IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No.2393/Mum/2019
(**Assessment Year :2009-10**)

JCIT (IT)(OSD)-4(1)(2) Room No.1609 16th Floor, Air India Building Nariman Point Mumbai – 400 021	Vs.	Arun Rangachari 201, Centre Point JB Nagar AK Road Andheri (E) Mumbai – 400 059
PAN/GIR No.AMDPR8746F		
(Appellant)	..	**(Respondent)**

CO No.05/Mum/2024
(Arising out of ITA No.2393/Mum/2019)
(**Assessment Year :2009-10**)

Arun Rangachari 201, Centre Point JB Nagar AK Road Andheri (E) Mumbai – 400 059	Vs.	JCIT (IT)(OSD)-4(1)(2) Room No.1609 16th Floor, Air India Building Nariman Point Mumbai – 400 021
PAN/GIR No.AMDPR8746F		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Gaurav Kabra
Revenue by	Shri Ajay Kumar Sharma
Date of Hearing	**04/04/2024**
Date of Pronouncement	**30/04/2024**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by Revenue and Cross Objection has been filed by the assessee against order dated 28/01/2019 passed by ld. CIT (Appeals)-58, Mumbai for the quantum of assessment passed u/s.147 r.w.s. 143(3) for the A.Y.2009-10.

2. In this case an *exparte* order was passed earlier by the Tribunal in favour of the Revenue vide order dated 22/04/2022, wherein the decision of the ld. CIT (A) was reversed by the Tribunal in ITA No.2393/Mum/2019.

3. Against the said ex-parte order, the assessee filed a Miscellaneous Application on 09.06.2023, being MA No: 427/Mum/2023, wherein the assessee pleaded to recall and cancel the original order dated 22.04.2022 as the respondent assessee did not receive any of the notice for hearing before the Tribunal alongwith the affidavit. After considering the application and verification of records and hearing both the parties, Tribunal held that the assessee had reasonable and sufficient cause, due to which he was unable to appear on the date ofhearing and thus the order dated 22.04.2022 was cancelled and recalled u/s 254(2) read with Rule 25 of ITAT Rules. Thus, the earlier *exparte* order has been recalled to be heard afresh by giving opportunity to both the parties.

4. In the grounds of appeal the Revenue has raised the following grounds:-

1. Whether the Ld. CIT(A) has erred in facts and law in not holding that the assessee is taxable u/s 9(1)(i) of the IT Act, 1961 in relation to the assessment of his business income as done by the Assessing Officer?

2. Whether the Ld. CIT(A) has erred in facts and law in not holding that there exists a business connection of the assessee in India and his business income as computed by the Assessing Officer is taxable u/s 9(1)(i) of the IT Act, 1961?

3. Whether the Ld. CIT(A) has erred in facts and law in applying the provisions of India-UAE DTAA without even examining whether the assessee is a resident under Article 4 of that DTAA for the purposes of it being applicable?

4. Whether the Ld. CIT(A) has erred in facts and law in holding that the assessee is entitled to treaty benefit under the India-UAE DTAA without appreciating the fact that the assessee had not provided Tax Residency Certificate from UAE Tax Authority?

5. Whether the Ld. CIT(A) has erred in facts and law in holding that there is no conclusive evidence and sufficient nexus of the assessee rendering consultancy services in India, without appreciating the fact that the assessee had accepted in his statement u/s 132(4) of the Act that he had provided such services to Gulf Finance House of UAE in relation to the Valuable Group of India?

6. Whether the Ld. CIT(A) has erred in facts and law in not appreciating that the statement of the assessee was recorded u/s 132(4) of the Act in the business premises of a company M/s Dar Media Pvt. Ltd, in which he was a share holder and director, and for purposes of business connection in India his utilization of such premises was sufficient in relation to consultancy services provided by him as he was in India for 110 days during F.Y.2008-09 (A.Y.2009-10) and the above premises was at his disposal?

7. Whether the Ld. CIT(A) has erred in facts and law in providing relief to the assessee w.r.t. addition of Rs 3,25,50,00,000/- being income corresponding to the receipts by Thurles International Ltd and DAR Capital Ltd, from Gulf Finance House of UAE without appreciating that these amounts pertained to services rendered by the assessee in relation to Valuable Group of India and that the onus was on assessee to prove that it was not as such?

8. Whether Ld. CIT(A) has erred in facts and in law in not considering the companies of DAR group as conduit companies without appreciating that the assessee was the sole/principal shareholder and director in DAR group of companies, and through them had cross-holding in Indian companies of the Valuable Group?

9. Whether Ld. CIT(A) has erred in facts and in law in not considering the companies of DAR group as conduit companies without appreciating that the copy of bank account submitted before the Ld CIT(A) clearly shows that money was transferred to him by M/s. DAR Investment Ltd, a DAR Group company, to buy a residential property in India in his own name and not in the name of the company?

10.Whether on the facts and in the circumstances of the case and in law, Ld. CIT (A) erred in not taking into account that the assessee has not discharged his onus by failing to provide copy of bank accounts regarding receipt of USD 51.m million and USD 41.5 million even while accepting that he had provided services to Gulf Finance House of UAE in relation to the Valuable Group of India, and not considering the decision of Hon'ble Bombay High Court in the case of Soignee R Kothari v/s DCIT IN WP(L) No. 3172 of 2015 where it was held that in the normal course of human conduct, if a person has nothing to hide and serious question are being raised about the funds, a person would put to rest all questions which seem to arise in the minds of the authority?

11.Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in not taking into account the decision of a Constitution Bench of Hon'ble Supreme Court in case of GVK Industries Ltd. & Anr Vs. Income Tax Officer & Anr in Civil Appeal

No. 7796 of 1997 where extraterritorial nexus of Indian laws has been held to be valid?

12.Without prejudice to the above, even if it is found that the India-UAE DTAA is applicable, whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in holding that there was no fixed place PE of the assessee in India without taking into account that the assessee was present in India for 110 days in AY 2009-10 and he had business premises at his disposal which are sufficient for creating such a PE in light of decision of the Hon'ble Supreme Court in the case of Formula One World Championship Limited [2017] TS-161-SC-2017?

13. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in holding that the investment of Rs 94,44,74,054/- by DAR Group of companies in Indian companies of the Valuable Group, cannot be taxed in the hands of the assessee on the ground that the investments were made by the foreign companies in their own capacities, without appreciating that the companies of DAR group were conduit companies in which the assessee was the sole/principal shareholder and through them had crossholding in Indian companies of the Valuable Group?

14. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in holding that the investment of Rs 94,44,74,054/- by DAR Group of companies in Indian companies of the Valuable Group, cannot be taxed in the hands of the assessee without appreciating that a Constitution Bench of Hon'ble Supreme Court in case of GVK Industries Ltd & Anr v The Income Tax Officer & Anr in Civil Appeal No. 7796 of 1997 has held the validity of extra-territorial nexus of Indian laws and this nexus is established by way of premises of M/s Dar Media Pvt. Ltd. being available at assessee's disposal and utilized by him w.r.t. rendering services and the presence of the assessee in India for 110 days during F.Y.2008-09(A.Y.2009-10)?

15. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in holding that the investment of Rs 94,44,74,054/- by DAR Group of companies in Indian companies of the Valuable Group, cannot be taxed in the hands of the

assessee without considering the decision of Hon'ble Bombay High Court in the case of Soignee R Kothari vs DCIT IN WP(L) No. 3172 of 2015 where it was held that in the normal course of human conduct, if a person has nothing to hide and serious question are being raised about the funds, a person would put to rest all questions which seem to arise in the minds of the authority, and the assessee had failed to provide even basic documentary proof such as bank statements of DAR Group of companies w.r.t. investments in Indian companies of the Valuable Group?

16. The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

5. Subsequently, the assessee filed a letter with Registry that he has not received Form 36 as filed by the department and the registry after verification of the fact, issued Form 36 to the assessee. Later, assessee filed a cross objection wherein following grounds were raised by the assessee:-

> *"1. On the facts and circumstances of the case as well as in Law, the CIT (A) erred in confirming the action of the Learned assessing Officer in reopening the assessment u/s 147 of the Income Tax Act, 1961 without considering the facts and circumstances of the case.*
>
> *2. The respondent craves, leave to add, amend or delete the said ground of appeal."*

6. First, we will deal with the issues and the grounds raised by the Revenue. The brief facts are that assessee is a non-resident Indian settled in UAE and was not filing the return of income in the individual capacity in India as no income has arisen or accrued to him in India. A notice u/s.148 was issued to the assessee on 31/03/2016 on the basis of search action carried

out on 10/04/2013 at M/s Dar Media Private Limited, wherein statement of the assessee was recorded. In the statement of the assessee the search team raised question on receipt of funds in the hands of foreign companies of the assessee, DAR Capital Limited (Mauritius) and Thurles International Limited (British Virgin Island) from Gulf Finance House (GFH) & Khaleej Bank of Commerce (KBHC), UAE, who were executing some projects with Valuable Group. The Ld. AO after relying on the statement of assessee recorded during the course of search action found that the assessee has provided consultancy services from India and received income in his foreign companies from GFH and KBCH, UAE. According to assessing officer, the said receipt of income by the foreign companies from GFH & KBCH, UAE is his income which has not been offered to tax and accordingly issued \notice U/s 148 for the impugned assessment year after recording following reasons:

"A letter was received from DDIT(Inv .) Thane regarding Mr. Arun Rangachari. Search action U/s 132 was carried out in the case of Valuable Group at Mumbai on 10.04.2013 by DDIT(Inv .) Thane. In a related action M / s DAR Media Pvt. Ltd. was also covered u / s 132 of the Act on 10.04.2013 and the statement of Shri Arun Rangachari was recorded in the capacity of Director of this entity. Mr Rangachari claims to be resident of UAE u/s 6 of IT Act though he has an Indian passport. In the statement Shri Rangachari claimed to have rendered consultancy services to two nonresident entities i.e. Gulf Finance House (GFH) & Khaleej Bank of Commerce (KBHC) which were executing certain projects in India in association with the Valuable Group. During the search proceedings U / s 132 an email from GFH addressed to Arun Ranganchari was found which stated "Please note that GFH over the years, has for certain of its projects made payments amounting to USD 51.5 m to DAR Capital Limited and USD 41.5m

to Thurles International Limited". ". Shri Arun Rangachari is the Director of these two entities which are based in Mauritius. The two Mauritius entities are owned 100 percent by Shri Rangachari, by his own admission in his statement recorded on 13.04.2013, in response to question no. 4 of the same. Based on the advice provided by Mr. Rangachari, the GFH and KBHC have made investments in India in collaboration with the Valuable Group. During search, Arun Rangachari claimed to have rendered consultancy services to Gulf Finance House and Khaleej Bank of Commerce, which included identification of land, local partners in India and allied activities at Energy City Panvel and Logistics Park, Pen and also claimed to have done liasioning between GFH and KBHC for which they paid consultancy fees to the companies owned (100%) by Shri Arun Rangachari amounting to INR 465 Crores. Thus, it is clear that though the consultancy/advisory services have been rendered by Mr. Rangachari in India and invoices have been raised to both these entities, as mentioned by him in his statement, in lieu of which payments have been made by GFH, as mentioned in email to the Companies owned by Shri Rangachari in Mauritius. Mr Rangachari has never admitted that whatever services were being rendered by him in India was on behalf of the above two companies which he owned 100%. Mr Rangachari was visiting in India frequently and had a fixed base in India for rendering services in India which was regularly available in the form of 100% owned companies in India such as Dar Media Pvt. Ltd 201, Centre Point, J.B. Nagar, Andheri Kurla Road, Andheri (E), Mumbai 400 059. Therefore, the money received by Mr. Rangachari is taxable in India in his hands as fee for technical services u/s 9(1)(vii) of the IT Act. Alternatively, the nature of activities carried by assessee in India by visiting India from a fixed base in the form of establishment of his companies owned in India, would be in nature of business income also and taxable u/s 9(1). The assessee claims to be a resident of UAE. However, the benefit of DTAA between India and UAE shall not be available as the assessee being an individual is not treated as a 'taxable unit' under the taxation laws of UAE. Hence the assessee is not a 'person' within the meaning of clause (e) of Article 3(1) of the DTAA with UAE. Without prejudice, the assessee is liable to be taxed under Article 7(1) as it has a permanent establishment in the form of premises of Dar Media Pvt Ltd in India(100% owned by assessee) which is acts as a fixed base or is available at the

disposal of assessee for management of its activities in India. It is evident from the fact that at the time of search, Mr. Arun Rangachari was present in the officie premises of M / s Dar Media Ltd., Centre Point, Andheri Kurla Road, J.B. Nagar, Andheri, Mumbai.Shri Rangachari also admitted to being a shareholder in certain entities in India, which were listed in response to question no. 7 of the statement recorded on 13.04.2013. The details of these investments, are available on record, as part of the seized material and submissions made by the assessee in the post search proceedings. It is seen that during the financial year 2008-09, A.Y. 2009-10, investments were made in Valuable Ag-Bio Pvt. Ltd., Valuable Technologies., Valuable Destination Pvt. Ltd., Nisarg, the details of which are as under:

Share holder	*Company*	*Date of payment*	*Amount Paid*
Dar Ventures Ltd	*Valuable Ag-Bio Pvt Ltd*	*26/09/2008*	*7,70,10,000/-*
Dar Ventures Limited	*Valuable Ag-Bio Pvt Ltd*	*18/02/2009*	*7,57,74,000/-*
Dar Investments	*Valuable Technologies*	*03/10/2008*	*10,00,00,000/-*
Thurles India Investment Ltd	*Valuable Destinations Pvt Ltd*	*06/10/2008*	*42,48,74,985/-*
Dar ventures	*Nisarg*	*06/10/2008*	*26,68,15,069/-*
	Total		*94,44,74,054/-*

During course of statements during the search, Mr. Rangachari promised to give details of the sources of investments made by him in India but despite the several opportunities given by the Investigation Wing to provide the exact details of the year wise break-up of the amounts, received by Thurles International Ltd. and DAR Capital Advisors Pvt. Ltd., the same have not been furnished by him. It is seen that the investment, made by Shri Rangachari in shares of Indian entities have been sourced not only from his personal account but also from DAR Capital (Response to question no.7). It is quite clear that a large amount of payment (Rs. 465 crores, equal to USD 93 Million) has been made

to his 100 percent owned entities in Mauritius on account of services rendered in India and the proceeds from the same have been used to make investments in India through his 100% owned companies, as mentioned above, which also suggests that it is Mr. Rangachari who is real owner of the money paid by GFH to DAR CAPITAL LTD and THURLES INVESTMENTS in lieu of services rendered by Mr. Rangachari in India.In response to question No.12 regarding Arun Rangachari's role in the projects of Energy City Project by GFH and Global Logistix project by KHCB, alongwith documents, if any, he has replied as under:

"My role has been limited to identifying the investment proposition for my clients, working alongside them for over a year and a half in preparing the various studies, business plans, projections, master-planning, financial viability studies, assisting them in raising investment for these projects (fro Middle East investors). After all these were completed, I alo introduced them to some groups in India (Including valuable Group who they finally chose) as a potential associate who could assist them in India for land acquisition. In the initial stages I played a limited role in ensuring that my clients and Valuable formed a working relationship as I was known to both parties and their was a new relationship. Subsequently, I played a limited and sporadic role in assisting my clients with some legal requirement in India as well, stepping in when there were any issues between Valuable Group and them. The documents articulating my business relationship with GFH and KHCB are currently not in my possession as I am an NRI and not based in Mumbai. They will be provided on or before 19th April, 2013."

However, till date he has not provided any documents.

Regarding investments made by Dar Ventures in M/s Nisarga Building Art & Technology Pvt. Ltd. it has been stated that the funded have been earned by the assessee. Relevant Question and Ans is reproduced below:

Q. No.17. Please explain the source for investments by the M/s DAR Ventures, Mauritius, in the shares of M/s Nisarga Building Art & Technology Pvt. Ltd. alongwith supporting documents?

Ans. The funds are proprietary funds that have been earned by me providing investment advisory services in the Middle East. The

supporting documents explaining the source for transfer of funds will be provided on or before 19th April, 2013.

However, no supporting documents were provided till date.

Further the assessee has made investment in the company Nisarg Building Art and Technology Pvt. Ltd. and made investment of Rs.26.68 in M/s Nisarga Building ad Technology Pvt. Ltd. on 3/10 / 2008 as per his reply to question No. 16 of the statement recorded. Further in his reply to question No.22 he had admitted that he was allotted a flat him in October, 2008 for a consideration of Rs.5,11,10,987/-.

The assessee has promised to provide documentary evidence for the above investments made. However failed to do so. The source of investment is not explained by the assessee.

Further, the assessee has claimed to have raised invoices against GFH and KCB for the services rendered to them in reply to q. No.33 of the statement recorded. During the course of search the assessee was asked to provide copies of invoices raised. He promised to provide the said invoices and bank statement for receipt of amounts on or before 19/4 / 2013 However, till date he has not provided the same.

In reply to Q. No.34 regarding the source of investments made in India and abroad, it is explained that he had invested USD 65 million in India and promised to confirm the exact figures on or before 19/4 / 20013 Till date he has not produced any such confirmation.

During the course of search proceedings, summons was issued to Shri Arun Gangachari asking him to appear before the DDIT (Inv.) Thane on 3/9/2013, 19/9/2013 , 4/10/2013 and 17/10/2013 to provide copies of invoices raised by him details of employees who have actually provided the services. However, he had not appeared before the DDIT (Inv.), Thane.

During the course of assessment proceedings also summon was issued to the assessee on 18/3/2016 to provide year wise and company wise break up of money received from Gulf Finance House and also copies of invoices raised by Shri Arun Rangachari against GFH and KBHC. Assessee has not complied to this summon also.

During the course of assessment proceedings u/s 147 of the I.T. Act, 1961 for A.Y. 2008-09, the assessee has failed to:

(i) give the copies of the invoices raised on GFH or KBHC against which the money has been paid by them to DAR Capital Ltd and Thurles International Ltd in Mauritius.

(ii) Explain why the money was received by DAR Capital Ltd and Thurles International Ltd when the services were rendered by Arun Rangachari in India.

(iii) give year wise break up of money received by DAR Capital Ltd and Thurles International Ltd

(iv) give year wise investment made in India by Arun Rangachari in his own name or in the name of his 100% owned companies and the sources thereof.

(v) give the copies of agreements if any with GFH or KBHC for receiving the fees in lieu of services rendered in India by Arun Rangachari.

(vi) give the details of actual investment made by GFH and KBHC inthe projects in India as per advice given by Arun Rangachari, which could earn him a huge fee of 465 Crores.

(vii) give the details of ownership of shares of the companies which in turn have invested in purchase of shares of the Valuable group.

(viii) Give the TRC of the companies owned by Mr Rangachari in Mauritius.

It was only stated by assessee during re-assessment proceedings that the investment was made from HSBC NRE A/c Chennai. On verification of the said bank a / c it is seen that most of the funds are remitted from Dubai. Hence the assessee was asked the source of Dubai fund. In response it is stated that the funds are remitted from Arun Rangachari's HSBC A / C in Middle East, UAE. An amount of Rs. 1,56,84,464/ - was remitted from his UAE HSBC A/c to NREA / c in Chennai during the F.Y. relevant to A.Y. 2008-09. Therefore, he was requested to give the source from where such amount was credited in assessee's HSBC Middle East A/c. In spite of various opportunities given on 2/12 / 2015 12/1 / 2016 3/12/2016, 11/2 / 2016, 24/2 / 2016 the

assessee's AR only submitted that none of the said sum in question have been received during the year 2007-08 relevant to A.Y. 2008-09 by the said entities i.e. Dar Capital Ltd. and Thurles International Ltd.. It is further stated that Thurles International Ltd. Is incorporated in F.Y. 2008-09 relevant to A.Y. 2009-10 only and it is further stated that none of the receipts during the year in question which have been transferred to account maintained in India are out of any sum received from GFH and that investment made during the year are out of money received from overseas was from assessee's own account. It is also very peculiar that the assessee claimed that assessee being a resident of UAE but the money for the services rendered by him in India is being received by his two 100% owned companies based in Mauritius and thereafter these sums have been invested in purchasing shares of Indian companies in India. This is being done apparently with the objective that no capital tax is paid by these Mauritius companies when the shares of Indian companies are transferred by taking benefit of India Mauritius DTAA. The assessee is not paying tax even now also neither in its own hands nor in the hands of the two Mauritius companies owned by him.

In the instant facts and circumstances it was the onus on the assessee to establish the fact that the funds have not been sourced from India and the assessee has not been able to establish the same with any evidence, despite being given ample opportunity. On one hand he admits to having rendered consultancy services in India hence income accrued in India is taxable in India and raised invoices for the same, implying that he has close nexus to India but on the other hand he has failed to prove that the sums deposited in HSBC UAE a/c and subsequently transferred to HSBC Chennai a / c in India before being invested in Indian Companies, have not been sourced from India. He has not stated as to what is the source of his income in UAE. He has mentioned the investments made in shares of Indian companies and also in immovable properties in India, thus, strengthening the belief regarding the strong business connection with India. Thus a strong presumption is raised against Mr. Rangachari, which he needs to rebut with documentary evidence that income invested in shares was from a taxable source from a country outside India. Therefore once the source of money has not been explained, then in absence of anything contrary shown by

assessee the only logical conclusion/presumption can be inferred is that that the amounts invested are unaccounted deposits sourced from India and therefore taxable in India. This presumption is as per the provisions of Section 114 of The Indian Evidence Act,1872 which reads as follows:

***"Section 114. Court may presume existence of certain facts**–*

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
The Court may presume –

……(g) That evidence which could be and is not produced would, if produced be unfavorable to the person who withholds it……"

Section 114(g) of The Indian Evidence Act, 1872, thus clearly says that the Courts can presume existence of certain facts if the person liable to produce evidence which could be and is not produced, which if produced would have been unfavorable to the person who withholds it. In the instant case, the assessee could have very well given the documents to show the source of generation of the amounts invested in India but he has chosen not to produce evidences to establish the same. Thus, as per the provisions of Section 114 of The Indian Evidence Act, 1872 also, it needs to be held at this stage that the information/details not furnished were unfavorable to the assessee and that the source of the money invested is undisclosed and sourced from India.

Thus, the provision of S.114 of the Indian Evidence Act raises an adverse proposition against the assessee in the background of the investments made by him in India as well as failure to provide the source of such investments which are in the nature of unexplained investments, taxable in India.

Shri Rangachari has not filed any Return of Income for A.Y. 2009-10 in India showing the proceed from these operations nor the source of his investments. As already stated in earlier paragraphs, the money received by Mr Rangachari in UAE through his 100% owned Mauritius entities, in lieu of services rendered by Mr Rangachari in India, are taxable in India u/s 5 r/w section 9(1) of the IT Act. It is this money which has been

then brought to India for making investments in Indian companies as stated above. Though from the material available on record it is apparent that the assessee received Rs 465 Cr over a period of years but no year wise breakup has been given. In absence of this, the amount received/accrued of Rs.465 crores needs to be taxed as income of Mr. Arun Rangachari in F.Y. 2008-09 relevant to AY 2009- 10. The assessee has also made investment in various companies of Valuable Group through Mauritius based companies amounting to Rs. 307.03 crores. However, the assessee has not explain the source of investment.

In view of the above,, I have reason to believe that income to the tune of Rs. 465 crores and investment to the tune of Rs.307.03 crores has escaped assessment for A.Y. 2009-10 and the same should be brought to tax. The income of Rs.465 Crores and Rs.307.03 crores are being treated as separate and independent income which has escaped assessment in the absence of any details being given by the assessee. In view of the above, I propose to re-open the case for A.Y. 2009-10 and issue notice u/s. 148"

7. The assessee filed an objection before the ld. AO vide letter filed on 19/12/2016, wherein assessee submitted that he is an individual and is not liable to be taxed in India in view of benefit of India UAE DTAA. Further, assessee also cannot be taxed under Article 7(1) as he did not have any permanent establishment in the form of premises of M/s. Dar Media Pvt. Ltd. in India which could act as a fixed base or is available at the disposal of the assessee from management of his consultancy activities. The allegation in the reasons recorded is that assessee has rendered consultancy services to Gulf Finance House (GFH) and Khaleej Bank of Commerce (KBHC) and has received consultancy fees amounting to Rs.465 Crores by him is factually incorrect, because no such money has been received by the

assessee from GFH and KBHC. This consultancy money was received by M/s. DAR Capital Ltd and M/s. Thurles Investments which are separate companies having separate legal entity and were registered outside India. Therefore, there cannot be any tax incidence in the hands of the assessee in his individual capacity as business profit. Further the allegation of supposed investments amounting to Rs.307.03 Crores is also erroneous and there is no such investment made by the assessee. However, ld. AO disposed of the objection vide letter dated 06/11/2017 objecting the contention of the assessee.

8. The ld. AO in the assessment order held that amount received by M/s. Dar Capital Ltd and M/s. Thurles International Ltd are taxable in India in the hands of the assessee looking to the fact that assessee has provided consultancy services to GFH and KBHC from India from a fixed place of business in Mumbai. His reasoning for taxing the amount received by the consultancy services by two companies are as under:-

7.1 It has been established by the Investigation Unit of Mumbai that the consultancy work has been rendered by the assessee for the business operations carried out in India. The consultancy work included identification of land, local partners in India and allied activities Energy City, Panvel and Logistics Park, Pen.

7.2 Sh. Arun Rangachari has liasoned actively between Valuable Group and Gulf Finance House (GFH) & Khaleej Bank of Commerce (KBHC). For the consultancy work carried out by Sh. Arun Rangachari, Gulf Finance House (GFH) and Khaleej Bank of Commerce (KBHC) have paid Consultancy fees to the companies owned 100% by Sh. Arun Rangachari amounting to US$ 51.5 million to M/s Dar Capital Ltd and US$ 41.5 million to Thurles International Ltd. It is notable that Dar Capital Ltd is based at

Mauritius and Thurles International Ltd is based at British Virgin Islands. In view of the above said facts, it is clear that. Sh. Arun Rangachari's 100% owned companies have received a total of US$ 93.00 million (INR 465.00 crores approximately by adopting the value of 1 US$ at Rs. 50/-).

7.3. The contention of the assessee is that since he is an NRI based at UAE and his two companies are foreign companies, their income cannot be taxed in India.

7.4 The above contention of the assessee cannot be accepted due to the well established fact that Sh. Arun Rangachari has been giving various consultancy services for projects undertaken in India as mentioned above to GFH and KBHC. Since, the above stated companies are owned by the assessee by having 100% stake, the assessee has deliberately received the amount in the hands of M/s. Dar Capital Ltd, based at Mauritius and Thurles International Ltd, based at British Virgin Islands in order to avoid taxation of income in India.

7.5 It is well established fact that the assessee has not submitted any details of the said companies, even though it was submitted by the assessee under Oath during the course of the proceedings u/s. 131 of the Income tax Act before the DDIT, Investigation Unit, Mumbai. Further, it is notable that the assessee is the sole person having the required knowledge of rendering these technical services on behalf of those business concerns.

7.6 It is contented by the assessee that, the above amount has been received by his foreign companies for consultancy work given outside India. Hence, the assessee was asked to submit the proof of this fact in the form of copies of agreement for this work, the invoices raised, payment received etc. At the time of search on 10/04/2013, Sh. Arun Rangachari stated that he would furnish all this information by 19/04/2013. But he did not submit any information before the Investigation Wing or before the undersigned during the assessment

9. On the issue of permanent establishment in India, AO held that at the time of search action u/s. 132(1) at the premises of

M/s. Dar Media Pvt. Ltd. in which assessee is a shareholder and director, was present at the said business premises and his statement was recorded u/s. 132(4) in the capacity of Director of M/s. Dar Media Pvt. Ltd. Thus, he deduced that assessee has been rendering his consultancy and other business activities from such business premises and accordingly, income earned by him by making use of the said premises is liable to be taxed under Article 7(1). Based on this he held that assessee had a PE in India under Article 5 and therefore, liable to be taxed in Article 7(1) under India UAE DTAA.

10. Without prejudice, the ld. AO held that assessee's case was also covered by Article 14 of India UAE DTAA. He observed that assessee was in India for 110 days during the year under consideration and had spent substantial time in India due to his other business interests. Thus, this fact again prove that he has been using business premises at Mumbai as a fixed base which is regularly available to him for the purpose of his business and therefore, consultancy services given to GFH and KBHC is also taxable as PE for independent personal services as per Article 14(1)(a) of the DTAA.

11. In so far as assessee's plea is that all the income has been received by the company, AO held that it is nothing but the income of the assessee on the ground that these are merely shell companies based on Mauritius and British Virgin Islands to evade taxation in India. Further assessee was 100% shareholder

of both these companies. AO's observation and the finding in this regard are as under:-

10.1 Shri Arun Rangachari has claimed that the services have been provided by M/s Dar Capital Ltd and Thurles International Ltd which are foreign based. However, it is seen that Mr. Arun Rangachari is a 100% share holder of these two companies. During the course of post search proceedings, summons was issued to Shri Arun Rangachari asking to appear on 03/09/2013, 19/09/2013, 04/10/2013 and 17/10/2013 in the Investigation Wing, Thane and provide the names of employees, date of visits by the employees who have actually provided the services for acquisition of land. Further, he was asked to submit copies of invoices raised by him on GFH and KHCB. These information were called for by the notices issued from this office also. However, Arun Rangachari has neither appeared nor submitted any details called for Thus the assessee's submission are nothing but /pse Dixit. The only conclusion which can be drawn from this is that all the activities have been carried out by Arun Rangachari himself. Thus, these facts go to prove that all the consultancy services were actually rendered by Arun Rangachari and the companies M/s Dar Capital Lid and Thurles International Ltd are only front/shell companies which are based at Mauritius and British Virgin Island to avoid taxation in India.

10.2 The above two companies are mere shell companies. Sh. Arun Rangachari and M/s Thurles International Ltd and M/s Dar Capital Ltd were asked several times to produce copies of agreement for consultancy work, the invoices raised, payment received, projects undertaken. Had these documents been provided, the nature of consultancy work and nature of payment in lieu thereof would have become clear But these were not provided either in the case of any of the companies or in the case of Sh. Arun Rangachari Thus it is clear that Sh. Arun Rangachari and M/s Thurles International Ltd and M/s Dar Capital Ltd did not want the issue to become clear.

10.3 Here it is pointed out that Sh. Arun Rangachari is 100% shareholder of Thurles International Ltd and Dar Capital Ltd and as such he is in a position to control them totally They were asked

to give details of the names and addresses of the persons who work for Thurles International Ltd and Dar Capital and other information about the assessee company but no such information has been provided. Thus it is clear that M/s Thurles International and Dar Capital Ltd are a shell company owned and controlled fully by Sh. Arun Rangachari. Thus, the money amounting to USD 51 5 million received by M/s Dar Capital Ltd and USD 41.5 million received by M/s Thurles International Ltd is money actually received for the consultancy work given by Sh. Arun Rangachari to OFH in India.

10.4 Sh. Arun Rangachari has received payments amounting to USD 51.5 million in the name of M/s Dar Capital based at Mauritius and USD 41.5 million in the name M/s Thurles International based at British Virgin Islands. These two companies are mere shell companies existing only on paper. These were formed for the sole purpose of receiving abroad the income earned by Sh. Arun Rangachari in India.

10.5 Sh. Arun Rangachari and M/s Thurles International Ltd and M/s Dar Capital Ltd were asked several times to produce copies of agreement for consultancy work, the invoices raised, payment received. Had these documents been provided, the nature of consultancy work and nature of payment in lieu thereof would have become clear. But these were not provided either in the case of any of the companies or in the case of Sh. Arun Rangachari. No project wise break up of money received or the exact purpose for which the money was received from GFH and KBIC was also not given. Thus the assessee has made an assertion but he has not proved it.

10.6 It was asked to give details of the names and addresses of the persons who work for Thurles International Ltd and Dar Capital and other information about the assessee company but no such information has been provided. No employee detail was provided who had the capability to earn such high consultancy fees for these companies. Even the details of the foreign projects, invoices raised, the payment received were not given by Sh. Arun Rangachari or these two companies. Thus the assessee has made unsubstantiated assertions Thus it is clear that M/s Thurles International and Dar Capital Ltd are shell company owned and

controlled fully by Sh. Arun Rangachari floated only for the purpose of diverting income carned in India to foreign country. Moreover, there is nobody else working for these two companies who can get them such high consultancy income. Thus the money amounting to USD 51.5 million received by M/s Dar Capital Ltd and USD 41.5 million received by M/s Thurles International Ltd is money actually received for the consultancy work given by Sh. Arun Rangachari to GFH in India but he made whole arrangement to look in such a way that it should appear that the money was received outside India. Thus the money received by these two companies is in substance for the consultancy work given by Sh. Arun Rangachari

10.7 If we put the facts of the case together, we come to only one conclusion. GFH and KBHC wanted to invest in some real estate project India. For this Sh. Arun Rangacharı gave them consultancy services and arranged for their meetings with some prospective parties for this purpose in India. GFH and KBHC selected Valuable Group for this work. They started the two projects namely, Energy City at Panvel and Logistics Park at Pen, both in Maharashtra, Near Mumbai. These projects materialised because of active liasoning and consultancy service given by Sh. Arun Rangachari to GFH and KBHC. He brought GFH and KBHC and Valuable Group together As a result, above two projects were started. Due to his services, Sh. Arun Rangachari was to receive payment For tax management purpose, Arun Rangachari decided to route these payments through his foreign based company. For this purpose he received USD 31.5 million in the name of M's Dur Capital Lad. Mauritius and USD 41.5 million in the name of Mis Thurles International Ltd, British Virgin Islands from OFH. Thus the consultancy service was given to OFH and KBHC for operations in India but payment was received by M's Dar Capital Lid and Thurles International Ltd, two foreign hased companies based outside India, in tax haven. This was done purely to save tax in India.

11. In view of the above facts and circumstances of the case, the income of the assessee is taxable as business income under the provisions of the IT Act of India u/s 9(1) of the Income tax Act read with Article 5 of the India UAE DTAA treaty

12 Without prejudice, it is observed that if Sh. Arun Rangachari is working for M/s Thurles International Ltd and Mis Dar Capital Ltd and giving consultancy services to GFH and KBHC for the project work in India, the money received by these two companies would become taxable as Fees for Technical Services and would be liable to tax as such as it is discussed in the para 9.

13. In view of the above, the total amount received on this ground is Rs.465,00,00,000/- Taking a genuine stand 30% of it is allowed as business expenditure, an amount of Rs. 325,50,00,000/- is taken as net income from business activity. Accordingly, the above amount of Rs.325,50,00,000/- is being added in the hands of the assessee, Sh. Arun Rangachari on substantive basis.

12. Further, the ld. AO has taxed unexplained investment in shares for Rs. 94,44,74,054/- in the form of investment made in companies of Valuable group. His reasoning and finding are as under:-

15:1 Shri Rangachari also admitted to being a shareholder in certain entities in India, which were listed in response to question no. 7 of the statement recorded on 13.04.2013. The details of these investments are available on record, as part of the seized material and submissions made by the assessee in the post search proceedings. It is seen that during the financial year 2008-09, A.Y 2009-10, investment were made in Valuable Ag-Bio Pvt. Ltd., Valuable Technologies. Valuable Destination Pvt. Ltd., Nisarg the details of which are as under:

Shareholder	*Company*	*Date of Payment*	*Amount Paid (Rs.)*
Dar Ventures Ltd.	*Valuable Ag-Bio Pvt Ltd*	*26/09/2008*	*7,70,10,000/-*
Dar Ventures Ltd.	*Valuable Ag-Bio Pvt Ltd*	*18/02/2009*	*7,57,74,000/-*
Dar	*Valuable*	*03/10/2008*	*10,00,00,000/-*

Investment	*Technologies.*		
Thurles India Investment Ltd	*Valuable Destination Pvt. Ltd*	*06/10/2008*	*42,48,74,985/-*
Dar Ventures Ltd.	*Nisarg*	*06/10/2008*	*94,44,74,054/-*

15.2 The assessee was asked to give the source of investment made by his foreign companies in India. The assessee has submitted that these money were invested by the companies and not by the assessee. Further, the money has been remitted from outside and are not taxable in India. Here it is observed that it has been held above that the companies owned by the assessee are mere shell companies and the money routed through these are the income earned by the assessee by his own personal consultancy work. Moreover, the assessee has not furnished evidence of receiving the money through remittance. About the source of his investment in different shares, the assessee has referred to the Board Circular No. 5 dated 20- 02-1969. Board Circular is extracted as under

"1. It has been represented to the Board that persons of Indian origin residing abroad but intending to return to India and settle here permanently, apprehend that the money brought in r remitted from abroad by such persons might be subjected to income-tax in India. The apprehension appears to be due to lack of information regarding the correct legal position about the taxability of the remittances of money from abroad. The general position, in this regard, is clarified below.

15.3 From the above it is seen that it is for the persons of Indian origin residing abroad but intending to return to India and settle here permanently Moreover in the circular itself it has been mentioned "The question of assessment to tax arises only when there is no evidence to show that the amount, in question, in fact represents such remittance. In other words, in the absence of proper supporting evidence, the taxpayers' story that the money has been brought into India from outside may be disbelieved by

the Income-tax Officer who may then proceed to hold that the money had in fact been earned in India."

15.4 In this whole episode, the issue is that the money should be earned outside India and should be brought in India as remittance. But in the case of the assessee the money is earned for consultancy work rendered in India, has been received outside India in the name of his two shell companies and is again bringing in India. This is pure tax evasion and nothing else The assessee can not be allowed to take shelter behind thus Circular

As per this Circular, the person should have sufficient resources in the foreign country. As we have seen the assessee is just receiving his income earned in India in foreign country and bringing it here. As such he does not have sufficient resources in the foreign country.

15.5. Thus it is held that the above money amounting to Rs 94,44,74,054/- is assessee's own money earned from undisclosed source for which the assessee has no explanation. Accordingly, this amount is being added to the total income of the assessee as unexplained investment. (Penalty proceedings u/s 271(1)(c) of the 1 T Act, 1961 has been initiated for furnishing inaccurate particulars of income.

13. Before the ld. CIT (A), assessee raised legal issue on account of validity of reopening u/s.147 which has been dismissed by the ld. CIT (A). In so far as issue on merits, he observed that in the rectification order, ld. AO has reduced the addition to Rs.180.25 Crores which is confined to sum paid by GHF to Thurles International Ltd. The ld. CIT(A) after considering the submissions and facts and material brought on record in the assessment order including the statement recorded during the course of search of the assessee, observed as under:-

Further, upon going through Assessment order, I do not find a single piece of evidence to hold that there is a Permanent Establishment for appellant in India. The evidence relied upon by itself is an e-mail (sort of confirmation letter) filed by appellant DDIT to prove their case does riot establish anything in this regard Other claim is travel to India to allege as fixed place Permanent Establishment which is not correct. Also regarding Dar Media Pvt. Ltd. (100% owned by appellant) to hold fixed place business, still there is no evidence to hold it as a fixed place of business by establishing actual conduct of business in that place so as to hold it as a Permanent Establishment. The finding in paragraph 8.9 is presumption based as even if consultancy services was given to GFH and KBHC, It is not established that it is rendered in India and not UAE. Further presence of a shareholder in a business premise of a company cannot be held as an evidence to establish permanent establishment. Overall there is no reasonably good evidence that there was actual conduct of business/rendering of services in India to hold existence of Permanent Establishment so as to assess business income.

14. Also, I find that there is no evidence of any financial transaction to establish that rendered in India. In page 6 of counter comments, the Assessing Officer mentions about Tax Residency Certificate [applicable section 90(4))). This applies only if it is established that there is income accruing or arising in India and that is a separate matter in this assessment/appeal. This also holds negatively against Assessing Officer.

15. In respect of detailed show cause issued by Assessing Officer, the appellant rebutted the contention of Assessing Officer. The Assessing Officer made his findings in paragraph 7 onwards of Assessment order. There is no direct evidence. One indirect evidence is frequency of India visit and duration or stay. In paragraph 10 Assessing Officer held that the company income is actually income of appellant since he is 100% owner of the company.

14. After quoting assessment order, he observed that there is no PE of assessee in India, holding as under:-

"18 I find that existence of Permanent Establishment in India not established factually within meaning of article 5(2) of India-UAE Double Taxation Avoidance Agreement. Further the documentary evidence relied upon does not prove any receipt in FY 08-09(AY 09-10). It is a vague document sent by an employee to Appellant. There is no receipt or confirmation letter from GFH or KBHC (a document from GHF or KBHC which proves that the payment was for services in India would have the best to have) and the circumstantial evidence built by Assessing Officer is weak and not conclusive. There is no seized material directly establishing the same. Thus income from consultancy services cannot be assessed as business profits under article 7 of the DTAA."

15. Coming to the issue whether it can be taxed for technical services, Ld. CIT (A) held that in India UAE DTAA, there is no clause for FTS and assessee also does not fall into Article 22 which deals with "Other Income"

16. In so far as applicability of Article 14, i.e., Independent Personal Services, Ld. CIT(A) held that is purely based on presumption because there is nothing which assessee has received in the individual capacity nor any amount was credited in the bank account of the assessee in India and money has been received in two companies which are distinct from individual, accordingly, he deleted the addition of Rs. 3,25,50,00,000/- which was reduced to Rs.180.25 Crores post rectification by the ld. AO.

17. In so far as investments made by a foreign company in the companies based in India, ld. CIT (A) held that ld. AO is to assist in the hands of an individual who is a non-resident and unexplained investment can be made u/s.69 / 69B in case no

books of accounts exists and the same is to be considered u/s.69. Once the investments have not been made by the assessee company, then there is no reason to make addition u/s.69 in the hands of the assessee. His reasoning for deleting the said addition reads as under:-

30. I find that merely because investment is made by a 100% owned foreign company the same cannot be held to be owned by appellant. Company has a different legal existence, created under legal provisions (being foreign company, under statue relevant in that foreign Jurisdiction) applicable. None disputes investment in this case by the foreign companies in Indian companies. The dispute is why the investment is that of Appellant and, if it is so, why it is his unaccounted investment. The former is decided upon on basis of guesswork based on loosely worded statement and latter without documentary evidence. Moreover, there is no hard evidence that same is sourced from income that has accrued or arisen in India.

31. The issue before me is investment by Dar Ventures Ltd. Dar Investment Ltd and Thurles International Ltd. in companies in India. It has nothing to do with personal accounts of Appellant. The case of Assessing Officer is that the Appellant (distinct from company) has invested the money. I find that even basic particulars from the India companies where the investment is made is not in records.

32. Here it is mentioned that investment have come directly from Dar Ventures Ltd, Dar Investment Ltd and Thurles International Ltd. directly to the India companies. With the limited information before me decision is to be taken. As such there is no documentary evidence to pin that investing company and appellant are one and the allegation of Assessing Officer as shell company is unsubstantiated. In records investment is made in India companies by companies. A different view with help of documentary evidence is not before me or seen established by Assessing Officer to fix it on the appellant.

33 In view of above, I direct Assessing officer to delete the addition of Rs. 94,44,74,054. Ground 3 is allowed.

18. Before us ld. CIT DR at the outset had raised multiple objections with regard to admissibility of grounds taken in the cross objection on various counts. At the time of hearing itself it was made clear that the Bench is not adjudicating the grounds which have been raised in the cross objection. Thereafter, he made the detailed submissions on merits of the addition referring to the various observations and findings of the ld. AO and how the ld. CIT (A) has not considered the same in proper perspective. After the conclusion of hearing, ld. CIT DR was asked to file written submissions on all the contentions raised by the Revenue before us in his written submissions. Now in his written submissions, we find that, first of all, he is challenging the very validity of recalling of the *exparte* order by the Tribunal, stating that Tribunal has erred in recalling the *exparte* order which was earlier decided in favour of the Revenue. On this point he has given his elaborate legal contention which has absolutely no relevance as we were not hearing upon the validity of recall of *exparte* order. If he had any grievance then this is not the forum or stage at all. Apart from that, he has raised various objections on the grounds raised by the assessee challenging that assessment should have been made u/s.153C and not u/s.148. In sum and substance his objections raised in multiple grounds and arguments can be summarized in the following manner:-

- Contesting as to whether the Hon'ble ITAT was correct in recalling its earlier order dated 22.04.2022 vide order dated 03.11.2023.
- Cross objections are beyond the prescribed time limit and without any reasonable cause for delay and also drew reference to the provision of section 253(4) of the Act.
- Objected the arguments put forth by the Ld.AR that the assessment should have been made u/s 153C of the Act.
- Further he has contested that though the assessee claims to be a resident of UAE, no evidence in the form of Tax Residency Certificate was furnished either during the course of assessment proceedings or during appellate proceedings.
- Further, the assessee has investments in 100% owned companies in Mauritius (DAR Capital Ltd) and British Virgin Islands (Thurles International Ltd). The assessee was present at the searched premises. One of the findings of the search action was that assessee had rendered certain services to Gulf Finance House (GFH) and Khaleej Bank of Commerce (KBC) (both foreign companies) with regard to their investments in 2 projects situated in India viz(a) Energy City Project by GFH and (b) Global Logistix Project by KBC.
- It was argued that the services were rendered by DAR Capital Ltd and Thurles International Ltd and payments aggregating to Rs. 465 crores were made to them by GFH & KBC. It was claimed that the former company was a resident of Mauritius and the latter a resident of British Virgin Islands.

- Further, the assessee did not co-operate during the post search proceedings, nor during the assessment proceedings in as much as no details whatsoever regarding the transactions with GFH and KBC were provided. In view of these facts, it was concluded that the assessee rendered the services to GFH and KBC through the PE /fixed base and therefore the services were rendered in India. The billings/payments were made to DAR Capital Ltd and Thurles International Ltd only for the purpose to evade payment of tax in India. In stating so, he had relied upon the statement of the assessee recorded u/s 132(4) of the Act during the course of search on DAR Capital group on 13.04.2013.

- Further, it was also argued that the Mauritius and BVI entities (DA Capital Ltd., and Thurles International Ltd) are shell companies especially as these are fully owned by the assessee and ultimately concluded that the assessee had business connection / PE / fixed base in India and he was regularly providing services to GFH & KBC from such PE in India. Therefore the said consultancy services provided for projects in India are required to be taxed as per Article 14 of the India-UAE DTAA.

- Lastly, he has challenged the telescoping benefit given to the assessee by the CIT(A) authority and stated that the investment made in shares of various Indian companies amounting to Rs 94.44 crore needs to be treated as unexplained investments.

19. First of all if the Tribunal has passed an exparte order without giving opportunity of hearing to the assessee and if the assessee has approached the ITAT **u/s. 254(2) r.w**. **Rule 24** and Tribunal after hearing both the parties found that there was bonafide reason for recalling the order, then at this stage validity of recalling the order cannot be raised at all. If at all the department had any grievance then, the only course left was to pursue remedy before the Hon'ble Bombay High Court rather than pointing out any illegality in recalling of the order. Thus, his substantial arguments and written submissions on this scope are out rightly rejected.

20. Coming to the issue, whether cross objections are beyond the prescribed time limit and was there any reasonable cause of delay, first of all, once the assessee had stated that it has not received the grounds of appeal and had applied for Form 36 from the Registry and after receiving the grounds of appeal filed by the department, it has filed cross objection and no delay have been pointed out by the Registry, we failed to understand to appreciate such contention that there was no cause for delay. In any case, we had made it very clear that we are not adjudicating the grounds raised in cross objection of the assessee that assessment should have been passed u/s.153C instead of Section 148 and made it clear in the court that we will deciding the issue on merits.

21. On merits, ld. Counsel in his written submissions have raised various points supporting the order of the ld. CIT (A). The

arguments of the ld. Counsel on behalf of the assessee can summarised as under:-

- It was primarily argued that the assessee falls within the definition of a Resident as defined in Article 4 of the Double Taxation Avoidance Agreement between India and UAE and is hence eligible to claim the benefit of the DTAA between the two countries. In stating so, the ld.AR drew reference to section 5(2) of the Income Tax Act and stated that the fact that the assessee is a non-resident has not been doubted by the AO. In fact the assessment proceedings have been completed by Ld. AO by accepting the assessee as a non-resident after considering the number of days spent by him in India. Therefore, the ld.AR mentioned that in such a situation what can be taxed in India is only the income which is either received or deemed to be received in India, or income that accrues or arises or is deemed to accrue or arise in India.
- It was further submitted that in the present case, there is no evidence whatsoever available with the revenue to draw to conclusion that the income has either accrued or deemed to accrue in India or that the income has been received by the assessee in India. The revenue has merely stated that it has been “established” by the Investigation Unit of Mumbai that the consultancy work has been rendered by the assessee for the business operations carried out in India.
- Further it was stated that the mail which was relied by the revenue mentioned clearly therein that the amount has been

received by DAR Capital Limited and Thurles International Limited are over the years and not in the instant year and that the income has been earned by the companies on account of services rendered outside of India. There is no connection whatsoever to the earning of this income with India.

- Further on the issue of PE, it was mentioned that for any place to be considered as a Permanent Establishment it is necessary that the place is at the disposal of that enterprise i.e. the assessee must be able to occupy the premises in its own right and use the same for the purpose of carrying its business in India. Mere presence of assessee during search at the office premises of Dar Media Pvt. Ltd. in the capacity of director of this entity, does not constitutes his PE. Further, it is not enough that the Assessee has a fixed place of business in India but the Assessee should carry on business in India through that fixed place of business. However, the revenue failed to provide any documents to prove that the consultancy services as alleged was actually provided from India.
- Further, the Ld.AR pointed that the nature of business carried out by DAR Media Private Limited is completely different from the services provided by the assessee. DAR Media is in the business of film production and distribution and no ways be connected to providing consultancy services as alleged by the revenue.

- Further, the Ld.AR mentioned that as per the provisions of Indian Income Tax Act, 1961, and individual and a company are separate legal entities. Thus, it is submitted that the income of a company cannot be taxed in the hands of a shareholder even if the shareholder is 100% shareholder.
- On the ground of unexplained investment, the Ld.AR argued that a shareholder is a different person than the company for the purpose of Income Tax Act, 1961 and the assessee cannot be taxed for investments made by the company. As is visible from the assessment order, the Ld. AO had itself stated that the so called investments have been made by various companies and not by the assessee. In view of the same, it is submitted that no addition can be made in the hands of the assessee for investments made by other companies.
- Further while concluding, the Ld.AR made without prejudice submission that the assessee had earned 93 million USD over a period of time by rendering consultancy services outside of India. Thus, the source of investments of Rs. 94 Crores can be easily explained from said income earned by the assessee outside India. Further the said ratio was also accepted by the tribunal in previous years ITAT order for AY 2008-09 in para 18.

Decision

22. We have considered the submissions filed by both the parties as well as oral submissions made during the course of hearing as well as findings recorded by the ld. AO and ld. CIT (A). The brief facts and background are that assessee is an individual

who is a non-resident Indian and settled in UAE. He is also director and shareholder in M/s. Dar Media Pvt. Ltd. which is mainly into business of advertisements, media, films, etc. The assessee is also director and shareholder of two companies, M/s. Dar Capital Limited incorporated in Mauritius; and M/s. M/s. Thurles Investments which is incorporated in British Virgin Islands. The assessee has rendered consultancy services to Gulf Finance House (GFH), UAE & Khaleej Bank of Commerce (KBHC), UAE who were executing certain projects in India in association with Valuable group in India. The consultancy services include identification of land, local partners in India and Energy City Panvel and Logistics Park, Pen etc. The assessee was doing liaison work for these two banking entities in UAE for which they pay consultancy fees to M/s. Dar Capital Ltd., and M/s. Thurles Investments, two companies' resident outside India. Thus, the payment was made by a non-resident entity to a non-resident company and none of the amount has been credited in any bank account in India either of the assessee or it is also not the case that these two companies had any bank account in India. The entire case of the ld. AO and ld. DR was that the assessee was substantial shareholder in the Dar group of companies and office of the Dar group of companies, especially Dar Media Ltd., had office in Mumbai and therefore, the office premises was at the disposal of the assessee and therefore, such office premises constitutes a PE / fixed place of the assessee in India, in his individual capacity and for the foreign companies based in Mauritius and UAE considering the fact that assessee

holds 100% of the shareholders in his companies. Thus, on these grounds ld. AO has concluded that assessee had rendered the services to GFH & KBHC from PE or fixed place in India and the billing / payments were made to foreign companies i.e. Dar Capital Ltd and Thurles International Ltd to evade tax payment in India. The ld. DR also pointed out that there are no financial activities of these companies and financial accounts do not show any business activity during the year and therefore, these were nothing but a shell companies and the funds were utilized for making investment in Indian companies as well as purchase of immovable property in India.

23. From the perusal of the assessment order, we find that there is no direct or indirect evidence that assessee had rendered any services from alleged business premises of Dar Media Pvt. Ltd. One of the main reasons given by the ld. AO that assessee had failed to provide the copies of agreement for this liaison work, invoices, etc., between GFH and KBHC and M/s. Dar Capital Ltd and M/s. Thurles International Ltd. Thus, AO has assumed that assessee had earned from the projects undertaken in India by using the business premises in India. Even in the entire search, there was no such document or evidence found that assessee was rendering any consultancy services from India, barring one e-mail from GFH addressed to the assessee which stated that, **"*Please note that GFH over the years, has for certain of its projects made payments amounting to USD $1.5 m to DAR Capital Limited and USD 41.5 m to Thurles International Limited*".** This content in e-mail is some kind of

confirmation of payment in connection of projects and does not prove in any manner the activity was carried out from India or to treat it as a part of evidence to establish that assessee had any PE or the office premise of Dar Media were at the disposal of the assessee for carrying out the consultancy work for GFH and KBHC. It only states that it has made payments to Dar Capital Ltd and Thurles International Ltd for its projects. Nowhere, it has been brought on record or any enquiry has been done, whether assessee had used the premises of Dar Media Pvt. Ltd. for rendering consultancy services to two foreign entities. To establish that assessee had a PE in India, the onus is heavily on the department, because the allegation that assessee has a PE in India is by the AO, so he has to bring on record that assessee was carrying out consultancy from the premises of Dar Media in India. AO has to conduct some enquiry or bring some evidence or material to prove that assessee had been carrying out his activity from India through PE or any premise was at his disposal for rendering services to the foreign entities so as to constitute business connection or PE in India. AO's presumption is that, since assessee was one of the Directors in Dar Media Pvt. Ltd. which is based in Mumbai, therefore, he must be doing his consultancy services on behalf of the two foreign companies from these premises. The assessee is a non-resident, rendering consultancy services to two UAE based banks and the payment has been made on account of consultancy services to two foreign entities of assessee. Now to tax the consultancy fees in the hands of the assessee in his individual capacity and not in the hands of

DAR Capital Ltd. or Thurles Investments Ltd., that to be as business income in India, then, something should be brought on record by the AO that these services have been rendered from India by the assessee and not based on some conjecture and premise. Even in the statement of the assessee this fact has been clarified by him during the course of the search and has specified the nature of liasoning and consultancy work done on behalf of GFH and KBHC from Dubai.

24. The premise drawn by the ld. AO that the payment received by Dar Capital Ltd and Thurles Investments Ltd is in the nature of payment to the assessee, because, *firstly*, these two are shell companies with no substantial activity; and *secondly*, assessee is 100% shareholder in these companies. If that is the case, then AO should have called for the information through proper channel about these two companies and then adverse inference should have been drawn for taxing this income in the hands of these two companies. In fact, if at all, this payment could have be taxed in the hands of these two companies if they have any business connection in India or source of income has accrued and arisen in India; and here in this year in the hands of M/s. Thurles International Ltd., a British Virgin Island entity It has been brought on record that in assessment order dated 14/02/2018 u/s.144C r.w.s 147/144 has been filed in the case of M/s. Thurles Interational Ltd., the copy of which has also been placed before us by the ld. Counsel that this amount has been taxed on protective basis in the A.Y.2009-10. There the ld. AO had asked for information from foreign authorities through

FT & TR about these companies, however, till the passing of the order, no such information has been received. The relevant observation of the AO in the case of M/s. Thurles International Ltd wherein he has taxed the payment received from GFH not only as business income but also as fee for technical services u/s.9(1)(vii). **For the sake of ready reference, the relevant finding given in the assessment order in the case of M/s. Thurles International Ltd reads as under**:-

"8. Permanent Establishment

Notwithstanding to the above, in the instant case, PE in India is also being established on the basis of following findings

8.1 At the time of search action ws. 132 of the Income tax Act on 10/04/2013 at the premises of Mix Dar Media Pvt Ltd at 201, Centre Point, Andheri Kurla Road, J.B. Nagar, Andheri, Mumbai, which is owned 100% by Shri Anın Rangachari, he was present at the said business premised and his statement was recorded Us. 132(4) of the Act.

8.2 Hence, it is clear that Sh. Arun Rangachari has been rendering his consultancy on behalf of M/s Dar Capital Ltd and M/s Thurles International Lad from the said business premises. Hence, the income earned by him by making use of the said business premises is liable to be taxed under Article 7(1) as he has a permanent establishment. In other words, the assessee is making use of the business premises of Dar Media Pvt. Ltd in India as a fixed base and is available at the disposal of assessee for management of his activities in India.

8.3 In the case of Sh. Arun Rangachari, he is engaged in the business activity by way of providing consultancy services on behalf of M/s Thorles International Ltd and he also uses the business premises located at Mumbai us a place of management. It is evident from the fact that at the time of search on 10/04/2013, Mr Arun Rangachari was present in this office

premises. He has himself admitted to the fact that he has been giving consultancy services to GFH and KBHC Hence, it is clear that M/s Thurles International Ltd is having PE in India.

8.4 From the passport of Sh. Arun Rangachari, it is seen that he has been in India for 110 days during FY 2009-10 as per details given below-

Arrival in India	*Departure from India 13 April 2008*	*Stay in days*
31st March 2008	*13th April 2008*	*13*
03 May 2008	*11th May 2008*	*9*
14th May 2008	*19th May 2008*	*6*
22 May 2008	*25th May 2008*	*4*
4th June 2008	*12th June 2008*	*9*
17th June 2008	*29th June 2008*	*13*
4th July 2008	*06th July 2008*	*3*
9th July 2008	*21st July 2008*	*13*
31st July 2008	*01st Aug 2008*	*2*
19th Aug 2008	*21st Aug 2008*	*3*
4th Sept 2008	*07th Sept 2008*	*4*
13th Sept 2008	*18th Sept 2008*	*6*
2nd Oct 2008	*4th Oct 2008*	*3*
15th Oct 2008	*17th Oct 2008*	*3*
22nd Oct 2008	*25th Oct 2008*	*4*
2nd Nov2008	*8th Nov 2008*	*7*
20th Nov 2008	*25th Nov 2008*	*6*
13th Jan 2008	*14th Jan 2009*	*2*
	Total	*110*

8.5 From the above it is amply clear that Sh. Arun Ramgachari spends substantial period in India due to his business interest. This fact once again proves that he has been using the business premises at Mumbai as a Permanent Establishment to carry out his business and also carrying out the business for his wholly owned business concern.

8.6 In view of the above, M/s Thurles International Ltd owned 100% by Sh. Arun Rangachari and the consultancy work supposedly in the name of the assesses company is carried out from the fixed place at Mumbai and accordingly, the said business place is held to be a PE of Ms Thurles International.

8.7 Thus it has been established that the assessee company's case that it has business income in India and it is taxable here u/s 9(1) of the IT Act.

9. Income earned through the business activity of India:-

9.1 It is established that the services have been provided by the assessee company, M/s Thurles International Ltd which is based at British Virgin Islands through Mr. Arun Rangachari, who is a 100% share holder of the assessee company. During the course of post search proceedings, summons was issued to Shri Arun Rangachari asking to appear on 03/09/2013, 19/09/2013, 04/10/2013 and 17/10/2013 in the Investigation Wing. Thane and provide the names of employees, date of visits by the employees who have actually provided the services for acquisition of land. Further, he was asked to submit copies of invoices raised by him and the company on GFH and KHCB. These information were called for by the notices issued from this office also. However. Arun Rangachari has neither appeared nor submitted any details called for in the instant case of M/s Thurles International Ltd. Thus the submission of the assessee is nothing but Ipse Dixit. The only conclusion which can be drawn from this is that all the activities have been carried out by Arun tangachari himself on behalf of M/s Thurles International Lid

9.2 Here it is pointed out that Sh. Arun Rangachari is 100% shareholder of Thurles International Lid and as such he is in a position to control it totally. They were asked to give details of the

names and addresses of the persons who work for Thurles International Ltd and other information about the assessee company but no such information has been provided. Thus, the money amounting to USD 41.5 million received by M/s Thurles International Ltd is money actually received for the consultancy work given by Sh. Arun Rangachari to GFH in India on behalf of M's Thurles International Ltd.

9.3 Sh. Arun Rangachari has received payments amounting to USD 41.5 million in the name M's Thurles International based at British Virgin Islands. This company is mere shell company existing only on paper. The assessee company was formed for the sole purpose of receiving abroad the income earned by Sh. Arun Rangachari in India.

9.4 Sh. Arun Rangachari and M/s Thurles International Lid were asked several times to produce copies of agreement for consultancy work, the invoices raised, payment received. Had these documents been provided, the nature of consultancy work and nature of payment in lieu thereof would have become clear. But these were not provided either in the case of the assessee company or in the case of Sh. Arun Rangachari. No project wise break up of money received of the exact purpose for which the money was received from GFH and KBHC was also not given. Thus the assessee has made unsubstantiated assertions which are Ipse Dixit.

9.5 If we put the facts of the case together, we come to only one conclusion. GFH and KBHC wanted to invest in some real estate project India. For this Sh. Arun Rangachari gave them consultancy services on behalf of M/s Thurles International Lad and he arranged for their meetings with some prospective parties for this purpose in India. GFH and KBHC selected Valuable Group for this work. They started the two projects namely, Energy City at Panvel and Logistics Park at Pen, both in Maharashtra, Near Mumbai. These projects materialised because of active liasoning and consultancy service given by Sh. Arun Rangachari to GFH and KBHC. He brought GFH and KBHC and Valuable Group together. As a result, above two projects were started. Due to his services, Sh. Arun Rangachari was to receive payment on behalf of M/s Dar Capital Ltd and M/s Thurles International Ltd. For tax

management purpose, Arun Rangachari decided to route these payments through his foreign based company. For this purpose he received USD 41.5 million in the name of M/s Thurles International Lad, British Virgin Islands from GFH. Thus the consultancy service was given to GFH and KBHC for operations in India but payment was received by M/s Thurles International Ltd, a foreign company based outside India, in tax haven. This was done purely to save tax in India.

10. In view of the above facts and circumstances of the case, the income of the assessee is taxable as business income under the provisions of the IT Act of India u/s 9(1) of the Income tax Act.

11 Without prejudice, it is observed that if Sh. Arun Rangachari is working for M/s Thurles International Ltd and giving consultancy services to GFH and KBHC for the project work in India. Hence, the money received by M/s Thurles International Ltd would become taxable as Fees for Technical Services and would be liable to tax as such as per the provisions of section 9(1)(vii) of the Income tax Act.

12. The total amount received by M/s Thurles International Ltd from GFH is 207,50,00,000/- Taking a genuine stand 30% of it is allowed as business expenditure and an amount of Rs.145,25,00,000/- is taken us net income from this work. The amount of Rs.145,25,00,000/- is added in the hands of the assessee company M/s Thurles International Ltd on protective basis. (Penalty proceedings u/s 271(1)(c) of the 1 T Act, 1961 tins been initiated for furnishing inaccurate particulars of income.)

13. It is notable that reassessment proceedings u's 147 of the Income tax Act in the case of Sh. Arun Rangachari has been initiated and in the said proceedings, the above stated Income has been added in the hands of Sh. Arun Rangachari on substantive basis.

14 The notice u/s 148 of the IT Act was issued on 30/03/2016. But the case was referred to foreign authority through FT & TR for obtaining information in the case of Sh. Arun Rangachari. M/s Dar Capital Ltd and Mis Thurles International Ltd. The requested information has not been received till now. Accordingly, the time

burring date is 31/12/2017. The quantum of the additions will be altered based on the information, if it is received from the FT &TR CBDT. Moreover, the assessee has not filed any income tax return. Therefore, the assessment order is being passed u/s 144 of the IT Act, 1961.

25. Thus, protective addition has been made pending information from FT &TR CBDT.

26. Be that as may be, in so far as assessee is concerned, we do not find any material or evidence to treat the consultancy fees received by M/s. Thurles International Ltd is taxable in the hands of the assessee on the ground that it is a business income of the assessee and as there is no PE or business connection of assessee in India for rendering these consultancy services, it cannot be taxed as business income in the hands of the assessee in India. The observation and finding of the ld. CIT (A) as incorporated above is to be upheld, because we agree with him that there is no single evidence to hold that there is a PE for assessee in India and mere e-mail which is a sort of confirmation letter does not establish any PE in India. Further the revenue has failed to provide any evidence in relation to the claim that the services were rendered from India by the assessee and has merely presumed the same. AO is merely holding in his Assessment Order that it is a "well established fact" that Shri. Arun Rangachari has provided consultancy services to Gulf Finance House (GFH) & Khaleej Bank of Commerce (KBHC) from India at a fixed place of business premises in Mumbai. This cannot be reckoned as "well established" nor has it established by any material on record. Even in the statement recorded

during the course of search proceedings u/s 132(4) clearly mentions the services have been rendered from Middle East (UAE). For sake of ready reference, the same has been reproduced as follows:

"Q. 17 Please explain the source of investments by the M/s Dar Ventures Mauritius, in the shares of M/s Nisarga Building Art & Technologies Pvt Ltd. alongwith supporting documents.

Ans: These funds are proprietary funds that have been earned by me providing investment advisory services in the Middle East. I have also taken unsecured loans from associates to assist in my funding requirements for DAR Media. The supporting documents explaining the source for transfer of funds will be provided on or before 19th April, 2013."

"Q.28 Since when are you associated with Gulf Finance House ? Kindly explain your association with and responsibility towards the Gulf Finance House.

Ans: My association with GFH dates back to 2001. I have worked with the company and several of its subsidiaries across various geographies in Asia, Europe. I continue to work with GFH currently predominantly in Africa for which we are raising a fund for agriculture. As a consultant, I have worked with them in various capacities and roles, including networking, lobbying, identifying investment opportunities, Public Relations, etc."

"Q. 32 Please refer to the print outs of emails and responses given by you. From the contents of the emails it is clear that you were actively involved in the acquisition of land in favour of GFH (Energy City Project) and KHCB (Global Logistic Park). Further, it is also clear that you are actively involved in the negotiations with Valuable Group and facilitating the land acquisition by way of taking legal opinions and various clearances. All the negotiations in the process of acquisition of land on behalf of both the financial institutions were done in India. Therefore, you are hereby requested to clarify why the services given by you should not be considered as the services rendered in India and the

compensation received for services rendered in India not be bought to tax in India.
Ans: I was not actively involved in land acquisition for the GFH and KHCB projects. The land acquisition process requires a complete understanding of the local laws and regulations; a vast network in the target area; and significant on-ground presence in the area to facilitate the process. I enjoy none of these attributes and am based in Dubai as I have been for the past 14 years. The land acquisition for both these projects were done solely by Valuable Group. Yes, I do not deny that there were instances in which I was called upon to step in and resolve certain liasoning issues by both GFH/ KHCB and Valuable Group, and I was only too happy to assist. Upon request, I also assisted my clients in identifying a legal firm and working with them to establish the legal standing of the land acquired for the project."

27. Thus, it is clearly mentioned therein that the amount has been received by DAR Capital Limited and Thurles International Limited over the years. The income has been earned by the companies on account of services rendered outside of India. There is no connection whatsoever to the earning of this income with India. The revenue has not been able to bring anything on record to prove that the income was earned by the assessee in India. Alternatively, the Ld. DR submitted that tax the said income by treating the same as fees received for technical services provided u/s 9(1)(vii) of the Act as in absence of FTS clause in India - UAE DTAA, the same is taxable as FTS under the Act. However, we are unable to appreciate such a contention; because, in absence of FTS clause in Treaty, the said income can be taxed as business income only and that to be if the assessee has Permanent Establishment (PE) in India. However, as held by us in the earlier paras, the revenue has merely drawn an

assumption that the assessee has PE in India without having any evidence to prove the same. Also it is a it is a well-settled law that if there is no FTS clause in the tax treaty, then the payments can be subject to tax in India only if the overseas company which has rendered the services has a permanent establishment (PE) in India and then such services may be taxed under Article 7 of India UAE Tax Treaty as business income

28. Now, coming to the applicability of **Article 14 of DTAA**, first of all for the sake of ready reference, the said Article is reproduced hereunder:-

"1. ***Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State****, except in the following circumstances when such income may also be taxed in the other Contracting State :*

(a)	*if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State ; or*
(b)	*if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant "previous year" or "year of income", as the case may be; in that case only so much of the income as is derived from*

	his activities performed in that other State may be taxed in that other State.

2. ***The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants****."*

29. Thus, first of all, income from professional services or other independent activities is taxed in the resident state, that is UAE, except when conditions mentioned clause (a) & (b) are satisfied. But before applying this article, the services should fall in the scope and definition of "***professional services or other independent activities of a similar character".*** The term "professional fees" has been defined and includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants. Thus, the services must strictly fall in the term defined and not otherwise. First of all, assessee do not fall in the category of "professional" as defined in Article 14(2), because this is purely a consultancy/ liaison service which does not fall in any of category of professional services as defined in Article 14. Thus at the very threshold itself, the said income cannot be taxed under Article 14, because it has to fall in the category of professional services so as to be taxed under Article 14.

30. Even otherwise, both the conditions mentioned in Article 14(1(a) are also not applicable:-

a) <u>Condition 1:</u>

If the assessee has a fixed base in India and the income earned can be attributable to that fixed base -

It is not in dispute that the assessee is a NRI, and does not have any fixed base in India. AO could not establish that the assessee had any such PE/ fixed base available to him in India to render services in individual capacity and treated office of M/s Dar Media Pvt. Ltd. as his fixed base where the assessee was present at the time of search. The so called office at Mumbai was leased office of M/s. Dar Media Pvt. Ltd. and the assessee was present there in his capacity as a director to carry out business activities and was not carrying out any activities in the form of a sole proprietorship/ sole enterprise. The same is clearly evident from the assessee's statement recorded u/s 132(4) of the Act, for which our attention was drawn at page 30 of the paper book, and from perusal it is seen that the company was involved in activity of Film Production and distribution whereas the income taxed in the hands of the assessee is on account of providing consultancy services on real estate affairs. Thus, there is no correlation whatsoever in between them.

31. Further, the contention of the Ld. DR stating that the assessee was found during search at the office premises of Dar Media Pvt. Ltd. in the capacity of director of this entity, and therefore the same constitutes his PE is flawed as mere presence of an enterprise at a particular location does not necessarily

mean that the location is at the disposal of that enterprise. For this purpose, reference is drawn on OECD guidelines which states as under:-

> ***"4.2 Whilst no formal legal right to use a particular place is required for that place to constitute a permanent establishment, the mere presence of an enterprise at a particular location does not necessarily mean that that location is at the disposal of that enterprise"***

32. In the present case, there is no evidence to prove that the assessee was using the premises for his own enterprise. Furthermore the provisions of treaty mention that for an income to be taxed in India, it is not enough that the Assessee has a fixed place of business in India but the Assessee should carry on business in India through that fixed place of business. How this income was earned by the assessee through the so called "fixed base/ permanent establishment" in India has never been established & substantiated by the revenue or Ld. DR. Hence, the condition 1 of the Article 14 is not satisfied.

b) <u>Condition 2:</u>

if the assessee has stayed in India for more than 183 days on the relevant assessment years.

33. This condition is also not satisfied as the revenue has themselves assessed the income by treating the assessee as Non-resident and the same is evident from page 1 of the assessment order. Further, the AO once again on page 24 of the assessment order para 8.7 has calculated the days, the assessee was present in India. Further on page 25, the Ld. AO drew a conclusion that

the assessee was present for 110 days for the instant year in India. Hence on combined conclusion, drawn by the revenue itself, it is clear that the assessee was in India for less than 183 days and hence even the condition 2 of Article 14 is also not satisfied.

34. Further as held above and reiterated again that Article 14 has described the services which will fall under the category of Independent Personal Services. On perusal of the said services it can be seen that only professional services in nature of independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants can be taxed under the said Article. In the instant case, it has been alleged by the revenue that the assessee has provided 'consultancy services' which falls under any of the category mentioned in the said article. However, provision of the article has to be read as is and no assumption can be drawn from the same. If the said approach is allowed that one can assume all the services and professions to be included and defeat the purpose of such DTAA entered between countries. On this issue, the Ld. DR stated that the Article 14(2) is inclusive definition and not an exhaustive one. But in stating so, the Ld. DR failed to substantiate the same with any evidence as to how such assumption was drawn by him.

31. Thus, we agree with the contention of the ld. Counsel and hold that consultancy services do not fall under any category

mentioned in said Article and therefore, the consultancy services cannot be taxed under Article 14(2). Accordingly the order of Ld. CIT (A) is upheld.

32. Now coming to the issues raised in grounds 13 to 15 where revenue has challenged the taxing of the amount of Rs 94.44 crore as unexplained investment made in companies in India in the hands of the assessee. We have gone through the submission made by the Ld. DR and also the finding given in the order of the AO and CIT (A). On perusal of details of investment, it is seen that investments have been made by various companies and not by the assessee. It is trite that a shareholder is a different person than the company for the purpose of Income Tax Act, 1961 and he cannot be taxed for investments made by the company.

33. To make an addition u/s 69 of the Act, some factual information is required that the explanation offered is not satisfactory and it has to be established that assessee indeed made the investment, of which source is not proved. However, upon going through the Assessment order (paragraph 15) as well as counter comments by Ld. DR, the thrust of the argument of revenue is that the investing companies are shell companies. If that is so, then information should have been sought from these companies through proper channel to know the source of funds. If the source is not proved and if it is found that there is any routing of unaccounted funds linking with the assessee, then it needs to be examined if the funds transferred are form undisclosed sources from India. Without any information or

inquiry, any investment made by a nonresident company cannot be taxed in the hands of an individual and that to be who is also nonresident. All this presumptions and perceptions as canvassed by the revenue cannot be the basis for addition of nonresident entity or individual. Merely because investment is made by a 100% owned foreign company, the same cannot be held to be taxable in the hands of the assessee, without lifting the corporate veil. Company as per law has a separate and distinct legal existence, created under legal provisions and being foreign company, under statute relevant in that foreign jurisdiction will be applicable. It is not in dispute that investments in this case are by the foreign companies in Indian companies. The case of the revenue is that the investment is by the assessee and that to be from his unaccounted income from undisclosed sources in India. All this is based on presumption and without documentary evidence or any enquiry or information. If a foreign company has made investment in an Indian Company through proper channel, then unless any adverse information is there on record that it is through unaccounted money routed through India cannot be taxed as unexplained. Moreover, there is no evidence that same is sourced from income or has accrued or arisen in India. From the reasons of reopening as reproduced above, it is clear that the investment have come directly from Dar Ventures Ltd, Dar Investment Ltd and Thurles International Ltd. directly to the India companies. Therefore, the same cannot be taxed in the hands of the assessee. We are thus inclined to agree with decision given by the CIT (A) and his order deleting the addition

is confirmed and accordingly, we dismiss the grounds raised by the revenue.

34. Therefore, considering all the contention's made above, we are not satisfied with the contention of the revenue and all the grounds raised by the department are dismissed.

35. One very important contention raised by the Ld. DR during the course of hearing was relying upon the ITAT order of Mumbai Bench in the case of the assessee for immediately previous assessment year, i.e., AY 2008-09. It was contented that not only the issue of taxability of consultancy payment received by these two foreign companies was upheld, but same was also heavily relied upon earlier by this Tribunal while dismissing the current appeal ex-parte, i.e., AY 2009-10. However, we note that fact of the case for AY 2008-09, on the basis of which the order was dismissed was slightly different than the instant case. In AY 2008-09, the assessee's NRE account Chennai bench had received an amount of Rs 156.8 crores from HSBC bank Middle East Dubai which was added u/s 68 of the Act on non-furnishing of any details. The income was credited in the bank account of the assessee in his individual capacity in India and on this fact, income was held to be taxable in India. However, in the instant year, no such amount has been received by the assessee in India in his account. The email confirmation relied upon by the revenue mentions that M/s. Dar Capital Ltd. and M/s. Thurles Investments have received amounts of USD 51.5m and 41.5m from GFH over the years for certain of its projects and not

the assessee. Therefore, the decision of the immediate previous year i.e., AY 2008-09 cannot be relied upon as the same is factually different.

36. We have already given our detail reason as to why this income cannot be taxed in India and one of the distinction feature from A.Y.2008-09 is that in earlier year the amount was credited in NRE account Chennai Branch has received the amount from HSBC Bank, Middle East, Dubai which was added in Section 68, however, in this year there is no such amount which has been received by the assessee here in India. Thus, the argument of the ld. DR is that this issue is covered by the earlier order is also rejected. Accordingly, appeal of the Revenue is dismissed.

37. In so far as cross objection filed by the assessee, the same is treated as purely academic as we have already dismissed the Revenue's appeal and we are not going into validity of reopening whether assessment should have been made u/s.153C or validity of notice u/s 148.

38. In the result, appeal of the Revenue is dismissed and Cross Objection of the assessee is also dismissed.

Order pronounced on 30th April, 2024.

Sd/-	**Sd/-**
(GAGAN GOYAL)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 30/04/2024
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy// BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai