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

BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.5991/Del/2015
Assessment Year: 2011-12
With
ITA No.288/Del/2017
Assessment Year: 2012-13
With
ITA No.7850/Del/2017
Assessment Year: 2014-15

Andritz AG, C/o- Mohinder Puri & Co., CAs, 1A-D Vandhna Building, 11 Tolstoy Marg, New Delhi	**Vs.**	DDIT (International Taxation), Circle-1(1), New Delhi
PAN :AAFCA6700M		
(Appellant)		**(Respondent)**

With
ITA No.2622/Del/2017
Assessment Years: 2012-13

DCIT (International Taxation), Circle-1(1)(1), New Delhi	**Vs.**	Andritz AG, C/o- Mohinder Puri & Co., CAs, 1A-D Vandhna Building, 11 Tolstoy Marg, New Delhi
		PAN :AAFCA6700M
(Appellant)		**(Respondent)**

Assessee by	Shri Percy Pardiwalla, Sr. Advocate Ms. Ritu Theraja, CA
Department by	Sh. Ved Prasash, Sr. DR

Date of hearing	11.06.2024
Date of pronouncement	27.06.2024

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

Captioned appeals, three by the assessee and one by Revenue, arise out of three separate orders of learned Commissioner of Income Tax (Appeals), New Delhi, pertaining to assessment years 2011-12, 2012-13 and 2014-15. Since, the appeals involve common issues, they have been clubbed together and disposed of in a consolidated order, for the sake of convenience.

ITA No.5991/Del/2015 (Assessee's Appeal)
Assessment Year: 2011-12

2. Ground nos. 1 and 2 are general in nature, hence, do not require specific adjudication

3. In ground no. 3, the assessee has challenged taxability of amount received towards offshore supply of design and engineering as Fees for Technical Services (FTS), both under section 9(1)(vii) of the Income-tax Act, 1961 (in short 'the Act') as well as Article 12 of India – Austria Double Taxation Avoidance Agreement (DTAA).

4. Briefly the facts are, the assessee is a non-resident corporate entity and a tax resident of Austria on the strength of Tax Residency Certification (TRC) issued in its favour. As stated by the Assessing Officer, the assessee is engaged in the business of supplying plants and services for hydropower, pulp and paper, metals and other specialized industries. The assessee had entered into contracts with Steel Authority of India Limited (SAIL) for its plants located at Salem and Bokaro. Further, the assessee had also entered into a contract with Jindal Stainless Limited. The contracts entered into with SAIL have the following three components:

(i) Offshore supply of design and engineering.

(ii) Offshore supply of plants and equipments.

(iii) Onshore supply of supervisory services.

5. The assessee generated revenue in India from the aforesaid three sources. In the return of income filed for the impugned assessment year on 26.03.2013, the assessee declared nil income and claimed refund of Rs.17,71,634/- In course of assessment proceedings, the Assessing Officer, while examining the details available on record, noticed the aforesaid sources of revenue

earned from India. As far as receipts from offshore supply of plants and equipments, the Assessing Officer accepted assessee's claim of non-taxability of such receipts. Insofar as offshore supply of drawings and designs, the Assessing Officer, after negating assessee's claim of non-taxability, observed that the contracts under which the assessee had received the amount, are composite contracts involving supply and services. He observed that the nature of services provided by the assessee to the Indian client are technical, hence, have to be treated as FTS under section 9(1)(vii) of the Act read with Article 12 of India – Austria DTAA. He observed that provision of design and engineering services is an intrinsic part of the contract and cannot be seen in isolation.

6. He observed, design and engineering services are amongst the initial works that would kick-start the implementation of the contract. Referring to the decision of Hon'ble Delhi High Court in case of CIT Vs. Mitsui Engineering and Ship Building, 174 CTR 66 (Del.), he observed that the design and engineering part cannot be seen in isolation to the entire contract and the payments received for rendering the same shall be taxable in India, as, the source of such income is in India. He further observed that the

provision of such services require some sort of technical skill, knowledge and expertise. Therefore, the payments received towards rendition of services would fall within the purview of FTS. Accordingly, he held that the amount of Rs.3,18,12,309/- received by the assessee towards design and engineering services, being in the nature of FTS, is taxable on gross basis at the rate of 10% in terms with Article 12 of India – Austria DTAA. Accordingly, he brought the receipts to tax.

7. The assessee contested the aforesaid decision before learned first appellate authority. However, the submission of the assessee regarding non-taxability of the receipts, did not find favour with the first appellate authority. Though, he held that the decision rendered by the Hon'ble Delhi High Court in case of CIT Vs. Mitsui Engineering and Ship Building is not applicable to the assessee's case, however, he held that, the very fact that the assessee separately paid fees towards design and engineering indicates that the supplier otherwise was not obliged to furnish the drawings and designs and the customers are required to pay for them independent of supply of equipment. Thus, holding that design and engineering is independent of offshore supply of

equipment, learned first appellate authority upheld the decision of the Assessing Officer. While doing so, he relied upon a decision of the Karnataka High Court in case of AEG AKTIENGESELLSCHAFT Vs. CIT [2004-TII-05-HC-KAR-INTL].

8. Before us, learned Senior Counsel appearing for the assessee drew our attention to a copy of the contract agreement placed in the paper-book and submitted that design and engineering services are inextricably linked to supply of plant and equipment. He submitted, the Assessing Officer has accepted the fact that the contract with the assessee is a composite contract. In that scenario, the Assessing Officer cannot disassociate offshore supply of design and engineering from onshore supply of plants and equipments. He submitted, when the receipt from offshore supply of plant and equipment is held as non-taxable, the receipts from offshore supply of design and engineering cannot be taxed. He submitted, not only in the year under dispute but in all subsequent years, the Assessing Officer has accepted assessee's claim that receipts from offshore supply of plant and equipment are not taxable. He submitted, receipts from offshore supply of design and engineering, being identical to offshore

supply of plant and equipment, cannot be made taxable. He submitted, the issue is otherwise squarely covered by the decision of the Coordinate Bench in the following cases:

(i) *SMS Concast AG Vs. DDIT, [2023] 153 taxmann.com 718 (Delhi – Trib.)*
(ii) *DSD Noell GMBH Vs. DCIT, [2023] 157 taxmann.com 64 (Delhi – Trib.)*

9. Learned Departmental Representative, while strongly relying upon the observations of the Assessing Officer and learned first appellate authority, submitted that the very fact that the payers have withheld tax on the payments towards design and engineering in terms with the contract, establish that both parties have accepted that the receipts are taxable in India. In reply, learned counsel for the assessee submitted that merely because payer has deducted tax at source to safeguard its own interest, does not make the receipts taxable in India.

10. We have considered rival submissions and perused the materials on record. We have also applied our mind to the decisions relied upon. It is an agreed and proven fact on record that the contracts under which the assessee has received the amounts towards design and engineering services, are composite contracts. The contracts require the assessee to not only supply

design and engineering, but also supply plants and equipments manufactured based on such design and engineering. Further, the assessee is required to provide supervisory services, which is on site. So far as provision of design and engineering services and supply of plants and equipments, both were made on offshore basis. It is a fact on record that the Assessing Officer has accepted assessee's claim of non-taxability of receipts from supply of plant and equipment, since, it was on offshore basis and the transaction was completed outside territory of India. Only because the contracts provided for payment of separate amounts towards design and engineering services, the departmental authorities have held that such services are independent to the supply of plant and equipment. This, in our view, is untenable as on a reading of the contract as a whole it does not appear that the offshore supply is a completely separate transaction having no relation to the supply of plant and equipments.

11. On the contrary, the terms of contract would make it clear that the design and engineering services inextricably linked with the manufacturing and supply of equipments. It is not the case of the department that the offshore supply of design and engineering

would have enabled the contractee to manufacture the plant and equipment through any other party independent of the assessee. Thus, it has to be held that offshore supply of design and engineering, being closely linked to the offshore supply of plant and equipment, it cannot be segregated from the offshore supply of plant and machinery, as the basic nature and character of both the transactions are identical. Therefore, when offshore supply of plant and equipment is not taxable, offshore supply of design and engineering cannot be made taxable.

12. Pertinently, identical nature of dispute arose in case of SMS Concast AG Vs. DDIT (supra), wherein, the non-resident entity had entered into a separate contract with JSW Steel Ltd. and an Indian entity for offshore supply of plant and equipment, offshore supply of drawings and design and supervision of erection and commissioning of equipment and its supply. While deciding the issue, whether the receipt towards design and engineering is taxable as FTS, the Coordinate Bench has held as under:

> *11. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. The short issue arising for consideration is, whether the amount received by the assessee for supply of drawing and design is taxable as FTS in India. Insofar as the factual aspect of the issue is concerned, there is*

no dispute that the designs and drawings were made outside India in Switzerland and were supplied to the contractee from Switzerland. It is a fact that the sale transaction qua the drawings and designs was completed in Switzerland and amounts were received in Switzerland. It is also a fact on record that both the supply of equipments and supply of designs and drawings are in relation to a single project of the contractee, viz., 1 X 8 Strand Billet Caster for Long Product Plants required for contractee's project located in the state of Karnataka.

12. Materials on record reveal that the drawings and designs are in relation to basic engineering, which means, basic data as well as draft drawings, schematic drawings or layouts, diagrams, configuration and calculations necessary to design the equipment, structure and systems, as the case may be. It also includes, the necessary calculations, functional descriptions, final equipment list, preliminary bills of materials for media systems, line routing drawings, main cables routings, foundation outlines with load data, motors and components list. It also includes reference component drawings with reference bills of material where applicable. Details design consists of the final design engineering to procure or manufacture the equipment and plants. It means the detail design of the equipment includes all necessary calculations, arrangement drawings, detail drawings for manufacturing where applicable, bills of materials, engineering of electrical components as well as associated standard and catalogue parts, instructions for manufacturing, assembly, inspection and construction if applicable, spare part lists, operation and maintenance instructions as the case may be.

13. Thus, from the details of design and drawings as well as documentation submission, schedule of drawings and designs, it is quite clear that drawings and designs supplied by the assessee are specifically related to the supply of plant and equipments for the JSW Steel Project.

13. On a reading of both the contracts, it is observed, though, the contracts have been separately executed, one for supply of plant and equipment and the other one for supply of drawings and designs, however, they have been executed on the very same date. One more crucial fact emerging from the drawing and design contract is, as per clause 17.1.1(iii), the purchaser is vested with the right to terminate the contract unilaterally, inter alia, due to the delay in delivery of the equipment in excess of 120 days for the reasons solely attributable to the seller and seller fails to take necessary remedial action. Thus, from the aforesaid condition imposed in the contract, it is very much clear that failure to supply

plant and equipment within the stipulated time period can also determine the contract for supply of drawing and design and the purchaser can terminate the contract for supply of design and drawing in that eventuality. Thus, the aforesaid fact makes it clear that the contract for supply of drawings and designs is inextricably linked to the contract for supply of plant and equipment.

14. Undisputedly, though, the Assessing Officer has brought to tax the receipts from supply of plant and equipment by treating it as business profit of the assessee connected to the PE, however, learned first appellate authority has reversed the decision of the Assessing Officer by holding that since the plants and equipments were supplied from outside India and the sale transaction has concluded outside India, the receipts cannot be taxed in India. Admittedly, against the aforesaid decision of the first appellate authority, the Revenue is not in appeal. Thus, when the supply of plant and equipment has been treated as sale transaction completed outside India, hence, not taxable in India, the sale and supply of drawings and designs being inextricably linked to sale and supply of plant and equipment has to be considered cumulatively and as a part of sale and supply of plant and equipment.

15. In case of Linde Engineering Division Vs. DIT (supra), the Hon'ble Jurisdictional High Court has observed that, in case, design and engineering are inextricable linked with the manufacture and fabrication of material and equipments to be supplied overseas and form an integral part of the supplies, then such services rendered would not be available to tax under section 9(1)(vii) of the Act as FTS. The Hon'ble Court further held that in order to fall outside the scope of section 9(1)(vii) of the Act, the link between the supply of equipment and services must be strong and interlinked that the services in question are not capable of being considered as services on standalone basis and are, therefore, subsumed as a part of the supplies. In the facts of the present case, in our view, the supply of drawing and design cannot be considered on standalone basis as the purchaser could not have utilized such drawings and designs without the supply of plants and equipments. Even, it is not the case of the department that by purchasing the drawings and designs, the purchaser could have got the plants and equipments manufactured by a third party. Therefore, in our view, the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid decision squarely apply to the facts of the present appeal.

16. In case of CIT Vs. Andhra Petrochemicals Ltd. reported in [2015] 373 ITR 207, the Hon'ble Andhra Pradesh High court has observed that different components of the contract cannot be read in isolation. Similar view has also been expressed by the Hon'ble Delhi

High Court in case of CIT Vs. Mitsui Engineering and Ship Building (supra).

17. Insofar as the decision of the Hon'ble Karnataka High Court in case of AEG Aktiengesllshaft Vs. CIT (supra), in view of the ratio laid down by the Hon'ble High Court in case of Linde Engineering Division Vs. DIT (supra), there is no need for much deliberation on the said decision.

18. At this stage, we must address some of the submissions made by learned Departmental Representative. Before us, learned Departmental Representative has submitted that the amount received for supply of drawings and designs is taxable in India, as, they have been delivered at Bangalore Airport and the seat of arbitration is in India. We do not find much substance in the said submission of learned Departmental Representative, as, in respect of the contract for supply of plant and equipment, as well, the delivery has been made at Chennai Airport and the seat of arbitration is also in India. Therefore, once the income from supply of plant and equipment is held to be not taxable in India, since, the sale transaction was completed outside India, the same logic applies even to the amount received from supply of drawings and designs. Thus, after considering the totality of facts and circumstances, we hold that the amount received by the assessee from supply of drawings and designs is not taxable in India as FTS. This ground is allowed."

13. If we examine the facts of assessee's case and analyze with the fact involved in case of SMS Concast AG (supra), it would be clear that assessee's case stands on a better footing as the contracts under which the assessee has received the payment are composite contracts. Therefore, the ratio laid down in case of SMS Concast AG (supra) squarely applies to assessee's case. Identical view has been expressed by the Coordinate Bench in case of DSD Noell GMBH (supra). Therefore, respectfully following the

decisions of the Coordinate Bench, as noted above, we hold that the amount in dispute is not taxable in India.

14. In Ground no. 4, the assessee has called into question the taxability of amount received towards onshore supervisory services as FTS by applying the rate of 10% on gross basis.

15. Briefly the facts are, as per the composite contracts entered with SAIL, the assessee, in addition to providing offshore design and engineering services and offshore supply of plants and equipments was also required to provide onshore supervisory services. For provision of onshore supervisory services, the assessee received Revenue from SAIL in India. In course of assessment proceedings, the Assessing Officer observed that though, the assessee admitted that it had a supervisory Permanent Establishment (PE) in India for providing onshore supervisory services, however, it has not offered the revenue received from such services in the return of income. Therefore, he concluded that the amount received towards onshore supervisory services, being attributable to the supervisory PE, has to be treated as FTS and taxed on gross basis by applying the rate of 10%. Though, the assessee contested the aforesaid decision of the

Assessing Officer before learned first appellate authority, however, it was unsuccessful.

16. At the very outset, learned Senior Counsel appearing for the assessee did not dispute the fact that the assessee had supervisory PE in India in respect of onshore supervisory services provided to SAIL. However, he submitted, the assessee, being a tax resident of Austria, is entitled to the benefits provided under India – Austria DTAA. Drawing our attention to India – Austria Tax Treaty, he submitted that as per Article 7(5) & (6) read with Article 12(5) of the treaty, even assuming that onshore supervisory charges received by the assessee are in the nature of FTS, since they are effectively connected with the supervisory PE, they have to be taxed as business profits under Article 7 of the DTAA. He submitted, in that event, it has to be taxed on net basis after deduction of all expenses. Proceeding further, he submitted, the assessee followed accountancy policy of recognizing revenue from onshore supervisory services through project completion method. He submitted, since all the projects with SAIL were ongoing during the year under consideration, the assessee offered the income to tax on completion of projects in assessment year

2014-15 and the Assessing Officer, while completing the assessment, has also accepted such income. Therefore, he submitted, there is no reason to tax such income again in the impugned assessment year, as; it would amount to double addition of the same income.

17. Learned Departmental Representative relied upon the observations of the Assessing Officer and learned first appellate authority.

18. We have considered rival submissions and perused the materials on record. Before we proceed to decide the issue, we must observe that the assessee has admitted that onshore supervisory services were provided to SAIL through supervisory PE in India. Thus, it is established on record that the assessee had a supervisory PE. There is also no dispute to the fact that, being a tax resident of Austria, the assessee is entitled to avail benefit under India - Austria DTAA. The Assessing Officer, undoubtedly, has treated the receipts as FTS and taxed it at the rate of 10% on gross basis. Learned first appellate authority endorsed the view of the Assessing Officer on the reasoning that in terms of Article 12(4) of the treaty, the amount received

towards onshore supervisory services has to be taxed as FTS at the rate of 10%.

19. On a reading of Article 7 of India – Austria DTAA, it becomes clear that business profits of an Austrian entity, having PE in India, is taxable under Article 7 of the treaty in the source country, after allowing expenses relating to the PE. Paragraph 5 of Article 7 of the treaty provides that the profit attributable to the PE shall be determined by same method followed year by year, unless there is good and sufficient reason to depart from such method. Whereas, paragraph 6 of Article 7 of the treaty provides that where the profits include items of income, which are also dealt with separately in other Articles of the treaty, then the provisions of those Articles shall not be affected by the provisions of this Article. It is a fact that the departmental authorities have treated the amount received from onshore services as FTS. Article 12(4) of the treaty deals with FTS and paragraph 2 of Article 12 provides that both royalty and FTS shall be taxed on gross basis by applying the rate of 10%. However, paragraph 5 of Article 12 carves out an exception by providing that in a case where royalty and FTS are connected with PE in the source country, then the

provisions of Article 7 or Article 14 would apply. In other words, even though, the receipts are in the nature of FTS, however, if it is connected to the PE, it has to be treated as business profit under Article 7. Therefore, in our view, the departmental authorities fell into error in taxing the receipts from onshore supervisory services as FTS under Article 12(4) of the treaty on gross basis. We hold that the receipts from onshore services, being attached to the supervisory PE in India, have to be taxed on net basis under Article 7 of the treaty.

20. Having held so, now we will deal with other aspect of the issue. It is the case of the assessee that the revenue from onshore supervisory services, is recognized based on project completion method followed year by year. It is the specific case of the assessee that since the project in respect of which it has received the supervisory charges were completed in financial year 2013-14, relevant to assessment year 2014-15, the assessee has offered the entire receipts in assessment year 2014-15 on net basis in terms of Article 7 of the treaty. In this context, learned counsel appearing for the assessee had drawn our attention to the return of income filed for assessment year 2014-15, the details of

amount received towards supervisory services, copies of invoices etc. We have already discussed earlier that as per Article 7(5) of the treaty, the business profits of the PE has to be determined by the same method year by year, unless there is good and sufficient reasons to depart from the said method.

21. Before us, learned counsel appearing for the assessee has submitted that the assessee has followed project completion method year by year and the department has also accepted it in all other assessment years. In fact, it is his submission that in assessment year 2014-15, the entire receipts from onshore supervisory services has been offered by the assessee and the Assessing Officer has assessed it.

22. Keeping in view the aforesaid submission of the assessee, we direct the Assessing Officer to factually verify, whether the receipts in dispute were offered to tax by the assessee in assessment year 2014-15 and, in case, it is found to be so, no further addition can be made in the impugned assessment year. Ground is allowed for statistical purposes.

23. In ground no. 5, the assessee has challenged the taxability of certain other supervisory fee in India. Briefly the facts are,

during the year under consideration, the assessee has provided supervisory services to two other Indian entities, which are Pragati Papers Industries Ltd. and Andritz Hydro Pvt. Ltd.

24. Before the Assessing Officer, the assessee claimed that the fee received towards provision of supervisory services to these two entities are not taxable in India, as, they are business profits and in absence of any PE qua the services provided to the aforesaid two entities, receipts cannot be taxed in India. The Assessing Officer, however, rejected assessee's contention and taxed the receipts as FTS on gross basis by applying the rate of 10%. Though, the assessee raised the issue before learned first appellate authority, however, learned first appellate authority failed to adjudicate the ground.

25. We have heard the parties and perused the materials on record. Before us, learned counsel appearing for the assessee reiterated that since the supervisory activities did not continue for a period of more than six months, there was no PE in terms of Article 5(2)(i) of the tax treaty. Thus, he submitted that the receipts, being in the nature of business profit, are not taxable in India in absence of PE. However, he fairly submitted that identical

issue has been decided against the assessee in the case of SMS Concast AG (supra).

26. Learned Departmental Representative relied upon the observations of the Assessing Officer and learned first appellate authority.

27. Having considered rival submissions and perused the materials on record, we find that the contracts, under which the assessee carried out onshore supervisory activities, are composite contracts involving both supply of plant and equipment, drawings and design, provision of supervisory services, erection, commissioning etc. Therefore, the services provided by the assessee, being technical in nature, receipts have to be treated as FTS under Article 12(4) of India – Austria DTAA. That being the fact on record, the supervisory fee received by the assessee is taxable in India in terms of Article 12(4) of tax treaty, irrespective of the fact whether the assessee had a PE in India or not. While deciding identical issue in case of SMS Concast AG (supra), the Coordinate Bench has held as under:

> *"21. We have considered rival submissions and perused the materials on record. From the facts on record, it is observed, the assessee had entered into a contract for supply of electromagnetic stirrer. As per the scope of the contract, the assessee shall engineer, manufacture and deliver the plant and equipment. The scope of*

> *contract also included supervision, erection and commissioning of plant and equipment. As per assessee's own admission, technical personnel were deputed to supervise the erection and commissioning of the plant and equipment. Thus, it is quite clear, in course of such supervisory activity, the qualified technical personnel deputed by the assessee must have imparted technical services for erection and commissioning of the plant and equipment. Therefore, in our considered opinion, the amount received clearly falls within the definition of FTS, both under the domestic law as well as under the treaty provision. Once the receipts fall within the definition of FTS under Article 12(4) of the DTAA as well as the domestic law, it becomes immaterial whether the assessee has a PE in India or not. Therefore, in our view, the amount in dispute having qualified as FTS, has rightly been brought to tax at the hands of the assessee. This ground is dismissed."*

28. The ratio laid down by the Coordinate Bench, as above, would squarely apply to the present case. Therefore, we decide the issue against the assessee. Accordingly, ground is dismissed.

29. In ground no. 6, the assessee has challenged the taxability of reimbursement of expenses from Indian group companies as FTS.

30. We have considered rival submissions and perused the materials on record. The assessee had entered into a cost contribution contract with other group entities for group information and business services. The agreement was entered into with a view to cost efficient organization with the group in terms of which group information and business services shall be provided by the assessee to other group companies for its own as

well as benefits of the group companies. The scope of group information and business services include activities related to:

- Development of the strategic orientation of the group information and business services within the whole group and the overall responsibility that the strategic targets are achieved.
- Support in compiling the yearly GIS budgets in line with the strategic targets.
- Involvement in all relevant decisions processes withing the GIS to ensure the achievement of the strategic/budgeted targets, with respect to
    - The organizational structure
    - Personnel
    - Investments
    - Projects
- Consulting an monitoring the process of projects through project reviews
- Consulting with regard to new IS activities.
- Provision of all services listed in appendix 2
- All additional services ordered from the assessee.

31. Cost incurred by the assessee for providing such services are allocated by way of specific allocation key to all the group companies, including the Indian entities. The cost incurred for providing such services was invoiced to all the entities including Indian entities and the assessee received the reimbursement of cost without any market up. The issue arising before us is, whether such cost reimbursement would be taxable as FTS. In our view, what the assessee has done is, shared the expenditure incurred for running the business with all its group entities. The cost has been recovered without any markup. Therefore, there is no profit element embedded in the payments received. That being the case, the receipts cannot be treated as FTS and brought to tax in India. For coming to such conclusion, we rely upon the following decisions:

i. *DIT Vs. A.P. Moller Maersk AS, [2017] 78 taxmann.com 287 (SC)*
ii. *CIT Vs. Expeditors International (India) Pvt. Ltd. [2012] 24 taxmann.com 76 (Delhi)*

32. The ground is allowed.

33. In ground nos. 7 and 8, the assessee has challenged the levy of interest under section 234D of the Act and withdrawal of interest under section 244A of the Act.

34. It is the specific case of the assessee that, though, refund was computed, however, it was never granted to the assessee. Therefore, there is no question of levy of interest under section 234D and withdrawal of interest under section 244A of the Act. Keeping in view the nature of dispute, we direct the Assessing Officer to factually verify assessee's claim and decide it in accordance with law. The grounds are allowed for statistical purposes.

35. Ground no. 9, being general in nature, is dismissed.

36. In the result, the appeal is partly allowed.

ITA No.288/Del/2017 (Assessee's Appeal)
Assessment Year: 2012-13

37. Ground no.1 is a general ground, hence does not require adjudication.

38. In ground no. 2, the assessee has raised the issue of taxability of amount received towards offshore supply of design and engineering. The issue raised in this ground is identical to the issue raised in ground no. 3 of ITA No.5991/Del/2015 decided by us in earlier part of the order.

39. Facts being identical, our decision therein, would apply mutatis mutandis. Ground is allowed.

40. In ground no. 3, the assessee has challenged the taxability of amount received from onshore supervisory services as FTS on gross basis at the rate of 10%. The issue raised is identical to the issue raised in ground no. 4 of ITA No. 5991/Del/2015 decided by us in earlier part of the order. Following our decision therein, we direct the Assessing Officer to factually verify assessee's claim that the income has already offered in assessment year 2014-15 and decide in accordance with law. Ground is allowed for statistical purposes.

41. In ground no. 4, the assessee has challenged the taxability of fees received from onshore commissioning services as FTS. The issue raised in this ground is identical to the issue raised in ground no. 5 of ITA No. 5991/Del/2015 decided by us in the earlier part of the order. Following our decision therein, we dismiss the ground.

42. In ground no.5, the assessee has challenged the taxability of the amount received towards reimbursement of cost as FTS. This ground is identical to the ground no. 6 of ITA No.5991/Del/2015

decided by us in the earlier part of the order. Hence, following our decision therein, we allow the ground.

43. Ground no. 6, being general in nature, is dismissed.

44. In the result, the appeal is partly allowed.

ITA No. 2622/Del/2017 (Revenue's Appeal)
Assessment Year: 2012-13

45. The only issue raised in this appeal relates to levy of interest under section 234B of the Act.

46. Parties have agreed before us that in assessee's own case in assessment year 2011-12, the Tribunal, in ITA No. 6394/Del/2015, order dated 23.08.2018, has decided the issue in favour of the assessee. Considering the above, we uphold the decision of learned first appellate authority by dismissing the ground.

47. In the result, appeal is dismissed.

ITA No. 7850/Del/2017 (Assessee's Appeal)
Assessment Year: 2014-15

48. Ground no.1 is a general ground, hence, does not require adjudication.

49. The issue raised in ground no. 2 relates to taxability of amount received towards offshore supply of design and engineering. This issue is identical to the issue raised in ground no. 3 of ITA No. 5991/Del/2015 decided by us in the earlier part of the order. Following our decision therein, we allow the ground.

50. In ground no. 3, the assessee has raised the issue of taxability of receipts from onshore support services on gross basis as FTS by contending that in absence of PE, it cannot be taxed in India. This ground is identical to the ground no. 5 of ITA No.5991/Del/2015 decided by us in the earlier part of the order. Following our decision therein, we dismiss the ground.

51. In ground no. 4, the assessee has raised the issue of taxability of reimbursement of expenses from Indian group companies. This issue is identical to the issue raised in ground no. 6 of ITA No.5991/Del/2015 decided by us in the earlier part of the order. Thus, following our decision therein, we delete the addition. Ground is allowed.

52. In the result, appeal is partly allowed.

53. To sum up, assessee's appeals, i.e., ITA Nos. 5991/Del/2015; 288/Del/2017 & 7850/Del/2017 are partly

allowed, whereas, Revenue's appeal, i.e., ITA No. 2622/Del/2017 is dismissed.

Order pronounced in the open court on 27th June, 2024

Sd/-	***Sd/-***
(M. BALAGANESH)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Dated: 27th June, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi