

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "J", MUMBAI  
BEFORE SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
& SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

**ITA No. 215/Mum/2020 (A.Y.2015-16)**

**M/s. Red Hat India Pvt. Ltd.,**

A-201, Supreme Business Park,  
Supreme City, Hiranandani Gardens,  
Powai, Mumbai – 400 076,  
PAN No. : AABCR7091N.

..... APPELLANT

Vs.

**DCIT, Circle 15(3) (1),**

Room No. 473, Aayakar Bhawan,  
New Marine Lines,  
Mumbai - 400 020.

..... RESPONDENT

Appellant by : Shri Ajit Jain, Ms. Nikhila Bhalla and  
Archita Bhalla Ld. ARs  
Respondent by : Shri Yogesh Kamat Ld. CIT-DR  
Date of hearing : 02/09/2024  
Date of pronouncement : 09/09/2024

**ORDER**

1. This appeal filed by the Assessee is directed against the order of the Ld. Assessing Officer (Ld. AO) passed under section 143(3) r.w.s. 144C(13) of Income Tax Act, 1961 ("Act") dated 29.11.2019 for assessment year 2015-16 passed pursuant to the direction of the Dispute Resolution Panel (DRP)-2, Mumbai, dated 30.09.2019.
2. The grounds of appeal read as under:

***Adjustment relating to international transaction pertaining to***

**payment of royalty and service fee:**

- 1.1 *The Ld. AO [along with the Learned Transfer Pricing Officer ('Ld. TPO')] under the directions of Hon'ble DRP erred on facts and in law in making adjustment of INR 469,683,748 based on re-characterization of transaction, ignoring the commercial and business aspect, and disregarding the law relating to determination of the arm's length price under Rule 10B of the Income-tax Rules, 1962 ('the Rules')*
- 1.2 *The Ld. TPO and Hon'ble DRP erred on facts and in law, in not appreciating the business model followed by the Appellant. In doing so, have grossly erred in:*
- a) disregarding Hon'ble Mumbai ITAT's decision in Appellant's own case for AY 2012-13 and 2013-14 on the issue;*
  - b) disregarding the 'License and Service' Agreement justifying the arm's length nature of transaction of payment of 'Royalty' and 'Service fees';*
  - c) misinterpreting the payment of 'service fees' as a payment of 'royalty' based on its own conjecture and surmises, and ignoring the explanations offered by the Appellant;*
  - d) disregarding the fact that the payment of 'service fee' was in connection with the support provided by AE directly to the end customers of the Appellant;*
  - e) disregarding the fact that the Appellant acts as a limited risk distributor and earns assured margins on revenue in 'Subscription segment';*
  - f) disregarding the fact that due withholding taxes were deducted on the service payment made to the AE; and*
  - g) Disregarding the remand proceedings directed during DRP proceedings, wherein the benchmarking was conducted based on the TNMM as the most appropriate method.*
- 1.3 *The Ld. AO and Hon'ble DRP confirming the Ld. TPO's action erred on facts and in law in disregarding the Transactional Net Margin Method ('TNMM') as the most appropriate method for determining the arm's length price of payment of service fees and applying the 'Other Method' in contravention of Rule 10B of the Rules*

**Adjustment relating to international transactions pertaining to provision of software support services:**

- 1.4 *On facts and in law, the Ld. AO erred in confirming the Ld. TPO's action of rejecting Akshay Software Technologies Limited as comparable company despite this comparable being reinstated by the Hon'ble DRP and thereby, violating the provisions of Section 144C(10) of the Act.*
- 1.5 *The Ld. AO and Hon'ble DRP confirming the Ld. TPO's action erred on facts and in law in determining the arm's length price for provision of software support services and thereby making an adjustment of INR 29,432,376/- to the taxable income of the Appellant. In doing so, have grossly erred in*
- a) *modifying the economic analysis carried out by the Appellant in the Transfer Pricing documentation without providing any cogent reasons;*
  - b) *rejecting various comparable companies selected by the Appellant in the Transfer Pricing Documentation and considering various comparable companies as comparable to the Appellant without appreciating that such comparable companies are functionally dissimilar to the Appellant; and*
  - c) *disallowing relevant adjustments as per the provisions of Rule 10B(1) and Rule 10B(3)*

***Adjustment relating to international transactions pertaining to provision of sales & marketing support services:***

- 1.6 *On facts and in law, the Ld. AO erred in confirming the error made by the Ld. TPO in computation of the alleged adjustment for the market support services segment despite being directed by the Hon'ble DRP to verify the same and thereby, violating the provisions of Section 144C(10) of the Act.*
- 1.7 *The Ld. AO and Hon'ble DRP confirming the Ld. TPO's action erred on facts and in law in determining the arm's length price for provision of sales and marketing support services and thereby making an adjustment of INR 7,642,971/- to the taxable income of the Appellant. In doing so, have grossly erred in*
- a) *modifying the economic analysis carried out by the Appellant in the Transfer Pricing documentation without providing any cogent reasons;*
  - b) *rejecting various comparable companies selected by the Appellant in the Transfer Pricing Documentation and considering various comparable companies as comparable to the Appellant without appreciating that such comparable companies are functionally dissimilar to the Appellant; and*

- c) *disallowing relevant adjustments as per the provisions of Rule 10B(1) and Rule 10B(3)*

***Additions on account of unearned revenue from subscription services of Rs. 21, 74, 74,822/-***

- 2.1. *The Ld. AO and Hon'ble DRP erred in not following the binding decision of this Hon'ble Income Tax Appellate Tribunal ('ITAT') vide order dated 10 April 2019 for A.Y. 2012-13 and A.Y. 2013-14 wherein on same set of facts, the Hon'ble ITAT has upheld the revenue recognition policy adopted by the Appellant in relation to revenue from subscription services;*
- 2.2. *The Ld. AO and Hon'ble DRP erred on facts and in law in making an addition of Rs. 21,74,74,822/- pertaining to subscription services and forming part of the 'unearned revenue", disclosed in the liabilities side of balance sheet of the Appellant, as income of the current year, without appreciating the fact that the impugned amount is in the nature of receipt of advance and is not chargeable to tax in the current year;*
- 2.3. *The Ld. AO has erred in observing that till A.Y. 2014-15, the Appellant was following completed service contract method and has changed its revenue recognition policy to percentage completion method for the subject year without taking cognizance of the fact that erstwhile Ld. AO himself, based on the directions of the Hon'ble DRP had corrected this incorrect assertion in the final assessment order for A.Y. 2014-15;*
- 2.4. *The Ld. AO erred in understanding the nature of services and the contractual framework between the Appellant and its customers and while doing so:
  - a) *erred on facts in equating the income from services with sale of goods based on the incorrect premise that performance of the Appellant is complete on signing of the subscription services agreement;*
  - b) *erred on facts in holding that the services are complete on entering of the subscription services agreement with the customer, without appreciating that the agreement is for rendering of services for a period which generally exceeds 1 year;*
  - c) *erred on facts in holding that performance of the Appellant is over and all the significant risks and rewards of ownership is transferred to the customer once the access code is handed over by the Appellant to the**

*customers, without appreciating the fact that privity of contract is between the Appellant and the customer, the Appellant is duty bound to ensure that services are satisfactorily performed over the duration of the contract; and*

*d) Erred on facts in not appreciating that the Appellant is solely responsible for provision of services during the term of the subscription services agreement.*

*2.5. The Ld. AO and Hon'ble DRP erred on facts and in law in preponing the income to the current year, without appreciating that the books of accounts are duly audited and unqualified by the auditor, and the said income is offered to tax in the respective year in which it is accounted, thereby, it is revenue neutral;*

*2.6. Without prejudice to the above, the Ld. AO and Hon'ble DRP erred in not granting a corresponding deduction/relief of INR 21,44,30,174/- on the preponement of income, for a corresponding increase in expenses in the nature of 'royalty' and 'service fees' payment as per the terms of the 'License and Service' agreement entered into by the Appellant with the AE and in view of the matching concept of accounting;*

***Other grounds:***

*2.7. The Ld. AO erred in short granting credit of Taxes Deducted at Source to the extent of Rs. 2,31,921/- while computing the tax liability for the year;*

*2.8. The Ld. AO erred in not granting credit of advance tax paid amounting to Rs. 45,00,000/- while computing the tax liability for the year;*

*2.9. The Ld. AO erred on facts and in law in levying excess interest under section 234B of the Act;*

*2.10. The Ld. AO erred on facts and in law in levying the interest under section 234A and 234C of the Act;*

*2.11. The Ld. AO erred on facts and in law in initiating penalty proceedings under section 274 read with section 271(1)(c) of the Act.*

3. At the outset Shri Ajit Kumar Jain Ld. AR mentioned that all the issues raised in the present appeal are covered by the orders of Hon'ble ITAT Mumbai in

the case of assessee for A.Y. 2012-13, 2013-14, 2014-15 and 2016-17.

4. Brief facts necessary to adjudicate the controversy at hand is that Red Hat US is a provider of open-source solutions for internet computing. Open-source software typically grants every user free access to the source code and enables the customers to modify and customize the software to suit their requirements, unlike proprietary software where source codes are owned by developers. Once open-source software is downloaded, software users may require access to ongoing support services. The sale of 'Red Hat subscriptions' enable the customers to directly avail and access 24\*7\*365 support service from various support centers of Red Hat Group located in US, UK, Asia, Australia, Czech Republic, Africa, Russia and various language specific countries. The Assessee Red Hat India Pvt. Limited enters into an Enterprise Agreement with the customers and distributes the open source 'Red Hat subscriptions. Further, the Assessee provides Red Hat software training content to the customers/ Red Hat training partners for which Red Hat US offers various training courses, renders consultancy services for the application of the systems, etc. Based thereon, the assessee sub-contract services to Red Hat US vide a 'License and Service Agreement', pursuant to which the Global support service centers of Red Hat provide support services directly to customers.
  
5. The abovementioned business activities can be classified under two segments viz. Subscription segment and Service Segment. In the Subscription segment the assessee sells Red Hat service offerings to customers in India. In Services segment the assessee provides Red Hat training content to

customers in India. In consideration for such services, the assessee compensates Red Hat US with (a) royalty for use of intellectual property (trademark/ trade name); and (b) service fees for provision of support services directly to customers. In addition to the above, the assessee renders sales & marketing and software support service to AEs. The international transactions of the assessee have been benchmarked in the transfer pricing study report as under:

<b>International transaction</b>	<b>Transfer pricing policy</b>	<b>Methodology</b>
Payment of royalty - Use of intellectual property (trademark/ trade name)	Royalty @ 3%	TNMM- • Subscription segment (comparable engaged in trading of software products)
Payment of service fee - Provision of support services from Global support centers to Appellant's customers	RHIPL pays service fee to AE after recovering its entire cost along with an assured margin of 1.4% for subscription and 13.5% for services segment	• Service segment (comparable engaged in providing comparable services)
Provision of software support service	Cost + 15%	TNMM - Comparable engaged in rendering similar services
Provision of sales & marketing support service	Cost + 5%	TNMM - Comparable engaged in rendering similar services

6. During the course of assessment proceedings, the Ld. TPO/Ld. AO made following adjustments to the income of the assessee:
- a. Disallowed the payment of service fees Rs. 46,96,83,748/-
  - b. Adjustment under the sales & marketing support service segment Rs.

76,42,971/-

c. Adjustment under the software support segment Rs. 2,94,32,376/-  
and

d. Addition on account of unearned revenue Rs. 21,74,74,822/-

The additions made by the Ld. TPO/Ld. AO were confirmed by the DRP. The assessee taken each addition/adjustment made by the Ld. AO/TPO in the following paragraphs.

**Ground 1.1 - 1.3: Adjustment on account of payment of service fees:-**

7. Ld. AR pointed out that the issue is squarely covered by the orders of the coordinate bench in assessee's own case, wherein on identical facts, the Hon'ble Mumbai ITAT has deleted the entire adjustment on account of payment of service fees. There has been no change in the functions, assets, and risk profile of the assessee in the impugned year and preceding three years viz. A.Y. 2012-13 (ITA No.1456/Mum/2017), A.Y. 2013-14(ITA No.727I/Mum/2017) and A.Y. 2014-15 (ITA No. 7210/Mum/2018). Ld. AR pointed out that the relevant judgments are available at Page No. 1520 and 1558 of the factual paper book filed by the assessee. The relevant extracts of the orders are as under:

**A.Y. 2012-13 & A.Y. 2013-14**

**ITA No.1456/Mum/2017, ITA No. 727I/Mum/2017**

*"28. upon careful consideration, we find that the actual payment for royalty and service fees both under subscription and services segment are as per the agreement entered into between the Assessee and its AE. No fault in the computation thereof has been pointed by the Revenue. Only due to error entire payment was booked under royalty. The sole basis on which the adjustments have been made is that the entire payment has been booked under royalty and the difference between the royalty as per the agreement and the total amount paid has been disallowed by the Revenue Authorities. We find that this is totally*

*de hors the substance of the transactions. It is settled law that it is the substance that counts and not the nomenclature given by the party. In this situation, the disallowance/ adjustment made by the TPO confirmed by the DRP is without any application of mind and the same cannot be sustained. Moreover, the Assessee's claim has been duly supported by the certificate from the statutory auditor which has also been ignored by the authorities below, without assigning any reason for the same. In these circumstances, we are of the considered opinion that the transfer pricing adjustment of INR 13, 52, 26,045/- for A.Y. 2012-13 and INR 27, 70, 02,848/- for A.Y. 2013-14 is unjustified and deserves to be deleted. We order accordingly.*

*29. As regards the submission of the Ld. DR that the matter be remanded to the TPO for examination of the issue, on the bench marking method applied by the Assessee, we do not find any reason what so ever to give the TPO a second innings. The TPO despite being made aware that royalty and service fees are two aspects of the matter and the documentation were on record, refused to carry out the analysis. We find that the TPO was fully aware of the Assessee's arguments however there is no whisper by the authorities below of any shortcoming in this aspect. The Ld. DR has also not been able to point out any defect therein on the basis of the documents on record and the submissions of the Assessee. It is neither the case that revenue has pointed out any defect in the documentation nor there is a case made out that there is a shortcoming in the selection of the comparables or the search process. In these circumstances, we do not find any reason to set aside the matter to Ld. TPO. Accordingly, we decline the request made by the Ld. DR."*

### **A.Y. 2014-15**

### **ITA No. 7210/Mum/2018**

*"5. As regards, ground No.1-1.3 adjustment relating to international transactions pertaining to payment of royalty and service fee. It is noted that identical issue was decided by this Tribunal in Assessee's own case for A.Y. 2012-13 and 2013-14. No distinguishing feature in the facts in the present year was pointed out by the revenue. It is also not the case that Hon'ble jurisdictional High Court has reversed the order of the ITAT. In this view of the matter following the decision of the co-ordinate bench in Assessee's own case, we set aside the Transfer Pricing Adjustment (TPA), in this regard and direct the same to be deleted."*

8. **It is also pointed out by the Ld. AR that the revenue has not preferred any appeal before the Bombay High Court on the above issue and therefore the order of Hon'ble ITAT has become final. Ld. DR could not controvert the findings of the coordinate bench as reproduced above.**
  
9. We have considered the facts of the current year and the decision of the coordinate bench in assessee's own case as reproduced above. Since there are no distinguishing facts pointed out by the Ld. DR, respectfully following the decision of the co-ordinate bench in assessee's own case, **we set aside the Transfer Pricing Adjustment on account of payment of service fee and direct the same to be deleted.**

**Ground 1.4 - 1.5: Adjustment on account of provision of software support services**

10. During A.Y. 2015-16, the assessee was engaged in providing software support services, for which it was remunerated at a cost-plus mark-up of 15%. The Ld. TPO, as confirmed by the Hon'ble DRP, re-computed the arm's length mark-up and proposed an adjustment of Rs. 29,432,376/-.

11. In this regard Ld. AR confined his arguments to Ground No. 1.5(c) in relation to granting of working capital adjustment and submitted that Hon'ble Mumbai ITAT in assessee's own case for **A.Y. 2016-17 – ITA No. 1379/Mum/2021** on identical facts has granted the working capital adjustment to the assessee under all 4 segments. The copy of judgment has been placed on record at page number 1 of the case law compilation filed by the Ld. AR during the course of hearing. The relevant extract is reproduced as under:

*“64... So we are of the considered view that the assessee is entitled for working capital adjustment. The Ld. TPO is directed to verify the computation furnished by the Assessee and accordingly provide the working capital adjustment to the Assessee in view of the settled principle laid down by the Tribunal, in order to provide level playing field for Assessee as well as comparable company”*

12. Considering that this issue has been examined and decided in favor of the assessee in its own case of A.Y. 2016-17 – ITA No. 1379/Mum/2021 and the fact that there has been no change in the functions, assets, and risk profile of the assessee in the impugned year, we are of the considered view that the assessee is entitled to working capital adjustment. **The TPO/AO is directed to grant the working capital adjustment to the assessee on the final set of comparables used by the TPO.**

**Ground 1.6 - 1.7: Adjustment on account of provision of sales and marketing support services.**

13. During A.Y. 2015-16, the assessee was engaged in providing sales and marketing support services, for which it was remunerated at a cost plus mark-up of 5%. The Ld. TPO, as confirmed by the Hon'ble DRP, re-computed the arm's length mark-up and made an adjustment of INR 7,642,971/-.

14. Ld. AR submitted that the controversy involved in the present appeal is confined to ground number 1.7(c) granting of working capital adjustment and ground number 1.7(b) rejection of one of selected comparable company i.e., Axis Integrated Systems Limited. In this regard, reliance was placed on the Hon'ble Mumbai ITAT judgment in assessee's own case **A.Y. 2016-17 – ITA No. 1379/Mum/2021** placed in the case law compilation at page number 1, wherein

on identical facts, the Hon'ble Mumbai ITAT has granted the working capital adjustment to the assessee under all 4 segments. The relevant extract is as under:

*“64... So we are of the considered view that the assessee is entitled for working capital adjustment. The Ld. TPO is directed to verify the computation furnished by the Assessee and accordingly provide the working capital adjustment to the Assessee in view of the settled principle laid down by the Tribunal, in order to provide level playing field for Assessee as well as comparable company”*

15. Considering that this issue has been examined and decided in favor of the assessee in its own case of A.Y. 2016-17 – ITA No. 1379/Mum/2021 and the fact that there has been no change in the functions, assets, and risk profile of the assessee in the impugned year, we are of the considered view that the assessee is entitled to working capital adjustment.

16. As regards the rejection of Axis Integrated Systems Limited, a comparable selected by the TPO, the assessee placed reliance on the Hon'ble Mumbai ITAT judgment in assessee's own case **A.Y. 2014-15 – ITA No. 7210/Mum/2018** wherein on identical facts, the Hon'ble Mumbai ITAT rejected Axis Integrated Systems Limited from the final set of comparable. Further, the findings of the coordinate bench are reproduced here under:

*“The assessee's counsel has submitted that one of the comparable selected by TPO i.e., Axis Integrated Systems Limited suffers from several dysfunctions which has been reproduced the assessee's submission herein above. The assessee's contention is that if the same is removed from list of comparables selected by the TPO, the ALP margin will be appropriate and hence, no adjustment will be required. As noted above, this comparable suffers from following dissimilarities.*

*We find cogency in the above submissions, which are duly supported by the case*

*laws. Hence, we direct that this comparable should be removed from the final set of comparables. The AO should make computation accordingly.”*

17. Considering that this issue has been examined and decided in favor of the assessee in its own case of A.Y. 2014-15 – ITA No. 7210/Mum/2018 and the fact that there has been no change in the functions, assets, and risk profile of Axis Integrated Systems Limited in the impugned year vis-à-vis previous year, **we are of the considered view that this comparable should be removed from the final set of comparables. The AO should make computation accordingly.**

### **Corporate Tax Grounds**

#### **Ground 2.1 - 2.6: Adjustment on account of provision of sales and marketing support services**

18. The Ld. AO/DRP has made an addition of Rs. 21, 74, 74,822/- on account of unearned revenue from subscription services. The Ld. A.R. for the assessee submitted that issue is squarely covered by the orders passed by the Tribunal in assessee’s own case for A.Y. 2012-13 and 2013-14 dated 10.04.2019 (ITA No. 1456/Mum/2017, ITA No. 7271/Mum/2017), for A.Y. 2014-15 dated 29.06.2021 (ITA No. 7210/Mum/2018) and for A.Y. 2016-17 dated 25.02.2022 (ITA No. 1379/Mum/2021). This factual position has not been controverted by the Ld. D.R. for the Revenue.

19. We have perused the afore-mentioned orders passed by the co-ordinate Bench of the Tribunal in assessee’s own case wherein the issue in question has been decided in favor of the assessee. The findings of the coordinate bench are reproduced below:-

*“61. Upon careful consideration we find that assessee has been following consistent system of revenue recognition. The assessee is inter alia engaged in the business of marketing, promotion and sale of 'Red Hat subscriptions' to customers in Indian sub-continent to avail support services that are for the open-source software system during the subscription period ranging from one to seven year, which is established by the special services agreement or contract. As per the consistent policy of revenue recognition, the assessee accounts for the revenue for service which would be performed in future year in its books as unearned revenue. Assessee's claim is that this practice by the assessee in respect of accounting for the sale of subscription is in accordance with Accounting Standard- 9 issued by ICAI. In support of this it is submitted that for rendering of service AS-9 provides that revenue should either be recognized on straight line basis over a period in which services are proposed to be rendered. The Assessing Officer has tinkered with this regularly adopted system on the plea that no further services is required to be performed by the assessee, that there is no significant uncertainty existing regarding amount of consideration that will be derived. The Assessing Officer has also find fault with completed contract method claimed to have been followed by the assessee.*

*62. Assessee's contention in this regard is that the assessee never claimed that it is recognizing revenue from subscription under completed service contract method rather it is following the percentage completion method for recognition of revenue. Assessee has further reiterated that the assessee has been regularly recognizing revenue over a period to which such subscription relates. It has been claimed that the said practice of recognizing revenue is in accordance with paragraph-2 of percentage complete method of AS-9. The assessee has further placed reliance upon the Income Computation and Disclosure Standard (ICDS) issued by the CBDT pursuant to section 145(2) vide Notification No. 21/2016 dated 29.9.2016 for the proposition that when services are provided by indeterminate number of acts over a period of specified time, Revenue may be recognized on straight line basis over specified period. The assessee has further relied upon the analogy from recently introduced section 43CB. In the light of the above assessee's contention is that subscription package agreed may involve various support services which cannot be pre-determinate. Recipient of service can raise queries numerous times during the tenure of agreement. Similarly, any correction bug fixes etc. can be required by the customers any time during the duration of the agreement. In the light of the above submissions in our considered opinion the Assessing Officer has clearly erred in changing consistently followed method of revenue recognition adopted by the assessee. In*

*the facts and circumstances elaborately dealt with above, we find due merits of the revenue recognition adopted by the assessee which is duly supported by mandate of AS-9 and other parameters referred above.*

*63. We also note that it is also a settled law that unless there is change in the facts and circumstances or that it can be said that earlier adopted system was wrong, revenue recognition method cannot be disturbed. We note that no such case exists here. In these circumstances, we set aside the order of the Assessing Officer and delete the addition in this regard.”*

20. The same view has been upheld by the tribunal in Assessee’s own case via order dated 29.06.2021 for A.Y. 2014-15 and order dated 25.02.2022 for A.Y. 2016-17.

21. Moreover, revenue recognition policy has been consistently being followed by the assessee over the years. This identical issue has also been dealt with by the Hon’ble Delhi High Court in the case of CIT vs. Dinesh Kumar Goel (197 Taxman 375) by relying upon the decision rendered by the Hon’ble Supreme Court in the case of E.D. Sassoon & Co. Ltd. vs. CIT (1954) 26 ITR 27, wherein the issue “whether the customer had paid entire fee in advance on which services remained due to be rendered in succeeding years, such receipts could not be considered as income accrued in the year of receipts”, has been decided by the Hon’ble High Court by returning the following findings:

*“Reading of the accounting standard makes it clear that the revenue is recognized only when the services are actually rendered. If the services are rendered partially, revenue is to be shown proportionate to the degree of completion of the services. This really clinches the issue in favour of the assessee.”*

*“...What is the relevant yardstick is the time of accrual or arise for the purpose of its*

*taxation, viz., in order to be chargeable, the income should accrue or arise to the assessee during the previous year. If income has accrued or arisen, even if actual receipt of the amount is not there, it would be chargeable to tax in the said year. Though the amount may be received later in the succeeding year, the income would be said to accrue or arise if there is a debt owed to the assessee by somebody at that moment. From this, it follows that there must be the "right to receive the income on a particular date, so as to bring about a creditor and debtor relationship on the relevant date". The Court further explained that a right to receive a particular sum under the agreement would not be sufficient unless the right accrued by rendering of services and not by promising for services and where the right to receive is interior to rendering of service, the income, therefore, would accrue on rendering of services..."*

22. So in view of the matter and by following the order passed by co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2012-13 & 2013-14, A.Y. 2014-15 and A.Y. 2016-17, we are of the considered view that addition made by the Ld. AO/DRP on account of unearned revenue qua subscription services is not sustainable in the eyes of law. **Hence grounds No. 2.1, 2.2, 2.3, 2.4, 2.5 & 2.6 are determined in favour of the assessee for statistical purposes.**

#### **Ground No. 2.7**

23. The assessee filed its return of income ('ROI') on 28.11.2015, claiming TDS credit of INR 16,38,16,698/-. However, TDS credit of only INR 16,35,84,777/- has been granted in the Assessment Order issued under section 144C(13) read with section 144 (13C) of the Act dated 29 November 2019. The assessee had filed an application under section 154 of the Act on 07 January 2020, which is pending disposal. Therefore, the AO is directed to decide this issue on the basis of evidence brought on record by the assessee by providing opportunity of being heard to the assessee. **Consequently, the ground No. 2.7 is decided for statistical purposes in favour of the assessee.**

### **Ground No. 2.8**

24. The assessee filed its 'ROI' on 28.11.2015, claiming an advance tax credit of INR 4,50,00,000/- which has not been granted in the Assessment Order. The assessee had filed an application under section 154 of the Act on 07 January 2020, which is pending disposal. Therefore, the AO is directed to decide this issue on the basis of evidence brought on record by the assessee by providing opportunity of being heard to the assessee. **Consequently, the ground No.2.8 is decided for statistical purposes in favour of the assessee.**

### **Ground No. 2.9**

25. The assessee has challenged the levying of interest under section 234B of the Act. Since this ground is consequential in nature, the AO is directed to deal with the issue in accordance with the law **and ground is allowed for statistical purposes.**

### **Ground No. 2.10**

26. The Assessee has challenged the levying of interest under section 234A of the Act. As per the facts mentioned by the assessee, it had filed its return of income ROI on 28.11.2015, which is within the statutory timelines as per section 139(1) of the Act. However, an interest of INR 29, 41,649/- has been charged as per the Assessment Order. The Assessee has also challenged the levying of interest under section 234C of the Act. As per the facts mentioned by the assessee, it had paid the advance tax due on the returned income for A.Y. 2015-16 within the statutory timelines. However, an interest of INR 25, 25,598/- has been charged as per the Assessment Order. Given the facts, we are of the view

that no interest under Section 234A and 234C of the Act should be levied. **The AO is directed to recompute the tax payable by / refund due to the assessee without said interest. Consequently, the ground No. 2.10 is decided for statistical purposes in favour of the assessee.**

**Ground No. 2.11**

27. This ground is premature and consequential in nature, **hence need no finding and dismissed.**

28. **In view of our findings on the grounds raised by the assessee, present appeal filed by the Assessee is partly allowed for statistical purposes.**

Order pronounced in the open court on 9<sup>th</sup> day of September, 2024.

Sd/-

(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 09/09/2024

PS

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai