

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI  
BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 2607/Del/2022  
(Assessment Year: 2019-20)**

Fujitsu Ltd, 3 <sup>rd</sup> Floor, Building No. 9B, DLF Cyber City, Gurgaon, Haryana (Appellant) <b>PAN:AAACF7231M</b>	Vs. ACIT, Circle-1(3)(1), International Taxation, New Delhi (Respondent)
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Assessee by : Shri K. M. Gupta, Adv  
Ms. Shruti Khimta, Adv

Revenue by: Shri Vijay B. Basanta, CIT DR  
Shri Shankar Lal Verma, Sr. DR

Date of Hearing 18/10/2024  
Date of pronouncement 14/11/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.2607/Del/2022 for AY 2019-20, arises out of the order of the Id AO, ACIT, International Taxation, Circle 1(3)(1) New Delhi [hereinafter referred to as 'Id. AO ', in short] dated 31.08.2022 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Ground Nos. 1 & 2 raised by the assessee was stated to be not pressed by the Id AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly Ground Nos.1 & 2 are hereby dismissed as not pressed.

3. The first issue to be decided in this appeal is with regard to taxability of arbitral award of Rs 32,97,07,175/-.

4. We have heard the rival submissions and perused the materials available on record. The assessee is a tax resident of Japan in terms of Article 4 of India-Japan DTAA (hereinafter referred to as the Treaty). The assessee is engaged in providing information technology support, maintenance support and software licensing services to various group entities including its Indian Associated Enterprises (AEs). The return of income for the assessment year 2019-20 was filed by the assessee declaring total income of Rs 27,96,72,140/- under section 139(1) of the Act. The details of various receipts derived by the assessee together with the tax treatment given in the return of income are tabulated as under:-

S no.	Name of the party	Nature of receipt	Amount (in INR)	Taxability in ROI
1.	Fujitsu India Private Limited (FIPL)	Income from providing system software support services	1,83,68,284	Taxed at 10% rate on a gross basis as per the provisions of India-Japan tax treaty
2.	Fujitsu Consulting India Private Limited (FCI)	Income from supply of software	17,44,73,581	Taxed at 10% rate on a gross basis as per the provisions of India-Japan tax treaty
		Reimbursement of expenses	5,88,26,793	Taxed at 10% rate on a gross basis as per the provisions of India-Japan tax treaty
3-	UCO Bank	Interest earned on funds lying with the	2,80,03,480	Taxed at 10% rate on a gross basis as per the provisions of
4.	Mizuho Bank Limited (Mizuho Bank)	Principal arbitral compensation, Interest on such compensation and Interest earned on funds deposited with the UCO bank	357710655	INR 32,97,07,175 is in the nature of business receipts and not taxable in India. [Ground No. 3 of present appeal] The remaining amount of INR 2,80,03,480 (i.e. INR 35,77,10,655 less INR 32,97,07,175) pertains to the interest earned on the aforesaid funds already been offered to tax as indicated in point no 3. [Ground No. 3 of present appeal

5. From the aforesaid table, the item mentioned in serial number 4 is the point of dispute before us. It is pertinent to note that the total figure of Rs

35,77,10,655/- comprises of two components – i.e. Rs 32,97,07,175/- representing principal portion of the compensation received in the arbitral award and Rs 2,80,03,480 representing interest earned on the compensation which were deposited with the UCO bank. The assessee pleaded that interest earned on the funds deposited with UCO bank in the sum of Rs 2,80,03,480/- had been already offered to tax in the return of income itself which is also evident from the aforesaid table vide serial number 3. Hence, the only disputed point before us is with regard to the taxability of the principal portion of the compensation received in the arbitral award in the sum of Rs 32,97,07,175/-.

6. During the year under consideration, the assessee received Rs 35,77,10,655/- from the Mizuho Bank Limited, Delhi after deduction of tax at source at the rate of 10% in accordance with order passed under section 197 of the Act by Income Tax Officer, International Tax Ward 1(3)(1), Delhi. The said amount represents the proceeds of the arbitral award passed in favour of the assessee vide order dated 17-12-2012 / 17-01-2013 in ARB Case No. 37/2009 ICADR against the Mahanagar Telephone Nigam Limited (MTNL). The said arbitral award was stuck in another set of protracted litigation with MTNL in execution of the award before the Hon'ble Delhi High Court and total amount of Rs 32,97,07,175/- was deposited as fixed deposit in UCO Bank, Delhi High Court during the pendency of the execution proceedings. Subsequently, the Hon'ble Delhi High Court disposed of the Execution Petition No. 126/2015 vide its order dated 2-5-2017 in favour of the assessee and directed to release the fund along with accrued interest on fixed deposits kept during the pendency of the said petition. Accordingly, the assessee was in receipt of interest portion thereon of Rs 2,80,03,480/- which was duly offered to tax by the assessee voluntarily in the return of income. The total amounts including the interest on fixed deposit amounting to Rs 35,77,10,655/- were transferred to Mizuho Bank Limited,

Delhi by UCO Bank, Delhi in pursuance of the said order for remittance to be made to the assessee by taking necessary approval of income tax authorities. The bifurcation of the aforesaid sum remitted by Mizuho Bank Limited, Delhi is as under:-

<i>S. No</i>	<i>Nature of Payment</i>	<i>Amount in USD</i>	<i>Amount in JPY</i>	<i>Amount in INR</i>
1	<i>Outstanding amount of PO-I / II /III for the supplies made from outside India under the Contract with MTNL under the Arbitral Award</i>	24,95,637.42	51,58,371.00	
2	<i>Interest on outstanding invoices of supplies in accordance with Arbitral Award</i>	24,02,478.58	5,071,251.00	
	<b>TOTAL Amount of Arbitral Amount</b>	<b>48,98,116.00</b>	<b>1,02,29,622.00</b>	<b>32,97,07,174.91</b>
3	<i>Amount of interest paid by UCO Bank on Fixed Deposit of Arbitral Award during the pendency of execution of award on the directions of Hon'ble Delhi High Court</i>			2,80,03,480.00
	<b>TOTAL Amount</b>			<b>35,77,10,654.91</b>

7. The assessee in accordance with directions of the Hon'ble High Court applied for No Objection Certificate to Income Tax Department under Section 197 of the Act for nil deduction of tax at source. In the aforesaid application, the assessee had disclosed that out of Rs. 35,77,10,655/-, UCO Bank had already deducted tax at source under Section 194A of the Act on the sum of Rs. 2,80,03,480/- being the interest on fixed deposits during the pendency of the said petition. However, the Income Tax Department issued Certificate under Section 197 of the Act directing Mizuho Bank Ltd, Delhi to deduct tax at the rate of 10% on the whole amount of Rs. 35,77,10,655/- without appreciating the fact that the sum of Rs. 2,80,03,480/- was included in the said amount had already suffered tax deduction at the rate of 10% by UCO Bank. Thus, the amount of Rs. 2,80,03,480/- had suffered double deduction of tax at source.

8. The assessee while filing its return of income offered the amount of Rs. 2,80,03,480/- being interest on fixed deposits received from UCO Bank at the special rate of 10% in accordance with India-Japan Tax Treaty. The assessee claimed Rs. 35,77,10,655/- as not chargeable to tax on two accounts i.e. Rs. 32,97,07,175/- being not subjected to tax in India being arbitral award arising out of contractual obligation and hence the same represents business income of the assessee which could not be brought to tax in India in the absence of permanent establishment in India and Rs. 2,80,03,480/- being part of Rs. 35,77,10,655/- being separately offered to tax as interest in accordance with Treaty.

9. The Learned AO in the draft assessment order had observed that despite giving sufficient opportunities to the assessee, there was no compliance from the side of the assessee by furnishing the requisite details. Accordingly, the Learned Assessing Officer considered the entire sum appearing in Form 26AS as income chargeable to tax, which inter alia included Rs. 35,77,10,655/- being the arbitration amount received from Mizuho Bank Delhi, which had suffered tax deduction at the rate of 10% on account of dispute with MTNL.

10. The assessee filed objections before the Learned DRP and also filed additional evidences and contended that the above sum should not be taxed as it is an arbitral award arising out of contractual obligation and hence had to be construed as business income not chargeable to tax under the tax treaty in the absence of PE of the assessee in India. The assessee submitted the following additional evidences during proceedings before the Learned DRP:-

- a) Copy of the Memorandum of Understanding between assessee and Fujitsu India Pvt Ltd (FIPL).
- b) Copy of purchase orders from MTNL.

- c) Copy of the Arbitration Order passed in favour of the assessee.
- d) Copy of the orders passed by Hon'ble Delhi High Court dated 17-8-2015, 18-11-2016 and 2-5-2017.
- e) Copy of application filed under section 197 of the Act requesting Nil withholding rate on receipts from Mizuho Bank.
- f) Copy of lower withholding certificate with regards to receipts from Mizuho Bank.
- g) Copy of contract / purchase order with FCIPL and FIPL along with invoices on sample basis.
- h) Copy of Tax Residency Certificate (TRC) for the relevant year.
- i) Copy of notice under section 143(2) of the Act dated 31-3-2021.
- j) Copy of notice under section 142(1) of the Act dated 9-9-2021.
- k) Response to questions relevant for taxability of income.

11. The Learned DRP sought for a remand report on the additional evidences filed by the assessee from the assessing officer. The Learned AO submitted the remand report which is enclosed in pages 247-253 of the Paper Book. The learned assessing officer alleged that compensation for a business dispute leading to non-performance at the end of MTNL could not be acceptable. On reading of the certain clauses of Arbitral Award, the learned assessing officer concluded that the assessee had no privity of contract with MTNL as the lead partner in the consortium who was awarded the contract by MTNL was Fujitsu India Private Limited and not the assessee. Therefore the assessee played an incidental and subsidiary role not directly involved in the business and contract with MTNL. The Learned AO observed that consideration received by the assessee from Indian customer user is not business income and it is a one time non-foreseeable and non-anticipatory windfall gain awarded by a Court of Law. As a general rule, the characterization of income as active business income or

passive income is decided on the basis of involvement in the activities by the non-resident taxpayer in a source country. One of the bright line tests is the quantum of business expenses. In this case, admittedly, the assessee has not incurred any business expenses in India, the only transactions are by way of receipt from the Tribunal as an award post-arbitration. The receipts are pre-determined by the assessee itself as a claimant, and not objected to by MTNL. Having established that the receipts arising from MTNL non-performance are not business receipts, they would be characterizable as income from other sources, and accordingly, the learned AO rejected the claim of the assessee to treat the said compensation receipt as business income and held that the said sum would be chargeable to tax as income from other sources under the provisions of the Act and also taxable under Article 22(3) of the India-Japan tax treaty.

12. The Learned DRP sought a rejoinder to the aforesaid remand report from the assessee which was duly submitted. The assessee specifically submitted that the Learned Assessing Officer has misread the Arbitral Award and its clauses and submitted that assessee is not only party to Arbitral Award which attained finality and had privity of contract with MTNL as the assessee is the party to consortium which was awarded the contract by MTNL. Considering the facts of the case, the Learned DRP admitted the additional evidences filed by the assessee. The Learned DRP, however, on merits of the issue, issued directions to the Learned AO to make factual verification of contentions of the assessee and pass speaking order thereon. The powers of the Learned DRP in setting aside the issue in violation of provisions of section 144C(8) of the Act is not in challenge before us. Hence we refrain to go into that aspect of the issue.

13. The Learned Assessing Officer pursuant to the directions of Learned DRP passed the final assessment order wherein the addition in respect of

the aforesaid sum was made by holding that the receipts are in the nature of income from other sources under the Act as well as 'Other Income' under Article 22(3) of India-Japan Tax Treaty and brought the same to tax.

14. We find that the assessee had placed on record all the documents that were part of the additional evidences filed before the Learned DRP in the Paper Book. The Copy of Arbitration Award is enclosed in Pages 70 to 185 of the Paper Book. The relevant operative portion of the said Award is reproduced below:-

“  
*PART XVIII*  
*Award: Operative Part*

<i>Description of Claims</i>	<i>Amount Awarded</i>	
	<i>INR</i>	<i>USD</i>
<i>Outstanding balance out of 69.4% of the value of PO-I &amp; PO-II</i>	<i>1,78,048/-</i>	<i>19,52,508.42</i>
<i>Outstanding balance out of 70% of the value of PO-III</i>	<i>1,27,12,991/-</i>	<i>5,43,129.00</i>
<i>Customs Duty illegally withheld by wrongly applying the settlement formula: Re: PO-I PO-II PO-III</i>	<i>6,25,18,021/- 13,64,994/- 3,43,57,096</i>	
<i>Shortfall in payment of Customs Duty Re: PO-I PO-II</i>	<i>1,05,15,482/- 32,65,778/-</i>	
<i>Maintenance Charges: Re: Phase-I</i>	<i>23,00,74,880/-</i>	
<i>Expenses incurred on extension of PBG. PBG-II (from 24-04-2006 to 10-11-2012) PBG-III (from 16-05-2008 to 10-11-2012)  <i>JPY 51,58,371</i></i>	<i>2,64,333.88</i>	

*182 Consequently, it is directed that the Respondent shall pay to the Claimants the following sums of money:*

*INR: 35,52,51,623.88*

*USD: 24,95,637.42*

*JPY: 51,58,371*

*18.3 The above said amounts shall carry interest calculated @ 8% per annum with effect from 03-03-2009 till the date of payment or till 30 days after the date of the award, whichever is earlier.*

*18.4 PBG-II and PBG-III are declared as discharged. The Respondent shall return the PBGs to the Claimants with an endorsement of the PBGs having been discharged.*

*18.5 Rest of the claims preferred by the Claimants are dismissed.*

*18.6 The Counter Claims preferred by the Respondent are dismissed.*

*18.7 The Claimants are held entitled to recovery of an amount of Rs. 60,00,000/- (as the costs incurred in prosecuting the arbitral proceedings before the Tribunal) plus Rs. 16,41,328/- as the amount of processing fee, administrative expenses and arbitrator's fee deposited by the Claimants with the ICA. In addition, the Claimants shall also be entitled to recover from the Respondent, the amount of Stamp Duty paid by them for scribing the award.*

*18.8 The Respondent is allowed 30 days time from the date of this award for payment of the amount awarded hereby. Failing this, the entire awarded amount shall carry interest calculated @ 18% per annum with effect from the date falling 30 days after the date of this award."*

15. From the above, the amount awarded as applicable to the assessee are as under:-

USD – 2495637.42 (1952508.42 + 543129)

JPY – 5158371

16. The Learned AR before us drew our attention to the written submissions filed by the assessee on merits of taxability of Arbitral Award. The following facts and observations made thereon are relevant for adjudication of this dispute which also duly meet the allegations casted on the assessee by the Learned AO in the assessment order :-

*"47. At pages 73 to 78, the Arbitral Tribunal set out the Undisputed Facts and the Claimant's case who are FIPL (an Indian Entity) and Appellant. For the sake of brevity, the same are not repeated here however the broad facts relevant to adjudicate the present issue are summarized below:*

a) **30.06.1998**: MTNL invited tender for supply of CDMA technology on turnkey basis which inter-alia includes supply of equipment and commissioning of the CDMA System.

b) **01.06.1999**: The contract was awarded to Joint Venture of appellant and FIPL wherein FIPL was the lead partner

c) The dispute between the parties and MTNL was in respect non-payment of dues even after commissioning of CDMA technology and acceptance testing of the various Purchase orders. (refer para 5.2 at page 75, Para 5.8 at page 76, Para 5.14 at page 77 etc. of the PB)

d) **03.03.2009**: The appellant and FIPL invoked arbitration clause against MTNL and Sole Arbitrator Justice Shri R. C. Lahoti was appointed by the parties. (Para 5.16 at page 77-78 of the PB)

e) The claims subject matter of arbitration are tabulated at pages 79 to 88 of the PB.

**f) At page 121 of the PB, one of the issues before the Arbitral Tribunal was whether Claimant No. 2 (i.e. Appellant) is a necessary party to the proceedings. The adjudication of the above issue was made at pages 124 - item no. 9 and further adjudication at page 163 to 164 of the PB. The aforesaid finding of the Arbitral Tribunal is reproduced as under:**

*"..13.9.2 However, still, it may be noted that two companies had submitted the joint bid which was accepted by MTNL. The MTNL has not produced the original bid before the Tribunal to substantiate its contention that Claimant No. 2 was not a bidder who had joined in submitting Bid. Clause 5.2 of the Instructions to Bidders (CV1 Ex3/2 at pg. 9) provides that the lead partner of the Joint Venture would sign contracts. Although the Respondents issued the purchase orders in the name of the lead partner, i.e. Claimant No.1, but requirement was of the main equipment being supplied by the Claimant No.2. The payments under the PO's which are required to be made in US\$, have been made to the Claimant No.2.*

*13.9.3 It cannot be said that the Claimant No.2 has been joined unnecessarily in the Arbitration Proceedings.*

g) In addition to above, the Arbitral Tribunal in Para 15.12 at pages 170 of the PB further observed as under in respect of the claim of the appellant:

*"... On 8.-11-2012 while filing calculation sheet in compliance with the orders of the Tribunal dt. 02-11-2012 and 06-11-2012, on behalf of the Claimants it has been stated that the*

*details of the account of the Claimant No. 2 to which any sum awarded in US dollars and Japanese Yen are to be credited by the Respondent by inter-bank funds transfer are as under: The above said particulars were filed by the Claimants under the copy to the Respondent. The above said particulars have not been disputed by the Respondent."*

*h) The following points from the Arbitral Award also clearly indicate that the Appellant was a party to the contract with MTNL as held by the Arbitration Tribunal.*

<i>Clause</i>	<i>Particulars</i>	<i>Remarks</i>
<i>Clause 4.2 (refer Page no 73 of Paper Book)</i>	<i>Undisputed Facts</i>	<i>The Appellant jointly with FIPL submitted bid as Joint venture for MTNL contract, with FIPL as lead partner.</i>
<i>Clause 4.6 (refer Page no 74 of Paper Book)</i>	<i>Undisputed Facts</i>	<i>As per purchase order dated July 2, 1999, Main equipment as per details in part-I, Annex "A" to be supplied by the Appellant.</i>
<i>Clause 9.2 (refer Page no 108 of Paper Book)</i>	<i>Clauses in the Tender documents</i>	<i>The Arbitrator has referred to clause 5 of the instructions to bidders. In clause 5.1 and 5.2 it is clearly stated that upon successful bid the parties to joint venture jointly and severally liable for all obligation under the contract.</i>
<i>Clause 18.1 (refer Page no 178 and 179 of the Paper Book)</i>	<i>Award: Operative part</i>	<i>The Arbitrator directed MTNL to pay the claimants the following sums of money: INR: 35,52,51,623.88 - FIPL (earlier FIL) USD: 24,95,637.42 - Appellant JPY: 5L58,37i - Appellant</i>

*48. During the remand proceedings, the Ld. AO had alleged that there is no privity of contract between the Appellant and MTNL & that the Appellant has only played an incidental and subsidiary role - not directly involved in the business and contract with MTNL.*

*49. It is the respectful submission of the Appellant that the Ld. AO has proceeded on conjectures and surmises without considering the complete facts of the case and reading the complete order of Arbitral Tribunal.*

*50. The Appellant wishes to highlight that the issue of privity to contract was also raised before the Arbitration Tribunal at the time of arbitration proceedings. Your Honours' would appreciate as stated above that Arbitration order passed by the Arbitral Tribunal clearly states Fujitsu Limited (i.e. Appellant) is a party to the contract with the MTNL and thereafter, also awarded the amount due to The Appellant under such contract. Hence, there is no merit in the allegation of the Ld. AO and*

*distinction he wanted to draw that the amount in question is a passive income of the appellant has no legs to stand upon.*

*51. For the reasons stated above, it is the respectful submission of the Appellant that the receipts pertain to a business dispute of the Appellant has not only been upheld by the Arbitral Tribunal but also the Hon'ble High Court being conclusive and binding on Ld. AO. Hence, taking a contrary view without assigning any reasons is against the settled principles of judicial discipline.*

*52. It is submitted that the appellant has since 1998 been a leading company engaged in providing telecom and information technology-based solution for global marketplace. It is an undisputed fact that the appellant and FIPL formed a Joint Venture to bid for the MTNL Contract which was awarded to it. This fact itself shows that the aforesaid contract was carried by the appellant in the ordinary course of business.*

*53. It is also an undisputed fact that the arbitral compensation was on account of a dispute arising with respect to supply of equipment by the Appellant and accordingly, partakes the nature of business income. There is no dispute that the transaction in question is a trading transaction. Accordingly, in the absence of any PE in India, the same is not taxable in India.*

*54. The Appellant wishes to place reliance on the following judicial precedents:*

*a. The Hon'ble Mumbai Tribunal in the case of Goldcrest Exports vs. ITO (2010) (134 TTJ 355) held that in the absence of a PE in India, compensation awarded under the arbitration award is not taxable in India. The relevant extract of the ruling is reproduced below for the Hon'ble Bench's ready reference:*

*"9..... The foreign buyer has no PE in India. As per Article 5(5) of DTAA, even if any business is carried out through a broker or general commission agent or any other agent of an independent status, then it cannot be said that the non-resident has PE in India. We, therefore, hold that as M/s. Swisssen NV London, UK has no PE in India and hence the compensation awarded under arbitration award was not taxable in India.....*

*(refer para 9 at Page no 141 of the CLC)*

*b. The Hon'ble Vishakhapatnam Tribunal in the case of 3F industries Limited vs. ACIT (2019) 108 Taxma.nn.com 79 relying on the decision of Goldcrest Exports (supra) held that, sum paid by assessee to Malaysian company towards assessee's failure to supply order constitutes business transaction and in absence of any PE in*

*India the payment would not be income taxable in India. (refer para 7.1- at Page no 146-148 of the CLC)*

*55. Given that there is no lis on the fact that the disputed receipts which lead to the arbitration proceedings thereafter culminating into the arbitral award, were related to offshore supply of goods which is in the nature of Appellant's business income, the impugned receipts would also fall within the meaning of business income and in the absence of a PE be taxable under the provisions of the Indo-Japan Treaty.*

*56. Applying the above principles to the instant case, the appellant submits that that the taxability of receipts in question is specifically dealt in Article 7 of the DTAA, thus the taxability under the residuary Article 23 of the DTAA does not arise. The Ld. AO's stand that the receipts of the Appellant from Arbitral Award being passive income is liable to be rejected."*

17. It is pertinent to note that the aforesaid Arbitral Award is liable for payment of stamp duty. The details of the same are enclosed in Page 183 of the Paper Book. We find that what assessee had got by way of Arbitral Award is for non-payment of dues for offshore supplies made. Hence it had to be construed only as business income of the assessee. It is further pertinent to note that the Learned Joint Commissioner of Income Tax, Range 1(3), International Taxation, Delhi while forwarding the Remand Report of the Learned Assessing Officer had also placed reliance on the decision of Mumbai Tribunal in the case of ACIT vs Ramona Pinto in ITA No. 582/Mum/2018. The Learned AR before us placed on record the decision of Hon'ble Bombay High Court reported in 156 taxmann.com 282 dated 8-11-2023 which reversed the decision of Mumbai Tribunal referred supra. Hence the decision relied upon by the Learned Joint Commissioner of Income Tax and by the Learned DR before us does not advance the case of the revenue. Accordingly, we hold that the principal portion of the compensation received pursuant to an Arbitral Award in the sum of Rs 32,97,07,175/- would have to be construed only as business income of the assessee as it arises out of contractual obligation of the business. Undisputably there is no PE for the assessee in India. Hence in view of

Article 7 of India Japan Tax Treaty, the same would not be chargeable to tax in India.

18. Now coming to the taxability of interest received on the compensation arising out of an Arbitral Award in the sum of Rs 2,80,03,480/- , though the assessee had voluntarily offered the same to tax in the return of income, the same , in our considered opinion, would not be chargeable to tax at all, in view of the decision of Hon'ble Supreme Court in the case of CIT vs Govinda Choudhary & Sons reported in 203 ITR 881 (SC) wherein it was held that such interest is only an accretion to the assessee's receipts from the contracts. It is obviously attributable and incidental to the business carried on by it. The Hon'ble Supreme Court specifically made an observation in Para 6 of its order that *interest can be assessed under the head 'income from other sources' only if it cannot be brought within one or the other of the specific heads of charge. We find it difficult to comprehend how the interest receipts by the assessee can be treated as receipts which flow to it de hors the business which is carried on by it. In our view, the interest payable to it certainly partakes of the same character as the receipts for the payment of which it was otherwise entitled under the contract and which payment has been delayed as a result of certain disputes between the parties. It cannot be separated from the other amounts granted to the assessee under the award and treated as 'income from other sources'.* Respectfully following the same, the interest portion of Rs 2,80,03,480/- also had to be treated as business income of the assessee and in the absence of PE in India, the same would not be chargeable to tax in India as per Article 7 of India Japan Tax Treaty.

19. Hence we have no hesitation to hold that the compensation received by the assessee pursuant to an Arbitral Award in the total sum of Rs 35,77,10,655/- would have to be construed only as business income of the

assessee and in the absence of any PE of the assessee in India, as per Article 7 of the India Japan Tax Treaty, the same would not be chargeable to tax in India. Accordingly, the Ground Nos. 3 to 4.1. raised by the assessee are allowed.

20. We find that assessee had already offered interest income of Rs 2,80,03,480/- to tax in the return of income. The learned AO by adding the total compensation amount of Rs 35,77,10,655/- had made double addition to the extent of Rs 2,80,03,480/- as admittedly the said figure is included in the total compensation amount of Rs 35,77,10,655/-. Since the fact of double addition is proved and established beyond doubt, we direct the learned AO to delete the addition of Rs 2,80,03,480/- while computing the total income of the assessee in the instant case. Accordingly, the ground No. 4.2 raised by the assessee is allowed.

21. The ground No. 5 raised by the assessee is challenging the initiation of penalty proceedings under Section 270A of the Act. Since the entire additions made by the learned AO are hereby directed to be deleted, the penalty proceedings would have no legs to stand. Accordingly, ground number 5 is allowed.

22. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 14/11/2024.

-Sd/-  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated:14/11/2024  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi