering, manufacture, testing at manufacturer's works and Ex-works supply of all the equipment and materials including mandatory spares from within India and Type Testing, as detailed in the Contract Documents of said contract, required' for the complete execution of ±800kV, 3000 MW HVDC Terminal Package associated with Western / Northern Region Interconnector for IPP Projects in Chhattisgarh under "National Grid Improvement Project". The scope of 'Third Contract' includes all services to be performed covering, inter alia, port handling, port clearance, inland transportation, insurance, delivery at site, handling, storage, erection including associated civil works, testing and commissioning of all the Plant and Equipment including mandatory Spares supplied under the Off- Shore Contract and On-Shore Supply Contract, Training in India etc. and any other services specified in the Contract Documents of said contract, for complete execution of ±800kV, 3000 MW HVDC Terminal Package associated with Western / Northern Region Interconnector for IPP Projects in Chhattisgarh under "National Grid Improvement Project".

Notwithstanding the award of work under three separate Contracts in the aforesaid manner, ALSTOM shall be overall responsible to ensure the execution of all the three Contracts to achieve successful completion and acceptance / taking over of the facilities by the Employer as per the requirements stipulated in the respective Contract Documents. It is expressly understood and agreed by ALSTOM that any default or breach by its Associate, ALSTOM-1 under the 'Second Contract' and/or Third Contract' shall automatically be deemed as a default or breach of this 'First Contract' also and vice-versa, and any such default or breach or occurrence giving the Employer a right to terminate the 'Second Contract' and/or Third Contract', either in full or in part, and/or recover damages under those contract(s), shall give the Employer an absolute right to terminate this Contract, at ALSTOM risk, cost and responsibility, either in full or in part and/or recover damages under this 'First Contract' as well. However, such default or breach or occurrence in the 'Second Contract' and/or Third Contract', shall not automatically relieve ALSTOM of any of its obligations under this 'First Contract'. It is also expressly understood and agreed by ALSTOM that the Plant and Equipment including mandatory Spares supplied by ALSTOM under this 'First Contract' and by its associate, ALSTOM-1 under the 'Second Contract', when erected and commissioned

by its associate, ALSTOM-I under the "Third Contract' shall give satisfactory performance in accordance with the provisions of the Contract".

14.1 Further, from the notification of award of off-shore contract dated 21.06.2012 and the relevant minutes dated 28.10.2011, page 125-127 of PB, relevant clauses are reproduced as below :-

"1.3 Your First Stage Bid submitted for the subject package under Proposal reference no. T0193 dated 26.11.2011; which was opened on 28th November, 2011. In your bid, you have confirmed that M/s. ALSTON T&D India (ALSTOM INDIA) (earlier known as M/s. AREVA T&D India Limited) shall be your Associate for the purpose of executing the On-Shore Supply Contract and On-Shore Services Contract (refer para 2.2 below) and furnished ALSTOM INDIA'S written consent vide their letter dated 26.11.2011.

12.1 We confirm having accepted your Bid referred to at para 1.3, 1.7 & 1.8 above) read in conjunction with all the specifications, terms & conditions of the Bidding Documents (referred to at para 1.2, 1.2.1, 1.2.2, 1.2.3 & 1.6 above) and your confirmations as per the documents referred above, and award on you the 'Off-Shore Contract' (also referred to as the 'First Contract') covering inter-alia supply on CIF Indian Port of Entry of all equipment and materials, mandatory spares including Type Testing to be conducted outside India, Training to be imparted abroad for the complete execution of the ±800kV, 3000 MW HVDC Terminal Package associated with Western / Northern Region Interconnector for IPP Projects in Chhattisgarh under "National Grid Improvement Project". as detailed in the Bidding Documents referred hereinabove. The scope of work inter-alia includes the following: Design, engineering, manufacture, testing at manufacturer's works and CIF supply of all off-shore equipment and materials from country(ies) outside India including Type Testing and training to be conducted outside India.

The scope of work under this Notification of Award (NOA) shall also include all such items which are not specifically mentioned in the Bidding Documents and/or your bid but are necessary for the successful completion of your scope under the Contract for the construction of ±800kV, 3000 MW HVDC Terminal Package associated with Western / Northern Region Interconnector for IPP Projects in Chhattisgarh under "National Grid Improvement Project", unless otherwise specifically excluded in the Bidding Documents or in this NOA.

2.2 As per the Record Notes of Clarification Meetings (referred to in para 1.5 above) and the acceptance of proposed Associate confirmed vide our communication dated 01.03.2012 (referred to in para 1.6 above), we have notified your Associate M/s. ALSTOM T&D India Limited vide our Notification of Award Ref. No. CC-CS/156- WRI/HVDC- 1489/7/G10/NOA-II/4336 dated 21.06.2012 for award of 'On- Shore Supply Contract' (also referred to as the 'Second Contract') for the subject package which includes the Ex- works supply of all equipment/materials including Type to be conducted within India, required, for the complete execution of ±800kV, 3000 MW HVDC Terminal Package associated with / Northern Region

Interconnector for IPP Projects in Chhattisgarh under "National Grid Improvement Project", 'as set forth in the Bidding Documents., viz. Design, engineering, manufacture,, testing at manufacturer's works and Ex-works supply of all the equipment and materials including mandatory spares and Type Testing from within India. We have also notified your Associate M/s. ALSTOM T&D India Limited vide. our Notification of Award Ref. No. CC-CS/156-WR1/HVDC- 1489/7/G10/NOA-III/4337 dated 21.06.2012 for award of 'On- Services Contract' (also referred to as the Third Contract') for performance of all other activities, as set forth in the Bidding Documents, viz. port handling, port clearance, inland transportation, insurance, delivery at site, handling, storage, erection including associated civil works, testing and commissioning of all equipment and materials, including the equipment supplied under the First Contract and the Second Contract. Training in India etc. required for the complete execution of +800kV, 3000 MW HVDC Terminal Package associated with Western / Northern Region Interconnector for IPP Projects in Chhattisgarh under "National Grid Improvement Project"

Notwithstanding the award of work under three separate Contracts in the aforesaid manner, you shall be overall responsible to ensure the execution of all the three Contracts to achieve successful completion and taking over of the works under the package by the Employer as per the requirements stipulated in the Bidding Documents. It is expressly understood and agreed by you that any default or breach by your Associate M/s. ALSTOM T&D India Limited under the Second Contract and/or the Third Contract shall automatically be deemed as a default or breach of this 'First Contract' also and vice-versa, and any such default or breach or occurrence, giving us a right to terminate the 'Second Contract and/or Third Contract, either in full or in part, and/or recover damages under those contract(s), shall give us an absolute right to terminate this Contract, at your risk, cost and responsibility, either in full or in part and/or recover damages under this 'First Contract as well. However, such default or breach or occurrence in the 'Second Contract' and/or Third Contract', shall not automatically relieve you of any of your obligations under this 'First Contract. It is also expressly understood and agreed by you that the equipment/materials supplied by you under this 'First Contract and by your Associate M/s. ALSTOM T&D India Limited under the 'Second Contract', when erected, installed & commissioned by your Associate M/s, ALSTOM T&D India Limited under the Third Contract' shall give satisfactory performance in accordance with the provisions of the Contract."

15. When these minutes dated 28.10.2011 are considered, the clause 1.3 makes it apparent that in the bid itself ALSTOM-I was proposed and confirmed as an Associate for the purpose of executing the on-shore supply and service contracts. So having an Indian Associate was an integral part of the Bid and not introduced at the discretion of the assessee. Reference in this context can be made to the bid document of September, 2011 containing special conditions of contract available at page no. 231 of the paper book which required that success full bidder shall be under an obligation for entering into the three contracts. The first for off-shore contract and second & third for on-shore supply contract.

16. Next in the notification of the award, the 'scope of contract' of the off shore contract, given to the assessee was limited to, "Design, engineering. manufacture, testing at manufacturer's works and CIF supply of all off-shore equipment and materials from country(ies) outside India including Type Testing and training to be conducted outside India. As distinguished with Scope of contract, meant for Second and Third Contracts. Thus there was not one scope of contract under which the assesse and Indian Associate were working together.

17. In aforesaid context only, this notification of award letter dated 26.06.2012 in clause 2.2 mentions that as ALSTOM-I was 'awarded' contract 2 and 3 for which 'separate notification of award on-shore supply contract and on-shore service contract was made on 21.06.2012. Thereupon the off- shore contract was executed on 17.08.2012 where it was specifically mentioned that ALSTOM-I was made part of the contract as the part of proposal at the bid stage itself. This of-shore contract specifically mentions that ALSTOM-1 shall be 'independent contractor' of PGCIL on the terms and conditions as laid down in the bidding document. Article 6 of this document dated 17.08.2012 specifically makes reference to ALSTOM-I's 'written unequivocal consent to work as the independent contractor of PGCIL' and that separate contracts have been entered between PGCIL and Indian Associate of the assesse, ALSTOM- I, on the same date 17.08.2012 for the second and third contract.

18. The aforesaid discussion of the relevant clauses leave no doubt in the mind of this Bench that at the stage of bid itself ALSTOM-I had joined the assessee in terms of the requirement of the bid. These clauses and stipulations go on to establish that there was a collaborative effort of the assessee and the Indian associate and as such there was not actually a consortium to which one contract was awarded with bifurcation at level of the members of Consortium. The award of separate off shore contract by the PGCIL to assessee and on shore contracts to the permitted associate ALSTOM-I, which was classified as independent contractor of employer, coupled with the execution of separate contracts with defined scope of work of each contract, required each party to perform its obligation under the respective contracts awarded to them separately and to receive the consideration under the contracts independent to each other. The terms negotiated and document executed firmly establish that there was no mix up in the role and identity.

19. The Ld. Tax Authorities below have actually fallen in error in construing the aforesaid discussed clauses because what to be a narrow and not a pragmatic approach. As observed above, they were selective in considering the bid and contract documents clauses and failed to take note of it as a whole and to understand the business prudence of such Bidding involving International entities, while dealing with Indian entities, for such infrastructural contracts. The Ld. AO has merely focused on the fact of three contracts, alleging that a single composite contract awarded on turnkey basis was split artificially into three sub-contracts by the assessee. The matter of fact happens to be it was a condition in bid and there was nothing on the part of assessee to do the splitting of a composite contract.

20. Then the Ld. DRP has fallen in error in making certain factual errors in observations. As for instance in para no. 5 of its order Ld. DRP mentions that there are only two signatories to all the three contracts namely PGCIL (the Employer) and the assessee company (the Contractor). The above discussion has established

there were three different award of contract and three different contracts were signed and executed. Only the 'first contract' was executed and signed between the assessee and PGCIL.

20.1 Further in para 5, the Ld. DRP has taken into account 'Part D' of a document relating to "commercial issues", and mentioned that it provided that "if ALSTOM-I fails to enter into the second contract and the third contract, the said contracts shall be entered into between ALSTOM and Power Grid in lines with the provisions of the document". Now as a fact this clause is part of Appendices 10, to the off-shore agreement which contains 'specific agreements made during meetings held from 03.07.2012 to 05.07.2012 between the PGCIL and M/s. ALSTOM, along with its associate ALSTOM-I. This agreement was on the part of ALSTOM to execute second and third contract, merely as an assurance that at advance stage after the bid is accepted and before the contract is actually executed the bid is not frustrated. In any case when the three contract stand executed on 17.08.2012, the issues discussed in the meeting between 03.07.2012 and 05.07.2012 became superfluous but Ld. DRP has unnecessarily stressed upon the same to draw a conclusion that primary commitment in all the three contracts was of the assessee.

20.2 Further in para 5.2, the Ld. DRP has reproduced para 3.2 of the notification of award dated 21.06.2012 without understanding the context in which the same was made. As for the convenience para 5.2 of the order of DRP is reproduced as below :-

> *"5.2 It has also been clarified at para 3.2 therein that-*
>
> *"3.2 Notwithstanding the break-up of the Contract Price, the Contract shall, at all times, be construed as a single source responsibility Contract and any breach in any part of the Contract shall be treated as a breach of the entire Contract,"*

a matter of fact that this para 3.2 is part of clause 3.0 in notification of award, which makes reference to contract price and it will be beneficial to reproduce the whole of it, from the notification of award dated 21.06.2012, available at page no. 127 of paper book as under :-

> *"3.0 Contract Price*
>
> *3.1 The total Contract Price for the entire scope of work under this Contract shall be GBP 107,590,567 + EURO 68,835,118+USD 13,559,144 (Great Britain Pound One Hundred Seven Million Five Hundred Ninety Thousand Five Hundred Sixty Seven Plus Euro Sixty Eight Million Eight Hundred Thirty Five Thousand One Hundred Eighteen Plus USD Thirteen million Five Hundred Fifty Nine Thousand One Hundred Forty Four Only) as per the following break-up:*

Sl.	*Price Component*	*Amount*	
1.	*CIF Price Component*	*GBP* *EURO* *USD*	*107,590,567* *68,835,118* *13,559,144*
2.	*Type Test Charges*		*Included*
3.	*Training Charges*		*Included*
	Total for Off-Shore Contract	*GBP* *EURO* *USD*	*107,590,567* *68,835,118* *13,559,144*

3.2 Notwithstanding the break-up of the Contract Price, the Contract shall, at all times, be construed as a single source responsibility Contract and any breach in any part of the Contract shall be treated as a breach of the entire Contract.

20.3 Ld. DRP has fallen in error in considering that the reference here to "single source of responsibility" is with regard to three contracts but the matter of fact is that it was only in context to the contract price for the off-shore contract. The off shore contract had three components; first being 'CIF price component' for which the contract price was disclosed and further the assessee was supposed to provide 'type test' and 'training but the charges for same were included in contract price for 'CIF price component' and in reference to that it was agreed that any breach in any part of the contract shall be treated as a breach of the entire contract. Here the entire contract has reference to the off- shore contract and not all the three contracts.

20.4 Further, Ld. DRP has fallen in error in considering the 'scope of work' mentioned in the bid to be the contract which has been awarded by PGCIL to assessee while as discussed above, the notification of award of the off-shore contract dated 21.06.2012 gave the limited scope of work in off-shore contract and there is a separate delineation of scope of the word for second and third contract awarded to ASTOM-I. Thus Ld. DRP has fallen in error to conclude there is no separate delineation of work.

21. Lastly, the major focus of tax authorities below and Ld. DR has also been on the fact that under the bid and the three contracts the ultimate responsibility of execution and liability in case of breach remained with the assessee. In this context, the Bench is of considered opinion that the business prudence involving such major infrastructure projects cannot be examined and questioned by the revenue authorities attributing bare motives and to assume that the different contracts under one bid are with only intention to escape taxation. Such arrangements are more out of business prudence and usually for the safeguard of the rights of Indian entity, like PGCIL, which negotiates and gets executed such infrastructural facility contracts. The intention being successful commissioning of the project and that it is not abandoned or frustrated due to involvement of many parties, each performing some part, by shouldering any delay or latches, on other unrelated party.

21.1 In this context, reliance can be placed on the judgment of Hon'ble Delhi High Court in Linde AG, Linde Engineering Division (supra) wherein dealing with the reasons for having such clauses to make parties to a consortium being joint and safely liable under a contract, Hon'ble High Court observed in para 53 and 55 as follows:

> *"53. We are also unable to accept the contention that the fact that Samsung and Linde had agreed to be jointly and severally liable for performance of the contract, would be sufficient to hold that they constituted an Association of Persons for the purposes of the Act. Linde and Samsung agreeing to be jointly and severally liable to OPAL for due performance of the Contract only indicates that Linde and Samsung had accepted a contractual obligation towards a third party, the same does not by itself lead to a conclusion that the said members had formed an Association of Persons. Any entity/individual may agree, for its own business purposes, to accept a liability for due performance of an obligation of another. This by itself would not lead to a conclusion that the said persons had formed a common enterprise or an association which was moved by joint action for a common purpose. As a matter of illustration, let us take a case where a director of a company provides a personal guarantee for a loan taken by the company. Having stood as a surety for the company, the director and the company would be jointly and severally liable to the lender. However, they continue to be independent of each other and the fact that are jointly and severally liable cannot possibly lead to the conclusion that the company and its director constitute an Association of Persons for the purposes of the Act. In order for independent entities/individuals to be considered as an Association of Persons, they must exhibit some trappings of a partnership in relation to their common enterprise."*
>
> *"55. In every project which is executed by multiple independent agencies, a certain level of cooperation and coordination is required to ensure that the agency involved performs its work in a timely manner as per a predetermined schedule in order to enable the other agency to commence and complete its portion of work. The level of cooperation as agreed between Linde and Samsung was also akin to the level of cooperation as expected from independent agencies executing a project. This can be understood by taking an illustration of a simple project for construction of a building. It is only after an Architect or a Designer provides the detailed drawings that a civil contractor can commence construction. Similarly, it is only after the civil construction is commenced and progressed to a certain level that space for electrical contractors is available for them to perform their work. The work of Interior finishing can take place only after the civil works are complete. The fact that each of the aforesaid agencies, namely, the architect, the civil and electrical contractors are required to complete their work in a pre- determined sequence and are required to cooperate with each other in providing the necessary information and adhering to a specified schedule would not necessarily imply that the architect, civil contractors and electrical contractors had formed an Association of Persons. In this illustration each one of the participants works towards a common project with a certain level of cooperation. However, since the said participants do not act as a single cohesive entity, but perform their*

> *independent allocated works, they cannot be considered as an Association of Persons. In order to consider agencies as an Association of Persons, it is necessary that they form a joint enterprise with a greater level of common management. An element of mutual agency and joint action for mutual purpose is also necessary. Mere obligation to exchange information, between independent agencies, for co-ordinating their independent tasks would not result in an inference that the agencies had constituted an Association of Persons."*

22. Hon'ble Delhi High Court in the Linde AG Case (supra) has also referred to case of Hyundai Rotem Co., in re [2010] 323 ITR 277/190 taxman 314 (AAR) which was also referred by the assesse before Ld. Tax Authorities below and where the facts were that Hyosung Corporation submitted a bid for execution of the works relating to 800 KV/400KV Tehri Pooling Station which was floated by Power Grid Corporation of India Limited (Power Grid). The applicant was successful and its bid was accepted. As per the terms and conditions of the bid, the applicant could assign the whole or part of the work to an independent contractor subject to the approval of Power grid. In terms of this provision, the applicant requested that part of the contract relating to onshore supply services be assigned to M/s L & T. Accordingly, Power Grid entered into a separate contract for onshore supplies and services with M/s L & T. Although, Hyosung continued to be responsible for the overall execution of the project, the scope of work of Hyosung was limited to the offshore portion of the contract. The facts of this case are quite identical; with PGCL being a common party and Ld. AAR in this matter vide application AAR no. 773 of 2008 order dated 17/6/2009, after taking into consideration the overall responsibility stipulations for the successful completion of the three contracts rested with the applicant Hyosung in line with the proposal in the bidding document, observed

> *"By incorporating various safeguards in the contract. Power Grid took the necessary precautions to see that notwithstanding the split up of contract into three, the applicant and L&T would act in harmony and maintain requisite coordination for the timely and successful completion of project. Such a role assigned to the applicant by Power Grid was in the overall interest of the project. It is an arrangement conceived of and agreed to by the parties keeping in view the overall objective of successful commissioning of the project."*

23. Thus, the bench is of considered opinion that the Ld. Tax Authorities below have fallen in error in concluding that there was an artificial split of a contract and that there was one inseparable, indivisible and composite contract.

24. On the basis of aforesaid discussion the question of assessee having a permanent establishment (PE) can be examined. Ld. AO has not given any substantial reason on the basis of evidence while what weighted heavily in the mind of Ld. DRP was that the supply of equipment on the basis of off-shore contract would have been rendered meaningless in the absence of services of supervision, erection commissioning etc. all of which was an indivisible part of the contract.

25. The Bench is of considered opinion that when the allegation of the Revenue about an artificial split of contract is not sustained and it is established that the

assessee has entered into the 'First Contract', in its independent capacity, there is no force in the finding of Ld. that GE India (Alostom-I) was actively involved in soliciting business for the assessee. In fact, there is substance in the contention of Ld. Sr. Counsel that in the bidding structure of present nature there is no question of someone 'soliciting' the business, as it was a case of open bid to which Indian and Foreign entities, both, were eligible to make the offer of bid.

25.1 There is no question of any agent and principle relationship between the assessee and the Indian associate for a very substantial reason that PGCIL has treated in its contract documents, ALSTOM-I to be its 'Independent Contractor'. There is substance in the argument of Ld. Sr. Counsel on the basis of judgment of Hon'ble Supreme Court in CIT vs. E-funds IT solutions (supra) that the onus was on the department to prove the existence of PE. The Bench is of considered opinion that such an onus can be considered discharged by specific reference to the evidence. No evidence is brought on record to show that the Indian Associate was employed by any 'act' of the assessee to represent the assessee independently while dealing with PGCIL. On the contrary what is established is that it was the assessee at whose proposal, ALSTOM-I was accepted to be an Associate of the assessee and the employer PGCIL treated ALSTOM-I as its 'independent contractor' on the terms and conditions, as laid down in the bidding document. If there was any involvement of the employees of Indian Associate, at any stage in the meetings between assessee and the PGCIL that was bound to be there and outcome of the fact that assessee and its Indian associate were required to work in tandem and that does not give rise to existence of a dependent agent PE of the assessee.

26. As with regard to the question of Indian Associate being a PE again there is force the contention of Ld. Sr. Counsel that the findings of Ld. Tax Authorities below are not on the basis of any facts and evidence. The case of assessee as submitted and established is that under 'First contract' it was merely liable to make offshore supplies. Thus, assessee was not engaged in any construction project in India. Its revenues were outcome of the offshores supplies and services rendered off shore. Thus, there was no question of constitution of the Construction PE as per Article 5(2) of the DTAA.

27. As for the applicability of Section 44BBB of the Act, is concerned, it can be observed that the foundation of it was existence of a PE. The assessee under the 'First contract' was merely under obligation to make off shore supplies and wherein property in the goods transferred outside Indian, therefore as Section 44BBB does not speak of engagement of a foreign company for 'supply' in connection with the turnkey Power Project, the provisions of Section 44BBB are not applicable. Thus Ld. DRP has fallen in error in sustaining application of Section 44BBB of the Act, on premises that the assessee is involved in the end to end execution of the project in India. The revenue derived by the assessee were on the basis of offshore supplies and not out of any construction, erection, testing or commissioning activities of a turnkey power project in India. Thus, the application of section 44BBB to such revenue, which is not per se taxable India, is not sustainable.

28. It also appears that the Revenue is not disputing the fact that under the 'First Contract' assessee was only supposed to make off shore supplies. Otherwise too it is appearing from the recitals of 'First Contract' that the procurement by PGCIL, was on the basis of, "CIF Indian Port of Entry supply". The title in property had

passed out side India. The payments were also made outside India in terms of this contract. The settled proposition of law in this regard, rightly relied by Ld. Sr Counsel for assessee, is sustainable and the relevant conclusion in para 79, from the judgment of Hon'ble Supreme court in the case of Ishikawajma-Harima Heavy Industries Ltd. (supra)is reproduced below;

> *"Re: Offshore Supply:*
>
> *(1) That only such part of the income, as is attributable to the operations carried out in India can be taxed in India.*
>
> *(2) Since all parts of the transaction in question, i.e. the transfer of property in goods as well as the payment, were carried on outside the Indian soil, the transaction could not have been taxed in India.*
>
> *(3) The principle of apportionment, wherein the territorial jurisdiction of a particular state determines its capacity to tax an event, has to be followed."*

29. Thus, the Bench is inclined to conclude that there was not an artificial split of bid into three separate contracts to avoid taxes in India. In the present case, the Indian Associate's non- involvement in off-shore transaction excludes it from being a part of the cause of the income itself, and thus there is no business connection. The Ld. Tax authorities below failed to appreciate the distinction between the existence of a business connection and the income accruing or arising out of such business connection, which is clear and explicit. It is established that assessee had no business connection or dependent agent PE or construction PE in India. The attribution of profit from off-shores supplies made to PGCIL to the alleged business connection or PE and application of Section 44BBB is not sustainable. The ld. Tax Authorities below have fallen in error to hold that off-shores supplies to PGCIL are taxable in India. The assessee was merely under liability for making off-shores supplies to PGCIL under the 'First contract' for which the revenue earned is not taxable in India. Consequently, ground no. 3 to 8 are decided in favour of the assessee.

30. Ground no. 9 to 11;It was contended on behalf of the assessee by the Ld. Sr. Counsel that at the time of passing final assessment order, the Ld. AO has not complied with binding directions of DRP. Raising the question that Offshore supply receipts from GETDIL & SFO Technologies- Ld. AO did not follow DRP directions Ld. Sr. Counsel relied ESPN Star Sports Mauritius SNCET Companies vs Union of India: 388 ITR 383 (Del), Global One India Pvt Ltd vs DCIT: ITA No.1980/Del/2014 (Del Trib.)and he submitted such addition is not sustainable. Ld. DR however, supported the findings of Ld. Tax Authorities below.

31. It can be appreciated in regard to these grounds that Ld. DRP in para 5.15 of its order had specifically directed the Ld. AO that receipts on account of offshores supplies made by the assessee to GE T&D and SFO, if they are not related to the PGCIL contract, which is the basis of addition in the draft assessment order, be deleted. Ld. AO in para 20 of final assessment order observed as follows:-

> *"20. In view of the directions of the Hon'ble DRP the receipts from GE T& D India Ltd. and SFO Technologies have been reexamined and it is held that Since the company constituted a dependent agent PE in India (GET&D) as*

far as the assessee's entire operations in India were concerned and the same has upheld by the Ld. DRP. It is pertinent to mention here that once PE has been established for a transaction, it needs not to be established for each and every transaction. Moreover, the supplies are of very high technical specifications, customised machinery and given that the assessee company is a leader in its field, these supplies were to be assembled and made operational/commissioning in India only by itself or its associated enterprises (which is GE T&D in this case), thus such receipts are taxable as discussed in preceding paras.

Without prejudice to the above, the assessee company has not furnished copy of agreement of offshore supply with GE T&D and SFO Technologies. It has only furnished sample invoices in case of Offshore supply made to GE T&D. In absence of any underlying agreement, assessee's claim that offshore supply made to GE T&D and SFO technologies is not related to PGIL contract can not be ascertained. In view of the above, the offshore supplies made to GE T&D and SFO Technologies are taxable as per DTAA and Income Tax Act. Further, the DRP has also upheld the taxability of Global operation fee amounting to Rs. 15.27,62,000 as Fee for Technical services as per DTAA and Income Tax Act.

32. The Bench is of considered opinion that once the foundation of the findings of Ld. AO on the basis of dependent agent PE status of GE T&D India and SFO technologies in not sustained by this Bench, the foundation of his reasoning in para no above stands washed away. At the same time what comes up is that assessee had claimed that there was no agreement with GE T&D and SFO technologies and on the basis of orders and invoices generated, the supplies were made. Ld. AO has stressed on the agreement without appreciating that the invoices as made available in the paper book from 281 to 371, have terms and conditions described on the purchase order. Thus, on the basis of general terms and conditions, purchase orders were raised and on the basis of which the offshore supplies were made to these two Indian companies. Ld. AO was under obligation to give effect to the orders of DRP in a substantive manner but without there being anything on record to show on the part of the Ld. AO that the supplies in regard to PGCIL contract with the assessee, the addition was made by ignoring invoices. Thus, these grounds are sustained and decided in favour of the assessee.

33. Ground no. 12; In regard to this ground it can be appreciated that Ld. AO made the general observations while Ld. DRP observed that the specialize / customize training provided by the assessee to the users for assessee and use of specific technical content available for their business 'make available' technical knowledge, skill and experience within the meaning of and scope of Article 13 of the DTAA. It has taken into consideration certain specific services on account of which the assessee had received global operation fees. The relevant para 6.3 of the order of ld. DRP is reproduced below :-

"6.3 On perusal of the relevant Global Operation Fees Agreements for the years 2017 and 2018 entered into between GE T&D India Ltd and the assessee, which are available in the paper book filed in DRP proceedings, the following services, inter alia, are seen to be provided therein under the respective Heads-

a) Technical support for manufacturing process.

b) Test system- which includes Test System design, Test Software development and provision for upgrades and new products, design and provision of test jigs and fixtures, providing of technical support in respect of system failure, process performance, spares and maintenance and Training of local support engineers on system.

c) Project managed introduction of new products into manufacturing units

d) Coordinate and manage introduction of design changes- Technical support and liaison between units and teams, E.g. R & D.

e) Master Data-Creation of product configurators on Global IT system, creation of products and materials on global system for use within local unit, training for local units in adaptation of Bom's, routings and configuration in line with global rules, providing of technical assistance and support and product structure realted issues and Training of local team in configurator development.

Indirect support- Technical support suppliers on process support, test system design and support, text fixture design and support, technical/quality issue resolution.

g) Component approval - Provide technical data and specifications and Training of local support engineers on system use.

h) Localisation- Provision of technical details, technical support for supplier development, facilitation of qualifications to global standard and facilitation of product approval for manufacture.

i) Creation of technical documentation for products.

34. In regard to this ground it was submitted on behalf of the assessee by Ld. Sr. Counsel that there were various services which were rendered for multiple functions to ALSTOM-I and those with regard to Global Industrialization function amounting to Rs. 7,15,24,966/- were offered to tax in the return of income and the balance services valued for Rs. 8,12,37,034/- were not offered to tax as the corresponding services do not fulfil the "make available" clause of paragraph 4(c) of Article 13 of the DTAA. Relying various judgments it was stressed that ALSTOM-1 is not enabled to employ these services on its own so the 'make available' clause is not applicable. The service provisions were primarily managerial in nature and do not involve any technical knowledge etc. to fulfil make available test. In context to the principle that the Global operation fee received from GETDIL is not taxable in India in absence of 'make available' and as to how the phrase Make available' is interpreted under law, the Ld. Sr. Counsel relied CTT vs De Beers India Minerals (P) Ltd: 346 ITR 467 (Kar), DIT vs Guy Carpenter & Co Ltd: 346 ITR 504 (Del), Autoliv ASP Ineys DCIT (International Taxation): [2022] 194 ITD 253 (Del Trib.), Anand NVH Products Incvs ACIT: ITA No.1951/Del/2021 (Del Trib.), NTT Asia Pacific Holdings Pte Ltd vs. ACIT: 196 ITD 591 (Mum Trib.), Raymond Ltd vs DCIT: 86 ITD 791 (Mum Trib.), GE Energy Management Services Incvs ADIT: 193 ITD 485 (Del Trib.), Bombardier Transportation Sweden AB vs DCIT: 90 ITR(T) 405

(Del Trib.), Bio Rad Laboratories Incvs ACIT: ITA No.994 & 996/Del/2022 dated 30.12.2022 (Del Trib)Ld.

34.1 Supporting his contention that Managerial services are not FTS in absence of 'managerial word in India-UK DTAA the Id. Sr. Counsel relied Steria (India) Ltd vs CIT: 386 ITR 390 (Del) and Everest Global Incvs DDIT: 194 ITD 729 (Del Trib.). Ld. DR however, defended the findings.

35. In this context, it can be observed that the Global Operation Fees Agreement made available at page no. 372-396 of paper book along with copy of invoices available at page no. 397-403 of the paper book establish, that the assessee had agreed to provide services which included industrialization of products, sources and procurement of raw materials, setting quality standers, supply general and contracts. The industrialization support for SMP services details and descriptions have been given in appendix II available at page no. 377 of the paper book. Ld. DRP has merely into consideration the sub-heads of Global Industrialization support services, which have infact already accrued to tax. Ld. Tax Authorities below have approached the issue with the very general discussion without appreciation of any evidence and facts to show that how the other services fall into the category make available clause. The essence of 'make available' clause is that the technical knowledge or skills of the provider should be imparted to be absorbed by the receiver so that the receiver can deploy similar technology or technique in the future without dependent upon the provider. However, in the case in hand for the services rendered, there is renewal of contract on annual basis and the nature of services are all prima facie managerial in nature. They have also passed the arm's length tests. Thus Ld. Tax authority below have fallen in error in taxing global operation fee of Rs.8.12,37,030 received from GETDIL as Fees from Technical Services ("FTS") under the provisions of the Act and the India-UK DTAA, without appreciating that provision of said services by the Appellant did not satisfy the 'make available' clause contained in Article 13(4)(c) of the India-UK DTAA. Ground is adjudicated in favor of assessee.

36. Consequent to determination of raised and argued grounds no 3 to 12 in favour of assessee, the appeal is allowed. Impugned final assessment additions are deleted with consequential effects."

19. From the above Tribunal order, it could be seen that the following grounds are covered in favour of the assessee is as under:-

Ground No. in present appeal	Issue	Para No. in ITAT order for AY 2018-19	Page No. in ITAT order for AY 2018-19
4.	Taxability of offshore supply in India	9.8.2 and 28	10 and 29
5	Whether assessee had business connection in India	9.8.1 and 29	10 and 30
7	Whether the assessee constitutes dependent	9.8.4 and 25	10 and 27

	agent permanent establishment (PE) Whether the assessee had constitutes fixed place permanent establishment in India	26	28
	Whether the onus is on the AO to prove the existence of PE	9.8.5 and 25.1	11 and 28
8.	Attributing 100% profits from offshore supplies made to PGCIL to the alleged business connections/ PE	9.8.6 and 29	11 and 30
9	Applicability of provision of section 44BB of the Act	9.8.3 and 28	10,28 and 29
10.	Whether single composite contract was artificially split into three separate contract	9.8	11 to 23 10, 12 to 27
12 to 15	Offshore supply receipts from SFO Technologies and GETDIL	30 to 32	30 to 32
16-17	Global operation fees from GETDIL as fees for technical services (FTS)	33 to 35	32 to 35

20. Ground No. 3 raised by the assessee is challenging the denial of treaty benefit under India UK DTAA to the assessee by holding that the assessee cannot be treated as tax resident of UK.

21. We have heard the rival submissions and perused the material available on record. We find that the assessee had enclosed a certificate issued by HM Revenue and Customs, UK certifying that assessee is a tax resident in UK for the year 2015. This is enclosed in page 308 of the Paper Book. Similar certificate for the year 2016 & 2017 are enclosed in pages 311 and 313 of the Paper Book respectively. The said certificate specifically mentioned that the assessee company is a resident of UK in accordance with Article 4 of the treaty between India-UK DTAA. We find from the profit and loss account of the assessee for the period ended 31.12.2015 is enclosed in pages 318 to 328 of the PB wherein, there is a note written by the assessee which reads as under:-

> "*the company acts as an undisclosed agent for General Electric Energy UK Ltd under terms which provide that General Electric Energy UK Ltd receives all trading income and pays all trading expenditure of the company.*"

22. The assessee had filed the return of income at UK for the accounting period commencing on or after 01.04.2015 till 31.12.2015 in UK declaring Nil income which are enclosed in pages 322 to 332 of the Paper Book. The entire financial statements for the period ended 31.12.2015 of General Electric Energy UK Ltd as prepared in accordance with UK laws are enclosed in pages 363 to 409 of the Paper Book. The income tax return filed by General Energy UK Ltd for the period of 01.04.2015 to 31.12.2015 are enclosed in pages 410 to 423 of the Paper Book. We find that the assessee is liable for tax for worldwide income. The assessee is a fiscal transparent entity entitled for treaty benefits as it holds valid tax residency certificate from UK Tax Authorities.

23. The ld DR before us specifically argued that as per Article 3 of India-UK DTAA, the term 'person' is defined as an individual, company, body of persons and any other entity which is treated as a 'taxable unit' under the taxation laws in force in the respective contracting state. The ld. DR submitted that in the instant case, the assessee is not 'liable to tax' at all and hence, does not get classified as even a 'person' as per Article 3 and accordingly, it is not entitled for treaty benefits. The ld DR further argued that as per Article 4 of India- UK DTAA, the expression "resident of a contracting state" is defined to include any person who is liable to tax. Accordingly, as per Article 4(1)(b) the term 'company', is not mentioned at all and accordingly, the assessee is not resident of UK irrespective of it holding a tax residency certificate from UK tax authorities. In this regard, we find that Article 3(g) of India UK DTAA defines the term 'company' to mean any body corporate or any entity which is treated as a company or body corporate for tax purposes. Admittedly, the assessee is a company. Admittedly, UK tax authorities had issued tax residency certificate for assessee clearly stating that it is a tax resident of UK even as per Article 4 of India-UK DTAA. In our considered opinion, once the assessee is a tax resident of UK as per Article 3(g) read with Article 4 of India-UK DTAA, the mechanism of tax assessment and recovery of tax will follow thereafter. The expression "liable to tax" mentioned in Article 4 of India

UK DTAA is to be understood in the manner that whether a particular person is obligated to pay tax in that respective country or not. If it is obligated to get taxed in that country, then depending upon its income, recovery of tax would happen on its own and tax mechanism for framing tax assessment would get triggered. Hence, we hold that the assessee herein is a tax resident of UK which fact is also confirmed by the Tax Residency Certificate issued by the UK Tax authorities specifically confirming that the assessee is a tax resident even as per Article 4 of the India-UK DTAA. Having held that the assessee is a tax resident of UK, it would be automatically entitled for treaty benefits. Accordingly, ground No. 3 raised by the assessee is allowed.

24. Ground No. 6 raised by the assessee is challenging the action of the ld AO in holding that GETDIL constitutes fixed place permanent establishment in India.

25. We have heard the rival submissions and perused the material available on record. The assessee has a group company i.e. GETDIL. The ld AO observed that this Indian company was taking active part of the Indian leg of the composite contract and accordingly treated the Indian company i.e. GETDIL as Dependent Agent of the assessee. In this regard, we find that Indian company is independently acting on its own, having its own work force, having independent receipts and had suffered taxes in India. Hence, it cannot be construed as Dependent Agent Permanent Establishment (DAPE). The Indian entity does not have any authority to conclude contract. The contract is awarded based on global bids. Hence, we hold that the entire observations made by the ld AO in this regard are totally without any basis. Our view is further fortified by the decision of Hon'ble Jurisdictional High Court in the case National Petroleum Construction Company Vs. DIT reported in 383 ITR 648(Del) wherein, it was held that given where assessee, a UAE based company, in course of carrying out contract with ONGC for installation of petroleum platforms, availed services of ASL for providing marketing information and other facilities in India, since 'ASL' was not authorized to conclude contract on assessee's behalf, paragraph 5 of article 5 of India-UAE DTAA applied to its case and, thus, it could not be regarded as Dependent Agent

Permanent Establishment (DAPE) of assessee in India. Accordingly, ground No. 6 raised by the assessee is allowed.

26. Ground No. 11 raised by the assessee is challenging the action of the ld AO in placing reliance on the Base Erosion and Profit Shifting (BEPS) Action Plan 7 read with Article 13 of Multilateral Instrument.

27. We have heard the rival submissions and perused the material available on record. At the outset, we find that the application of BEPS Action Plan 7 read with Article 13 Multilateral Instrument is an issue which is still in the air and is in nascent stage as the OECD members had not come into consensus for the same. Accordingly, the same cannot be applied for the AY under consideration. Hence the Ground No. 11 raised by the assessee is allowed.

28. Ground No. 18 raised by the assessee is challenging the levy of interest u/s 234B and 234D of the Act on the ground that the buyer has deducted tax at source and remitted to the account of the Central Govt in accordance with the proviso to section 209(1)(d) of the Act and hence there would be no liability for the assessee to pay advance tax. In the present case, PGCIL, who is buyer of offshore supplies made by the assessee which has been brought to tax by the ld AO in the final assessment order, had duly deducted tax at source before making the said payment. Hence, it was submitted that there was no default on the part of the assessee in payment of advance tax. This issue is no longer res integra in the view of the decision of the Coordinate Bench of this Tribunal in the case of BG International Vs. JCIT in ITA 62/DDN/2019 for AY 2015-16 dated 24.02.2020, wherein, it was held in para 32 and 33 as under:-

> *"32. We have heard the rival contentions and perused the record. The AO while computing the income in the hands of the assessee has charged interest u/s 234B of the Act at Rs.39.46 crores (approx.). The assessee is aggrieved by the aforesaid charging of the interest. The case of the assessee is that the tax due on the income of the assessee was subjected to tax deduction at source. Our attention was drawn to the computation of the tax liability in the hands of the assessee by the Assessing Officer which was placed on record. It was pointed out that the assessee had not paid any taxes by way of advance tax and total tax payable was adjusted against the tax deducted at source at Rs.17.54 crores (approx.). The question which arises is that where the*

liability to pay tax was on the payer which in turn had to deduct tax at source, then the shortfall if any in the taxes due cannot be attributed to the assessee and for such default no interest chargeable, u/s 234B of the Act.

33. Under the provision of section 209(1)(d) of the Act, it is provided that against the income tax calculated under the provision of Act then amount of income tax which would be deductible or collectible at source during the said Financial Year from any income would be deducted. The provisions of section 234B of the Act deals with payment of Advance tax, whereas in the present case, this does not amount to default of payment of Advance tax, but amounts to default in deduction of tax at source. Hence, the provisions of section 234B of the Act are not applicable and so also the proviso under section 209(1)(d) of the Act."

29. Respectfully following the same, we hold that interest u/s 234B of the Act is not chargeable in the instant case. The chargeability of interest u/s 234D of the Act is consequential in nature.

30. In the result, the appeal of the assessee is partly allowed in ITA No. 884/Del/2023 for AY 2016-17.

ITA No. 885/Del/2023 AY 2017-18

31. Ground Nos. 1 to 15 raised by the assessee for AY 2017-18 are identical as those raised in AY 2016-17 and hence, the decision rendered hereinabove for AY 2016-17 shall apply mutatis mutandis for AY 2017-18 also except with variance in figures.

32. Ground No. 16 raised by the assessee for AY 2017-18 was stated to be not pressed by the ld AR at the time of hearing. The same is reckoned as a statement made from the bar and accordingly dismissed as not pressed.

33. Ground No. 17 raised by the assessee is challenging the chargeability of interest u/s 234B and Section 234C of the Act. With regard to chargeability of interest u/s 234B of the Act, the decision rendered by us herein above for ground No. 18 for AY 2016-17 shall apply mutatis mutandis for this year also. With regard to chargeability of interest u/s 234C of the Act, the law is well settled that the said interest should be charged only on the returned income and not on the assessed income.

34. In the result, the appeal of the assessee for AY 2017-18 in ITA No. 885/Del/2023 is partly allowed.

ITA No. 2239/Del/2023 AY 2015-16

35. All the grounds raised by the assessee for AY 2015-16 are identical with those raised for AY 2016-17. Accordingly, decision rendered by us hereinabove for AY 2016-17 shall apply mutatis mutandis for AY 2015-16 also except with variance in figures.

36. In the result, the appeal of the assessee in ITA No. 2239/Del/2023 for AY 2015-19 is partly allowed.

ITA No. 2240/Del/2023 AY 2020-21

37. The ground Nos. 1 to 17 raised by the assessee for AY 2020-21 are identical with the grounds raised for AY 2016-17 and hence, the decision rendered thereon for AY 2016-17 shall apply mutatis mutandis for AY 2020-21 also except with variance in figures.

38. Ground No. 18 of the assessee is challenging the chargeability of interest u/s 234A of the Act. The ld AO is directed to verify whether the return of income was filed before the due date specified u/s 139(1) of the Act or the extended due date from time to time by the CBDT and decide the chargeability of interest u/s 234A of the Act accordingly. With regard to chargeability of interest u/s 234B of the Act, the decision rendered by us hereinabove for AY 2016-17 shall apply mutatis mutandis for this year also. Accordingly, ground No. 18 raised by the assessee is allowed for statistical purposes.

39. In the result, the appeal of the assessee in ITA No. 2240/Del/2024 for AY 2020-21 is partly allowed for statistical purposes.

40. To sum up -

ITA No.	AY	Result
884/Del/2023	2016-17	Partly Allowed
885/Del/2023	2017-18	Partly Allowed

2239/Del/2023	2015-16	Partly Allowed
2240/Del/2023	2020-21	Partly Allowed for statistical purposes

41. Since, appeals of the assessee are hereby disposed of, the stay petitions No. 200/Del/2023 and 201/Del/2023 preferred by the assessee for AYs 2016-17 and 2017-18 respectively are hereby dismissed as infructuous.

Order pronounced in the open court on 13/03/2024.

-Sd/-
(C. N. Prasad)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 13/03/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi