

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1359/MUM/2024      ITA No. 1352/MUM/2024  
(Assessment Year: 2015-16)      (Assessment Year: 2016-17)**

**ITA No. 1357/MUM/2024      ITA No. 1356/MUM/2024  
(Assessment Year: 2017-18)      (Assessment Year: 2018-19)**

**&  
ITA No. 1354/MUM/2024  
(Assessment Year: 2020-2021)**

**Assistant Commissioner of Income  
Tax, Mumbai,**

481/2, Aayakar Bhavan, M.K. Road,  
Churchgate, Mumbai - 400020

.....

**Appellant**

Vs

**Sonata Information Technology  
Limited,**

208, T V Industrial Estate, 2<sup>nd</sup> Floor,  
S K Ahire Marg, Worli Colony,  
Mumbai - 400030  
[PAN:AAECS8734]

.....

**Respondent**

**Appearance**

For the Appellant/Department : Dr. Kishor Dhule

For the Respondent/Department : Shri Amit Shetty  
Ms. Nisha Patel

**Date**

Conclusion of hearing : 20.06.2024

Pronouncement of order : 27.06.2024

---

**ORDER**

**Per Bench**

1. This is a batch of 5 appeals pertaining to Assessment Years 2015-16, 2016-17, 2017-18, 2018-19 and 2020-2021 preferred by the Revenue against five separate orders, each dated 23/01/2024, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi

[hereinafter referred to as 'the CIT(A)']. Since the appeals involve common issues the same were heard together and are being disposed by way of a common order.

**ITA No. 1359/Mum/2024 (Assessment Year 2015-16)**

2. We would first take up appeal for the Assessment Year 2015-16 which has been preferred by the Revenue challenging the order, dated 23/01/2024, passed by the CIT(A), whereby the CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 15/12/2017, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
3. The Revenue has raised the following grounds of appeal:
  - "1. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the disallowances made by the Assessing Officer of Rs. 3,54,69,425/- claimed by the assessee as an expenditure for services allegedly rendered by Sonata Software Ltd, the holding company, to the assessee, even though the claim of such expenditure was to reduce the income of the assessee company and increase the deduction u/s 10A availed of by Sonata Software Ltd, the holding company?"*
  2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing an amount of Rs. 14,99,37,951/- being deputation charges paid by the assessee to the holding company Sonata Software Ltd. (SSL) in respect of personal allegedly deputed by SSL to the assessee?*
  3. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing an amount of Rs.67,45,028/-being the reimbursement of various expenses allegedly incurred by the holding company Sonata Software Ltd on behalf of the assessee?*

4. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing the assessing officer to delete the disallowance made u/s. 40(a)(ia) of the Act, after making the verification of the fact of deduction of TDS and reversal of entries, especially when it is admitted that in respect to the claim of provision for expenses of Rs. 52,01,277/-, no TDS was deducted in the financial year under consideration.*
  5. *Without prejudice to the above, the Ld. CIT(A) erred in not upholding the disallowance made u/s. 37 of the Act of Rs. 36,40,894/- being provision for expenses, having categorically held that the same is not ascertained liability in the assessment year under consideration."*
4. The relevant facts in brief are that the Assessee was, at the relevant time, engaged in the business of trading in software and provision of software development services. The Assessee filed return of income for the Assessment Year 2015-16 on 30/11/2015 declaring total income of INR.36,74,21,410/- under normal provisions of the Act and book profits of INR 25,30,49,904/- under Section 115JB of the Act. Subsequently, the Assessee filed revised return declaring total income of INR.35,01,84,930/- under normal provisions of the Act, and INR 36,22,66,685/- as Book Profits under Section 115JB of the Act. The case of the Assessee was selected for scrutiny.
  5. The Assessing Officer noted that the Assessee had claimed expenditure of INR 3,54,69,425/- on account of payment of service charges and INR 68,65,947/- on account of reimbursement of other expenses to M/s. Sonata Software Ltd. (for short '**SSL**'), its holding company. It was contended by the Assessee that the aforesaid expenditure of service charges as well as reimbursement of expenses was claimed in accordance with the Agreement, dated 28/09/2000, entered into by the Assessee with SSL [as revised from time to time on 01/07/2002,

01/07/2004, 01/07/2006, 01/07/2008, 01/07/2010 and 01/07/2014.]. According to the Assessee, as per the aforesaid agreement, SSL provided various accounting, legal, administrative services, etc. to the Assessee for which service charges were paid by the Assessee to SSL during the relevant previous year. In addition, SSL was also reimbursed for the out of pocket expenses incurred by SSL for the purpose of providing the aforesaid services. Further, the Assessee also paid deputation charges to SSL for deputing technical staff with the Assessee for providing software development services. However, the Assessing Officer was not convinced. According to the Assessing Officer, no services were rendered by SSL to the Assessee. The services agreement between the Assessee and SSL were entered into with the intention reducing the tax liability. SSL was carrying out activities eligible for claiming exemption under Section 10A of the Act whereas the Assessee was engaged in providing non-eligible/taxable services. Therefore, the transactions under consideration were entered into by the Assessee with SSL with the for the purpose of reducing the profits and tax liability of the Assessee and increasing the tax exempt income of SSL. Since the expenses were not incurred for business purpose deduction for the same could not be allowed under Section 27 of the Act. Making the aforesaid observations, the Assessing Officer disallowed deduction for (a) payment of services charges amounting to INR 3,54,69,425/-, (b) reimbursement of expenses of INR 68,65,947/- and (c) payment of deputation expenses of INR 14,99,37,951/- paid by the Assessee to SSL. Further, the Assessing Officer was of the view that INR 52,01,277/- debited to the Profit & Loss Account for the relevant previous year as provisions of expenses represented contingent liability and

therefore, deduction for the same could not be allowed under Section 37 of the Act. Since the Assessee had suo-moto disallowance of INR 15,60,383/- [*being 30% of aggregate provisions of INR 52,01,277/- debited to the Profit & Loss Account for the relevant previous year*] on account of non-deduction of tax at source, the Assessing Officer made disallowance of the balance amount of INR 36,40,894/- under Section 37 of the Act. After making, inter alia, the aforesaid additions/disallowances the Assessing Officer completed the assessment under Section 143(3) of the Act at assessed income of INR 54,62,12,450/- vide Assessment Order, dated 15/12/2017.

6. Being aggrieved, the Assessee carried the issue in appeal before CIT(A). Vide order dated 23/01/2024, the CIT(A) partly allowed the appeal preferred by the Assessee. Following the decision of the Tribunal in the case of the Assessee for Assessment Years 2007-08 to 2014-15, the CIT(A) deleted the disallowances in respect of payment of service charges, deputation charges and reimbursement of expenses by the Assessee to SSL. The CIT(A) also deleted the disallowance of INR 36,40,894/- made by the Assessing Officer in respect of provision for expenses by following the decision of the Tribunal in the case of the Assessee for the Assessment Year 2014-15.
7. Being aggrieved by the above relief granted by the CIT(A), the Revenue has preferred present appeal before the Tribunal on the grounds reproduced in paragraph 3 above.

Ground No. 1, 2 & 3

8. We have heard both the sides and perused the material on record. It emerges that issues raised in Ground No. 1, 2, and 3

raised in the present appeal are had come up for consideration before the Tribunal in the case of the Assessee in the preceding years. During the course of hearing the Learned Authorised Representative for the Assessee had placed reliance upon the common order, dated 08/12/2020, passed by the Tribunal in the case of the Assessee in appeals pertaining to **Assessment Year 2013-14 and 2014-15 [ITA No. 3244 & 3245/Mum/2018]**. By way of the aforesaid common order, **dated 08/12/2020**, the Tribunal had dismissed identical grounds raised by the Revenue challenging deletion of disallowance of service charges, deputation charges and reimbursement of expenses paid by the Assessee to SSL by placing reliance on orders of the Tribunal for the preceding assessment years in the following manner:

*"9. At the outset, Ld. AR appearing on behalf of the assessee submitted that the grounds 1, 2 & 3 raised by the revenue are squarely covered by the series of the orders of Coordinate Bench of ITAT in ITA No. 4446/Mum/2011 for Assessment Year 2007-08, ITA No. 4334/Mum/2015 for Assessment Year 2011-12 and 1360/Mum/2017 for Assessment Year 2012-13 in assessee's own case on merits, wherein the Coordinate Bench of ITAT has decided these issue in favour of the assessee.*

*10. On the other hand, Ld. DR supported the orders passed by the revenue authorities, however he conceded these grounds are covered by the order of Coordinate Bench of ITAT.*

*11. Considered the rival submissions and material placed in record. We find that the identical grounds raised in the present appeal has already been decided by the Coordinate Bench of ITAT in ITA Nos. 4446/Mum/2011 for Assessment Year 2007- 08, ITA No. 4334/Mum/2015 for Assessment Year 2011-12 and 1360/Mum/2017 for Assessment Year 2012-13 in assessee's own case on merit. For the sake of clarity, order of Coordinate Bench*

of ITAT in ITA No. 4446/Mum/2011 for Assessment Year 2007-08 is reproduced below:-

With regard to Ground No. 1.

10. At the time of hearing it was agreed by the parties that similar issue had come for consideration in assessee's own case in A.Y 2001-02 in ITA No.3702/M/04 and this Tribunal on identical issue held as follows:

"7. The next issue arising from the appeal of assessee relates to the disallowance of Rs.6,55,88,590/- on account of service charges paid to Sonata Software Ltd. (SSL). Brief facts giving rise to this appeal are these: The assessee is 100% subsidiary of SSL. It came into existence in the year under consideration with the object to carry out one of the activities of SSL which was not eligible for exemption u/s. 10A. Prior to the year under consideration, SSL was carrying out two independent activities i.e. (i) activity eligible for exemption u/s. 10A and (ii) the activity not eligible for exemption u/s. 10A. Separate accounts were maintained by SSL for these activities. Direct expenses relating to these activities were accounted for in the separate accounts respectively. However, service charges were common and later on allocated to these activities on the basis of turnover. The assessee, after its incorporation, took over the activity of SSL, which was not eligible for exemption u/s. 10A on 1.7.2000. However, an agreement was entered into between assessee and SSL to the effect that SSL would continue to incur expenses in the nature of service charges on behalf of assessee as before and the same would be reimbursed by the assessee. The assessee paid the sum of Rs.6,55,80,590/- as service charges for the year under consideration and claimed the same as business expenditure.

8. The Assessing Officer disallowed the entire expenditure by observing as under:

"(i) The following tabulation gives details of the sales, expenditures claimed of the nature "Legal & Professional expenses" and of the nature "Recruitment & Training" in the separate Profit & Loss Accounts prepared for the non-IOA activity of SSL in the A. Yrs. 1998-99, 1999-00 and 2000-01 and in the case of the assessee company for the A. Yrs. 2001-02 and 2002-03.

xx xx

*From the above, it is observed that the expenditure in SSL under the heads "Legal and Professional" and "Recruitment and Training" for the A. Yrs. 1998-99 to 2000-01 increased in proportion to the turnover from Rs. 18.25 lakhs to Rs.49.09 lakhs (Rs.39.5 lakhs + Rs.9.5 lakhs). However, in comparison to this, the expenditure on account of "Service charges" (which encompasses the expenditures claimed under the said two heads) in the assessee company for A. Yrs. 2001- 02 and 2002-03 has been claimed at an abnormally high amount of Rs.655.88 lakhs and Rs.910.27 lakhs respectively, disproportionate to the turnover of the assessee.*

*(ii) It has been stated in the said agreement of SSL with the assessee company that all out of pocket expenses including travel, conveyance etc. are to be billed separately by SSL and shall be reimbursed bit the assessee. However, rather than separately billing for these out of pocket expenses, SSL is raising periodic lump sum credit notes by apportioning the expenditure incurred by SSL on account of insurance, salaries and allowances, directors remuneration, electricity and water charges, printing and stationery, professional charges, repairs and maintenance, rent for offices and also depreciation. The assessee was categorically asked to furnish supporting evidences to show that the said services stated at (a) to (d), above were rendered by SSL. However, the assessee has not furnished the same till the finalization of the assessment. The only evidences submitted are the debit/credit notes raised on the assessee by SSL according to which the expenses incurred in SSL have been apportioned to the assessee on the basis of turnover of the assessee and SSL. Payment pf service charges from SITL to SSL is mere diversion of income without services rendered by SSL. Mens rea for this claim is to reduce taxable profit and claim more 10-A profit in SSL.*

*(iii) The receipts on account of Service Charges in the hands of SSL have not been credited separately as the income of its non-10A activity. However, these recetts have been reduced from the expenditure claimed of 10A activity of SSL. The net*

*implication of this is that the profits of the 10A activity of SSL have increased and on which no tax has been paid. Whereas in fact, these receipts are clearly pertaining to the non-IOA activity of SSL and therefore such receipts should have been offered for tax.*

*iv) The assessee has contended that the said agreement has been in the best interest of the business between two independent corporate entities. It has also been contended that the same has been incurred out of commercial expediency. It has further been submitted that it is the prerogative of the businessman as to how to run its business and the Department should not prescribe the quantum of expenditure etc. These contentions of the assessee would have been acceptable if this agreement was entered into between two independent entities not under the common management and control. In the instant case, the assessee is a 100% subsidiary of SSL. The implication of this agreement is that the taxable profits of the assessee have been reduced and at the same time increasing the non-taxable profits of its holding company-SSL.*

*v) On perusal of the Balance Sheet of the assessee company, it is observed that out of the total service charges of Rs. 655 88 lakhs payable to SSL for the relevant year, an amount of Rs.522.57 lakhs is outstanding as on 31.03.2001. This further indicates that the basic purpose of this agreement is to reduce the tax liability in the hands of the assessee and increase the non-taxable profits of SSL"*

*In Para 4.4 of his order, the Assessing Officer also observed that entire exercise was a colourable device to reduce its tax liability and to increase non-taxable profits of SL.*

*9. The matter was carried in appeal before the CIT(A) before whom it was submitted that:*

*"Before me in the appeal proceedings, it was explained on behalf of the assessee that Assessing Officer has misled himself in presuming that the agreement for services covers only the legal and professional charges and recruitment and training expenses, ft was explained that the area of services covered under the agreement is very broad and*

*that the expenditure has been claimed on the basis of actual expenditure incurred on the basis of debit notes received from SSL and that if the expenditure in question was not incurred the assessee would not have been able to carry on its business, it was further submitted that the debit notes issued by SSL and the details given to the Assessing Officer in support of the expenditure included in the debit notes show that not only legal and other specified services were the subject in the agreement but also other services which are not specifically stated in the agreement were also included."*

*10. The CIT(A) examined the details of the expenditure which had been allocated on the basis of respective turnover which was given along with debit notes. It has been made clear that such details were also furnished before Assessing Officer. (See page 23-24 of the order). It was noted by CIT(A) that entire expenditure was incurred commonly for SSL and assessee and was allocated on the basis of turnover. According to him, business activities of SSL was much more expenditure oriented than business activity of assessee. Hence, in his opinion, the expenditure on support services to the assessee in the ratio of turnover was patently wrong. After going through the agreement, it was also held that SSL was required to advise the assessee in the matters of finance, accounts, taxation, legal, administration, HRD etc. and proper maintenance of record, compliance under various laws and training of employees. He also noted that assessee itself had incurred operational expenses of Rs.835.76 lacs which shows that assessee itself maintaining a large force of its employees. Such expenses amounted to 8.31% of total in finance, accounts, taxation, legal, administration, HRD, education and research and training deptt. could be allocated. He then estimated the sum of Rs.50 lacs towards the services of SSL rendered from assessee and held the same to be allowable. Rest of the expenditure was held to be disallowable. Aggrieved by the same, the assessee is in appeal before the Tribunal.*

*11. We have heard both the parties in the light of the materials placed before us. We find that the issue regarding the allocation of expenses in respect of service charges arose in the case of SSL. In that case, the Assessing Officer was of the view that allocation of expenses for Non-10A unit (not eligible for exemption) was excessive as exempted unit was much more expenditure oriented. The matter ultimately reached*

the Tribunal which accepted the case of assessee that allocation of support services expenses on the basis of turnover was justified. The Tribunal, vide para 34 of its order dated 17.03.2003 in ITA No. 495/496/M/02, held as under:

"We have considered the submissions and we have perused the various records placed in the Paper book. In the Paper book at page 27 to 34, the assessee has placed each and every head of expenditure and this Expenditure has been bifurcated under the three heads- STP unit entitled to deduction under section 10A, non STP not entitled to deduction u/s.10A and support services. Further, it is found that the basis of allocation amongst the three heads is actual expenses, number of employees and ratio of fixed assets, floor area and turnover ratio. Thus, on the basis of above five criteria, expenditure has been allocated to the three heads. Further, it is noticed that the total expenditure allocated under third head i.e. support services; has been again allocated under two heads - 1) STP units entitled to deduction u/s. 10A and nonSTP which is not entitled for deduction u/s. 10A on the basis of turnover ratio. In our considered opinion the allocation of expenditure contained in the Paper book at page 27 to 31 appears to be appropriate. As per details contained in pages 27 to 31, it can be seen that the appellant company has only allocated expenses of Support Service Division between 10A and non-10A activities in the ratio of turnover has been called for by the Assessing Officer by this letter dated 20.01.2000 appearing at page 35 of the Paper book. Further, direct expenses relating to 10A and non- 10A activity has been directly charged against the profits of these activities and do not call for any interference." .

The above observations of the Tribunal resolve the controversy before us. Admittedly, prior to incorporation of assessee company, SSL was carrying on two units independently i.e. unit exempted u/s. 10A and the unit not exempted. Direct expenses incurred were separately booked to respective units. Only the support services expenses were allocated on the basis of turnover. Such allocation has been found to be proper and reasonable by the Tribunal. There is no dispute that non exempted unit was taken over by the assessee company and support services were continued to be rendered by SSL. From the inception, the stand of the assessee has been that such expenses were

allocated on the basis of turnover as is apparent from para 4.3.3(ii) of the 'assessment order, wherein it has been mentioned that expenses were allocated in debit notes as the basis of turnover. Even the CIT(A) has also admitted this factual position at page 23 of his order where he mentioned "The details of the expenditure which has been allocated on the basis of respective turnover is given along with debit notes, copies of which were filed before me, as also before the Assessing Officer". Faced with the same, the Id. Departmental Representative had nothing to add except to rely on the order of Assessing Officer. The Id. Departmental Representative submitted that allocation of expenses requires verification and therefore the matter may be referred to Assessing Officer for necessary verification. We are unable to accept this request since there is no dispute to the factual position that allocation of service expenses was made on the basis of turnover. No useful purpose would be served in restoring the issue. Accordingly, following the finding of the Tribunal in the case SSL, we set aside the order of CIT(A) on this issue and delete the disallowance sustained by him."

11. The above order of the Tribunal has been followed in assessee's own case for A.Y 2002-03, in ITA No.3027/M/06, A.Y 03-04, 3758/M/06 , A.Y 2004-05 8& A.Y 2005-06 ITA No.3158& 3161/M/08. Facts and circumstances under which the disallowance was made in the earlier years and the present Assessment year are identical. Respectfully following the aforesaid decisions we uphold the order of CIT(A) dismiss ground No.1 raised by the revenue.

With regard to Ground No. 2 & 3

17. We have heard the submissions of the learned DR on Gr.NO.2 and 3 who relied on the order of the AO. The learned counsel for the Assessee reiterated submissions made before CIT(A) and the order of the CIT(A).

18. We have considered the rival submissions. While deciding Gr.No.1 of the Assessee, we have already seen the terms of the Agreement between the Assessee and SSL by which SSL agreed to render some common services in the areas of Finance, Accounts, Taxation, Legal, Administration, HRD, education, Training , Research etc. Clause-3 of the

said agreement which have been referred to in the earlier part of this order clearly shows that the expenses covered by that agreement cannot and do not relate to expenditure incurred on deputing employees to work on specific projects of the Assessee. Therefore the expenses on account of deputation charges as well as other expenses are not covered under the aforesaid agreement. The other reasons given by the AO for making the impugned disallowance cannot also be sustained. The order of the Tribunal referred while deciding Gr.No. 1 will equally apply to Gr.No.2 and 3 also as the other reasons given for making the impugned disallowance are similar to the one given while making the disallowance of expenses which is subject matter of Gr.No.1. We are therefore of the view that there is no merit in Gr.No.2 and 3 raised by the Revenue. Consequently Gr.No.2 and 3 are dismissed”.

*12. Therefore, respectfully following the decision of Coordinate Bench of ITAT which is applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, the grounds 1, 2 & 3 raised by the revenue are dismissed”. (Emphasis Supplied)*

9. There is no change in the facts and circumstances of the case. There is nothing on record to persuade us to take a view different from the view taken by the Tribunal in appeals for the preceding assessment years. Thus, we do not find any infirmity in the order passed by the CIT(A) in this regard as the CIT(A) has followed the decision of the Tribunal. Accordingly, Ground No. 1,2 & 3 raised by the Revenue are dismissed.

Ground No. 4 & 5

10. By way of Ground No. 5 the Revenue has challenged the action of the CIT(A) of allowing deduction for provision for expenses debited to the Profit and Loss Account for the relevant previous year.

11. The Assessing Officer had disallowed deduction for the provisions for expenses on the ground that the provision was made for expenses which were contingent in nature and were not incurred during the relevant previous year and therefore, deduction for the same could not be allowed in view of Section 37 of the Act. Since the Assessee had made suo-motu disallowance of INR 15,60,383/- under Section 40(a)(ia) of the Act computed at the rate of 30% of aggregate provisions of INR 52,01,277/- debited to the Profit & Loss Account for the relevant previous year, the Assessing Officer made disallowance of the balance amount of INR 36,40,894/-.
12. The CIT(A) deleted the disallowance of INR 36,40,894/- by following the decisions of the Tribunal in the case of the Assessee in appeals pertaining to Assessment Year 2013-14 and 2014-15 [ITA No. 3244 & 3245/Mum/2018, common order, dated 08/12/2020] in the following manner:

*"8.11. Further, we would like to rely on appellant own case for A.Y.2013-14 & A.Y.2014-15 wherein department has raised the same ground for disallowance. The Hon'ble ITAT rejected the department's contention disallowance of appellant's year end provision cannot be termed as contingent in nature disallowable u/s 37 of the Act. The relevant par is reproduced below for the sake of Ready Reference: "With regard to alternate ground raised to plea that Ld. CIT(A) should have invoked section 37 to disallow the expenses claimed by the assessee, Ld. DR submitted that the liability claimed by the assessee is unascertained liability.*

*15. On the other hand, Ld. AR brought to our notice page 32 of the paper book, the chart showing details of provision of expenses for Assessment Year 2013-14 as per which, the assessee had created total provision of Rs. 245,55,504/-. He submitted that this provision of expenses relating to the incomplete project for which assessee has already recognized the revenue, but these expenses are in the nature of salary, variable performance pay and other*

*incentives to the work force. These expenses cannot be ascertained due to the reason that the assignment of work is not determined and the nature of expenses claim may change. The exact nature of expenses will be determined only when the actual expenses or work is assigned in the subsequent Assessment Year. These are part of revenue recognized for this Assessment Year and assessee regularly follows this accounting procedure over the year. When the identity of the person in whose hands, such income /payment is includible will be known and the quantum of payment is ascertainable only at that point of time, when the actual work is assigned or completed in the subsequent assessment year. Until the quantum of expenses is ascertained till then the provision of TDS will not apply. In that proposition, he relied on the following case laws:- a) Apollo Tyres Ltd. Vs DCIT [2017][78 taxmann.com 195], Hon'ble Delhi Tribunal. b) Industrial Development Bank of India Vs. ITO [2007][107 ITD 45], Hon'ble Mumbai Tribunal. 16. Considered the rival submissions and material placed in record. We notice from the record that assessee has recognized the revenue and at the same time, there are costs which has to be absorbed before recognizing the revenue. Those costs which are visible and estimated but cannot be quantified i.e. they have identified the nature of expenses to be incurred, but cannot decide to whom such work to be assigned. This will be ascertained only when such jobs are assigned. In order to close the books with the matching principles, generally, the assesseees will create a general provision in their books and it will be reversed in the subsequent year as and when it is assigned or ascertained. Since the payee is not known and also liability is not ascertained, the assessee cannot apply the TDS provisions. This method of accounting is adopted by the assessee consistently, therefore the method adopted by the assessee is proper. Since the assessee has already declared the revenue without completing the unascertained jobs, without creating the relevant general provision, it will amount to excess charge of income to tax. When the same provision is disallowed, it amounts to double taxation.*

8.12 xx xx

8.13 *I have considered the facts and circumstances of the case, gone through the assessment order of the A.O, the submissions of the appellant. The contentions and submissions of the appellant are being discussed and decided here in under:*

*"The learned AO had taken an Identical ground for the first time before the Hon'ble Mumbai Tribunal in assessee own*

*case for A.Y.2013-14 & A.Y 2014-15 wherein the Hon'ble Tribunal has held that*

*"20. In the above decision, it was remitted back to AO to verify whether payee is not identifiable. In this case, it is clear from the record submitted before us that the work was not assigned to anyone. Therefore, it is only a general provision and the assessee has not credited to any provision to any specific account. Therefore, the provision of TDS will not apply to the case of assessee. Accordingly, ground no. 4 raised by revenue is dismissed." Thus, relying on the above factual and legal matrix as well as on the judgement given by Hon'ble ITAT in the appellant's own case where the facts are identical, the addition made by AO is deleted."*

*Thus, relying on the above factual and legal matrix as well as on the judgment given by Hon'ble ITAT in the appellant's own case where the facts are identical, the addition made by AO is deleted"*

13. We note that the CIT(A) has deleted the disallowance by following the decision of the Tribunal in the case of the Assessee for the Assessment Year 2013-14 and 2014-15 whereby identical ground/contention raised by the Revenue were rejected. It is admitted position that there is no change in the facts and circumstances in the Assessment Year 2015-2016. There is nothing on record to persuade us to take a different view of the matter. Thus, we do not find any infirmity in order passed by the CIT(A) to this extent and accordingly, decline to interfere with the order passed by the CIT(A) in this regard. Thus, Ground No. 5 raised by the Revenue is dismissed.
14. By way of Ground No. 4 the Revenue challenged the deletion of disallowance made by the Assessing Officer by invoking Section 40(a)(ia) of the Act. However, the issue does not arise in the facts of the present case as the Assessee had made suo-moto disallowance of INR 15,60,383/- under Section 40(a)(ia) of the Act. Ground No. 4 raised by the Revenue is, therefore,

dismissed.

**ITA No. 1352/Mum/2024 (Assessment Year 2016-17)**  
**ITA No. 1357/Mum/2024 (Assessment Year 2017-18)**

15. We would next take up appeals preferred by the Revenue for the Assessment Year 2016-2017 and 2017-2018 preferred by the Revenue challenging the orders passed by the CIT(A), each dated 23/01/2024, whereby the CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 17/12/2018, and dated 17/12/2019 passed under Section 143(3) of the Act.
- 15.1 During the course of hearing, both the sides had agreed Ground No. 1 to 5 raised in appeals for the Assessment Year 2016-17 as well as Assessment Year 2017-18 are identical to grounds raised in Appeal for the Assessment Year 2015-16. Therefore, our reasoning, finding and adjudication on Grounds raised in appeal for the Assessment Year 2015-16 shall apply mutatis mutandis to appeals for the Assessment Year 2016-17 and 2017-18. Accordingly, in view of paragraph 8 to 13 above, Ground No. 1 to 5 raised by the Revenue in appeal are dismissed.

**ITA No. 1356/Mum/2024 (Assessment Year 2018-19)**

16. We would next take up appeal preferred by the Revenue for the Assessment Year 2018-2019 challenging the order, dated 23/01/2024, passed by the CIT(A), whereby the CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 15/04/2021, passed under Section 143(3) read with sections 143(3A) & 143(3B) of the of Act.
- 16.1. For the Assessment Year 2018-19 the Assessee had debited to the Profit and Loss Account for the relevant previous year INR

4,55,16,760/- as service charges, INR 1,59,57,740/- as reimbursement of expenses and INR 15,69,62,824/- as deputation charges. Thus, the Assessee had claimed deduction for aggregate expenses of INR 21,84,37,324/-. The Assessing Officer made disallowance of INR 21,84,37,324/- which was deleted by the CIT(A) by placing reliance on the decision of the Tribunal in the case of the Assessee. Hence the Revenue is in appeal before the Tribunal

- 16.2. During the course of hearing, both the sides had agreed the Ground No. 1 to 3 raised in appeal for the Assessment Year 2018-2019 are identical to Ground No. 1 to 3 raised in Appeal for the Assessment Year 2015-16. Therefore, our reasoning, finding and adjudication on grounds raised in appeal for the Assessment Year 2015-16 shall apply mutatis mutandis to the corresponding grounds raised in appeal for the Assessment Year 2018-2019. Accordingly, in view of paragraph 8 to 13 above, Ground No. 1 to 3 raised by the Revenue in appeal are dismissed.

**ITA No. 1354/Mum/2024 (Assessment Year 2020-2021)**

17. We would next take up appeal preferred by the Revenue for the Assessment Year 2020-2021 challenging the order, dated 23/01/2024, passed by the CIT(A), whereby the CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 29/09/2022, passed under Section 143(3) read with sections 143(3A) & 143(3B) of the Act.
- 17.1. For the Assessment Year 2020-2021 Assessing Officer made disallowance of (i) INR. 82,20,446/- being service charges paid by the Assessee to its holding company SSL incurred for the services rendered and (ii) payment of deputation charges of INR.3,92,34,996/- to SSL. The CIT(A) deleted the aforesaid

disallowances by placing reliance on the decision of the Tribunal in the case of the Assessee. Hence, the Revenue is in appeal before the Tribunal.

- 17.2. During the course of hearing, both the sides had agreed that the Ground No. 1 & 2 raised in appeals for the Assessment Year 2020-2021 are identical to Grounds No. 1 & 2 raised in Appeal for the Assessment Year 2015-16. Therefore, our reasoning, finding and adjudication on grounds raised in appeal for the Assessment Year 2015-16 shall apply mutatis mutandis to the corresponding grounds raised in appeal for the Assessment Year 2020-2021. Accordingly, in view of paragraph 8 to 13 above, Ground No. 1 to 2 raised by the Revenue in appeal are dismissed.
18. In result, all the five appeals preferred by the Revenue are dismissed.

Order pronounced on 27.06.2024.

**Sd/-**  
**(Prashant Maharishi)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 27.06.2024  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai