आयकर अपीलीय अधिकरण,'सी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर.रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND SHRI S.R.RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./**ITA No.: 937/Chny/2024**
निर्धारण वर्ष / Assessment Year: 2016-17

M/s. Same SeutzFahr Italia SPA, No. 15, Viale Francesco Cassani 15,Italy. [72M SIPCOT Industrial Complex, Ranipet, Vellore-632 403]	v.	Assistant Commissioner of Income Tax, International Taxation Circle 2(2), Chennai.
[PAN: AAKCS-1896-D] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. S.P. Chidambaram, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. R. Anita, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 22.11.2024
घोषणा की तारीख/Date of Pronouncement : 30.01.2025

आदेश /O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), Chennai -16, dated 07.02.2024 and pertains to assessment year 2016-17.

2. The assessee has raised the following grounds of appeal:

1. The Appellant objects to the order dated 07 February 2024 issued under Section 250of the Income Tax Act, 1961 (Act)by the Commissioner of Income Tax(Appeal)and the order dated 12 May 2022 issued under Section 147 r.w.s.144C(3) of the Act by the Assessing Officer ('AO') for the aforesaid assessment year on the following grounds:

2. *Reopening of assessment under section 147 of the Act*

2. 1 The Assessing Officer erred in reopening the assessment under section 147 of the Act.

2.2 The Assessing Officer having issued reopening notice under section 148 under the old provisions ought not to have continued and completed the reassessment proceedings post amendment of such provisions with effect from 1 April 2021.

2.3 The Assessing Officer erred in initiating the reassessment proceedings under the old provisions and completing the same under the new provisions.

2.4 The Assessing Officer ought to have appreciated that the approvals and sanctions under the old provisions and newprovisions are different and as such the entire reassessment proceedings is invalid.

2.5 The Assessing Officer ought to have appreciated that merechange of opinion cannot per se be the reason for re-opening under section 147 since there was no fresh material on record which merits such re opening.

2.6 The Assessing Officer erred in reopening the assessment based on certain information which was available in a different AY.

2.7 The Assessing Officer erred in reopening the assessment without reason to believe that income chargeable to tax has escaped assessment.

2.8 The Assessing Officer ought to have appreciated that it is not prerogative for the Assessing Officer to form a reason for belief based on the Form 3CEB and financial statements of SAME India which was available on record from the time when the Return of Income of the assessee filed and processed subsequently.

2.9 The Assessing Officer had no new tangible material and as such reopening under section 147 or 148 of the Act is bad in law.

2.10 The CIT(A)further failed to appreciate that mere change of opinion cannot per se be the reason for re-opening under section 147 and erred in holding the action of re-opening the assessment by the Assessing Officer as valid.

Without prejudice to the foregoing grounds, the Appellant prefers the following grounds of appeal:

3. Reimbursement of warranty cost

3.1 The CIT(A) has erred in treating the reimbursement of warranty cost as income chargeable to tax in India as fees for technical services.

3.2 The CIT(A) failed to appreciate that the Appellant has not rendered any services to SAME India and as such deeming of receipt for back-to-back reimbursement charges as fees for technical services is void ab initio.

3.3 The CIT(A)failed to appreciate that the amount received by the Appellant were cost to cost reimbursement without any element of profit and as such no income chargeable to tax in India has accrued to the Appellant.

3.4 The CIT(A) erred in not considering the fact that the amount so received by the Assessee was the cost incurred on account of warranty obligation embedded in the sale price of SAME India without any element of profit and further the same is offered to tax in India as part of export sales.

3.5 The CIT(A) has completed the assessment on the basis of misconceived facts and also by relying on decisions which are distinguishable from the facts in the present case of the appellant.

3.6 The CIT(A) ought to have appreciated that the Appellant is a non-resident and a distributor of tractor outside India which are manufactured by SAME India and as such during the warranty period if there are any manufacturing defects the Appellant instructs its dealers to service the same outside India for and on behalf of SAME India and claims reimbursement of the expense from SAME India and as such the reimbursement cannot be treated as fees for technical services.

3. 7 The CIT(A)failed to note that the Appellant is not rendering any technical service to SAME India.

3.8 The CIT(A) ought to have appreciated that the dealers of SAME Italia are rendering service to third party customers outside India for rectifying the manufacturing defects in respect of the tractors sold by it and since it relates to manufacturing defects the Appellant claims reimbursements from SAME India.

3.9 The CIT(A) has erred in not considering the arrangement between the appellant and its subsidiary company wherein SAME India provides warranty reimbursement to the appellant for the cost of rectifying manufacturing defects which is the blueprint of its business model as signified by its long-standing agreement.

3.10 The CIT(A) has not appreciated the substance of this agreement which separates the warranty reimbursement payment made by SAME India to SAME Italia and the warranty cost payment made by SAME Italia to third party dealers as independent contracts.

3.11 Without prejudice to the above even assuming that the reimbursement could be treated as fees for technical services the same would not be taxable in India as the services are rendered by dealers of SAME Italia to third party customers outside India and as such by virtue of the exclusionary clause in Section 9(1)(viib) the fee for technical service cannot be deemed to accrue or arise in India.

3.12 Without prejudice to the above even if the back-to-back reimbursement received is treated as fee for technical service and taxed in India then only that portion of the cost incurred by ultimate dealer excluding cost of material or spare parts shall be charged to tax.

The Appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra as also all consequential relief thereto.

The Appellant craves to add, alter, amend, substitute, rescind, modify and I or withdraw in any manner whatsoever all or any of the foregoing grounds at or before the hearing of appeal.

3. The brief facts of the case are that the Same Deutz Fahr Italia Spa is a Non-Resident company based in Italy and engaged in the business of assembly/manufacture and sale of Tractors. The

assessee, M/s. Same Deutz Fahr Italia Spa, a foreign company and tax resident of Italy filed the return of income on 29.11.2016 admitting Income from Other Sources being income chargeable to tax at special rates of Rs.1,71,54,423/-. The nature of said income as per return of income, Schedule Other Sources being income from Royalty and Fee for Technical Services received from India which was offered to tax as per the provisions of section 115A of the Act. Apart from the above, the assessee is also in receipt of an amount of Rs.1,99,03,858/- from India being re-imbursement towards warranty payments which was not offered to tax for the reason that the said amount was not chargeable to tax in India as

(a) The cost incurred on account of warranty claim is recharged by M/s. Same Deutz Fahr India Pvt Ltd at cost without any mark-up i.e. made without any element of profit.

(b) Mere repair work would not constitute a managerial, technical or consultancy services as defined under the Income Tax Act.

(c) Assessee also relied on the exclusionary clause provided in the Section 9(1)(vii)(b) of the Income Tax Act.

The assessee had received warranty services includes part identification/defect analysis and codification, investigation of claim by vehicle manufacturer and these services are technical in nature

and would fall under the category of Fees for Technical services (FTS) as per the India and Italy DTAA and thus the AO issued a notice u/s.147 of the Act stating that the assessee had failed to disclose fully and truly all material facts for reopening the assessment. After considering the submissions of the assessee, the AO passed an order u/s.147 r.w.s.144C(3) of the Act dated 12.05.2022 for the A.Y.2016-17 by rejecting the claim of the assessee and brought to tax Rs.1,99,03,858/- as the payment received by the assessee is towards a contractual payment for obtaining technical services from the dealers for servicing the tractors and the said receipt is treated as a FTS as per the Act and the DTAA and was treated as liable to be offered to tax as income in India by holding as under:

> *"The responsibility is cast on the assessee and SAME India to provide warranty services to the customers at its own cost for which amounts were collected at the time of original sale itself*
>
> *For this purpose, assessee will enter into agreements with dealers to carry out the actual services towards which assessee will make the payments and subsequently get it reimbursed from SAME India.*
>
> *In the scheme of the assessee's business model, the assessee provides warranty on its products and to carry out such responsibility assessee has obligated the dealer to render the same and hence the reimbursements have arose." (Emphasis supplied)*
>
> *The dealers definitely represent only the vehicle manufacturers when they sell the goods and also the customer doesn't buy the product of the dealer but the product of the vehicle manufacturer.*
>
> *Basically, the issue has to be approached from an alternate perspective, ie., Warranty is not only a warranty for the service after the defect but a*

warranty for the no defect of the product offered by the manufacturer. Warranty is defined as:

> Warranty relates to the sale of goods and will say that it is of a particular standard. A warranty is a promise that refers to more tangible things, like parts of the product or machine. It promises that the motor in a juicer will function smoothly for a year or two. If it doesn't, the manufacturer will repair or replace the motor.

Hence, such a warranty can be offered only by the manufacturer. The customer while making the purchase believes in the warranty for the products offered by the manufacturer and not the dealer, i.e., warranty schemes for the products are devised offered by the manufacturers and not the dealers.

The contract of warranty is between the assessee and the customers and the further contract for carrying out the warranty services is between the assessee and the dealer for which the assessee receives reimbursements from SAME India.

The service of tractors is a technical service. It requires the service personnel to be technical expert in the field of auto industry. As per the assessee website, assessee is also providing technical training to the technicians who carry out the services.

In the Annual Report of M/s, SAME Deutz India Pvt Ltd for the Financial Year 2015-16, it was seen that under the head Transactions with the Related Parties and under Warranty Expenses Rs.5,64,15,999 has been shown as transacted with the assessee, namely, Same Deutz Fahr Italia SPA, Italy. But, the assessee had mentioned that in Form 3CEB the amount paid to the assessee, an associated enterprise with whom international transaction was entered into by M/s. SAME Deutz India Pvt Ltd, was only Rs.1,99,03,858. As there was discrepancy between the two figures, it was required to be verified. In order to verify the assessee's claim that it had received remittances under the head Warranty amounting to Rs. 1,99,03,858, a notice u/s.133(6) was issued to M/s. SAME Deutz India Pvt Ltd seeking information on Warranty expenses account for the financial year 2015-16 relevant to the AY 2016-17. It was replied on 21.02.2022, that the amount paid to the assessee during the year was Rs.1,99,03,858 and the remaining Rs.3,65,1 2,141 was paid to many other parties. Hence, it is concluded that the remittances received by the assessee during the year under the head Warranty Expenses from a related party was Rs.1,99,03,858.

Further, it is seen that the assessee has relied upon the decision of the Hon'ble ITAT, Chennai in the case of Nissan Motor India Pvt Ltd (NIMPL) and has mentioned that its case is squarely covered in its favour. In the NIMPL case, the assessee was a manufacturer of motor cars in India and exports the motor cars to other countries and sells them in those countries through its sister concerns who acts as the dealer of the assessee company. The assessee company also provides warranty to the end customers who purchase the car. The assessee's sister companies who acts as the dealers of the assessee company, towards which the dealer companies incurs expenditure and as per the contractual obligation, the assessee company reimburses such expenses incurred by its "dealer - sister companies". Thus, the assessee company incurs expenditure outside India for the purpose of earning income from source outside India.

The facts in this case are distinguishable from the facts of the assessee's case. In the case of assessee M/s. SAME Deutz Fahr India Pvt. Ltd manufactures and sells tractors in Semi-knock Down condition, where the assessee undertakes to complete these SKDs by independently purchasing the remaining parts and assembles the remaining parts and sells it to foreign customers. Hence, the question of linking the sale price of the tractors with warranty service obligation does not arise, as the finished tractors are sold by the assessee. Even as per the Supply agreement entered into by the assessee with M/s, SAME Deutz Fahr India Pvt. Ltd, reference is to complete or SKD tractors, But in the assessee's reply there seems to be no mention of any complete tractor purchase, It is seen that M/s. SAME Deutz Fahr India Pvt. Ltd had sold Rs.461.19 crores of goods to the assessee but no break up of details for such purchase has been provided. Further, the break-up of warranty expenses is also not shown except that all the Warranty Cost reimbursement invoices contain a general narration " Reimbursement for Warranties" giving no indication of why and where this amount was spent. Clause 8 of the Supply agreement spells out the recitals in respect of Warranty in two clauses (a) Period of base warranty and (b) Warranty service which are general in nature. It is also not clarified whether the cost of warranty is embedded in the sale price of the SKDs sold to the assessee which assembles and sells to its retailers. And, if it is so, then the question of a separate reimbursement of warranty cost to the assessee does not arise. Therefore, it is seen that the decision relied upon by the assessee is not analogous to its case.

Hence, the payment received by the assessee is towards a contractual payment for obtaining technical services from the dealers for servicing the tractors and the said receipt is treated as a Fee for Technical Services as per the Act and the DTAA and was treated as liable to be offered to tax as income in India."

Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld.CIT(A).

4. The CIT(A) after considering the Assessment order and the submissions of the Appellant, concurred with the Assessing Officer by making a specific finding as under by passing an order on 07.02.2024:

> *3.4 Thus a perusal of the facts in the case as elaborated by the Assessing Officer, go on to establish, that "reimbursement of warranty" is nothing but fees for Technical Services"*

Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before us.

5. Ld.AR for the assessee submitted that the company purchases Tractors as well as Semi Knock Down (SKD) of Tractors from its subsidiary company SAME Deutz Fahr India Private Limited ('SAME India') on a principal-to-principal basis and assembles the same with other parts to sell the assembled/finished product/Tractors to the dealers as a part of their business activity. The dealers in turn sell the end product/tractors to the ultimate customers. With respect to the Tractors and SKD of tractors sold to the assessee, SAME India, being the original equipment manufacturer, provides warranty for a maximum period of 12 months from the date of

ultimate sale or rent or vehicle being put to use, against any defect in material and/or manufacture of Tractors or SKD of Tractors. Generally, on sale of Tractor by dealer to the end customer, it is the obligation of dealer to repair/replace service the products sold to its customers at its own expense when customer brings the Tractor to the dealer for any repair or replacement to be provided by dealer under warranty period. The dealers honor the claim in view of reciprocal warranty obligation of the Original Equipment Manufacturer i.e. Same India. At the time of warranty claim, it is the customer who avails the service for the cost paid by him as part of the sale price of the tractor he purchases from the dealer. It is the dealer who renders the repair/replacement service to the customer pursuant to independent contract as it forms part of warranty obligation included in its sales price. Further, on account of the above costs, the dealer claims reimbursements from the assessee and then the assessee claims reimbursement from SAME India for the cost incurred by the dealer. It is further to be noted that transporting the product from Italy to India for servicing will not be an economically viable option and hence SAME India has requested the assessee to assist/facilitate in rendering warranty services through dealers to third party customers located outside India. Pursuant to the above, the assessee has requested third

party dealers outside India to carry out warranty service to the ultimate customer outside India with regard to sale of tractors made outside India. The assessee has reimbursed the dealers and later the same amount was claimed as reimbursement from Same India. In this entire gamut of the transaction, the assessee's role is limited to acting as a conduit/facilitator and the assessee does not render any repair service to the end customers.

5.1 The above detailed transaction flow has been accepted by the Assessing Officer as well as the Dispute Resolution Panel in their respective orders and the same has also been confirmed by the department in their written submission filed now before this Hon'ble Bench.

5.2 The conclusion of the lower authorities is that the repair of tractor is technical service and therefore it is taxable is Fees for Technical Services. Further, it is held that jurisdictional decision is not applicable because in that case it was complete car for which warranty service was rendered whereas in the instant case it was for SKD of tractor and therefore it was held to be factually distinguishable.

5.3 **Technical repair is not technical service:**

It is pertinent to note that there is a difference between technical service and technical repairs. Mere repair work would not be in the nature of fee for technical service and referred to section 9(1)(vii) of the Act. Hence, we wish to highlight that such warranty payments being reimbursement of repair/ replacement cost may not be in the nature of FTS. We wish to highlight the decision of the jurisdictional Tribunal in case of *BHELGE-Gas Turbine Servicing (P) Limited (24 taxmann.com 25)* (Hyderabad Tribunal) where the assessee had work orders with third parties in respect of repair and refurbishment of its product (turbines). It was held that routine repairs including assembly, disassembly, inspection, evaluation, etc., form a part of technical repair services which are different from technical services. Further, only payments in the nature of 'technical services' attract the provisions of section 9(1)(vii).

5.4 Repair done by dealer to customer:

The Assessee wish to reiterate that it is an undisputed fact that the warranty repair service was done by dealers to ultimate customers. The dealers claim the cost incurred for warranty service from the Assessee and the Assessee in turn claims the same as reimbursement from Same India. Therefore, the Assessee's role is

restricted to acting as a conduit for facilitating the warranty service on behalf Same India for the Tractors sold in Italy.

Therefore, it is submitted that there is no technical service which is rendered by the Assessee on behalf of Same India to customers.

Explanation 2 to Section 9(1)(vii) of the Act defines 'fees for technical services' to mean any consideration for rendering of managerial, technical or consultancy services. In the present case, technical services were not rendered to Same India and as such any reimbursement in relation thereto cannot be deemed to be FTS in the hands of the Assessee.

Accordingly, the reimbursement received from Same India to honor/reimburse the cost incurred by dealers cannot be deemed to be FTS rendered by Assessee to the Same India.

5.5 Repair done outside India:

The Assessee has sold the Tractors outside India and it is in relation to such tractors, during the warranty period, if required warranty service is provided by dealers outside India to customers outside India.

As per Section 5(2) of the Act, the income of a non-resident is taxable in India if the income is received or deemed to be received

or accrues or arises or is deemed to accrue or arise in India. In the present case, reimbursement received by the Assessee cannot be construed as received or deemed to be received in India since the reimbursement is in relation to repair services undertaken outside India.

5.6 **Exclusionary clause in Section 9(1)(vii)(b)**

Apart from the above, it is also submitted that warranty repair service is done in relation to tractors sold in Italy. As per the exclusionary clause in Section 9(l)(vii)(b), where fees is paid in respect of services utilized in the business outside India or for the purposes of making or earning any income from any source outside India then such payment does not constitute as fees for technical service. In the given case the source of income arises outside India as the sale of tractors to customers take place outside India.

5.7 The Ld.AR submitted that the following decisions are squarely covered in favor of the Assessee:

A. Tractors and Farm Equipment Limited Vs DCIT Chennai ITAT in ITA.No.1069/Chny/2019

> *"6. Upon careful consideration of material fact, it could be gathered that the assessee is primarily engaged as manufacturer of agricultural tractors. It has sold tractors overseas through non-resident distributors.*

As part of the sales obligations, the assessee has to provide warranty. This warranty expenditure is incurred by the overseas distributors and the same are later on reimbursed by the assessee. The submissions of Ld. AR are that warranty expenditure is part of overall sales obligations and the expenditure is reimbursed on actual basis. The warranty obligation being part and parcel of sales transactions and therefore, the same could not be held to be 'fees for technical services'. Another line of argument is that services have been cared as well as utilized outside India and therefore, there is no TDS obligation on the part of the assessee in view of the fact that the payees do not have any permanent establishment in India. Finally, Ld. AR has submitted that no services have been rendered to the assessee rather the technical services, if any, has been rendered to overseas customers by the non-resident distributors.

.. . . The services have been carried as well as utilized outside India. There is nothing on record that any of the payees has any permanent establishment in India. Therefore, as held by the bench, in such a case, there would be no obligation for assessee to deduct tax at source. We also concur with the submissions of Ld. AR that the warranty obligation being part and parcel of sales transactions and therefore, the same could not be held to be 'fees for technical services'."

B. Nissan Motor India Pvt Ltd Vs DCIT [2018] 92 taxmann.com 127 Chennai ITAT

" In the case of the assessee, the assessee is a manufacturer of motor cars in India and exports the motor cars to other countries and sells them in those countries through its sister concerns who acts as the dealer of the assessee company. The assessee company also provides warranty to the end customers who purchase the car. The assessee's sister companies who acts as the dealers of the assessee company maintains the cars sold by them according to the terms of the warranty promised by the Assessee Company, towards which the dealer companies incurs expenditure. As per the contractual obligation, the assessee company reimburses such expenses incurred by its dealer - sister companies". Thus, the assessee company incurs expenditure outside India for the purpose of earning income from source outside India. Therefore, by virtue of Section 9(1)(vii)(b) of the Act, the payment made by the assessee company to a person outside India for earning income from any source outside India, and the income arising from such payment to the recipient shall be excluded from the deeming provision of Section 9(1) of the Act. Hence, we are of the considered view that the assessee company will not be liable to deduct tax U/s.195 of the Act. It is pertinent to mention that the decision relied by the Ld.AO in the case SPX India Pvt. Ltd., Vs. CIT supra and Ashok Leyland Ltd., Vs. DCIT supra are not applicable to the facts of the case of the assessee. In the case SPX India Pvt. Ltd., the issue was with respect to deduction of tax at source on the amount reimbursed as ISO audit fee to parent company. In the case of

Ashok Leyland Ltd., the company was engaged in the business of manufacture of motor vehicles in India and the issue was with respect to reimbursement of expenditure towards air fare, accommodation and subsistence cost of personal disputed by foreign company. Accordingly, the issue is decided in favour of the assessee."

5.8 **Reimbursement**

The AO has given a categorical finding that the amount received by the Assessee is a reimbursement at page 10 of the Assessment order:

"For this purpose, assessee will enter into agreements with dealers to carry out the actual services towards which assesseewill make the payments and subsequently get it reimbursed from SAME India."

The Assessee relies on the Supreme Court decision in the case of GE India Technology Cen. (P.) Ltd. vs. Commissioner of Income-tax [2010] 193 Taxman 234 (SC) wherein it is held at para 9 that when there is no element of income, then remittances cannot be held to be chargeable to tax in India.

5.9 **SKD Vs. Tractor**

The AO has refused to follow Chennai ITAT decision in the case of Nissan Motors *(Supra)* on the premise that in Nissan's case it was sale of complete car whereas in the instant case it is supply of SKD and later Assessee assembles and sells the tractor.

The Ld.AR submitted that the Assessee has entered into Supply Agreement with Same India for purchase and sale of Tractors/SKD of tractor outside India. In the said agreement at Para 3(1)(c) (refer Page 61 of paper book) it is agreed between the parties that the Assessee while assembling the remaining parts, the Assessee will ensure that it will assemble in a manner which in no way affects the SKD produced by SAME India. The relevant extracts are as under:

"c) SDFI undertakes to complete, at its own risk, the SKD by independently purchasing the remaining parts. The assembly of the remaining parts shall be performed by the SDFI according to the best techniques in a manner which in no way may affect SKD produced by SDF India."

Further, the supply agreements also restrict the warranty to parts of assembled tractor by Same India. The warranty clause in the agreement is as under:

*"8. **Warranty***

a) ***Period of base warranty***

Concerning the furniture of SKD, the warranty is limited to the parts of the assembled tractors manufactured and assembled by SDF India and therefore does not cover any equipment, parts or component not manufactured or not assembled by SDF India or any defect or malfunctioning arising in the products due to any equipment parts or component not manufactured"

*b) **Warranty service***

*SDFI shall have the exclusive right to perform or **arrange for the performance of warranty service** with respect to the products sold to SDFI." (emphasis supplied)*
*"10. **Product Quality Information***

a) ……..

b) It is expressly understood and agreed that SDFI shall not be entitled to claim against SDF India any consequential or incidental damage or losses SDFI may suffer as a result of matters described in art. 8.a);"

5.10 The Ld.AR submitted that the above clauses of the agreement, it is clear that the Assessee while assembling the SKD into a Tractor shall ensure that there is no damage to SKD. Further, it is also agreed between the parties that Same India would reimburse the cost relating to SKD parts of tractor supplied by it, which impliedly means that Same India will not reimburse the warranty cost relating to other parts procured by the Assessee for the purpose of assembling the tractor.

5.11 In view of the above, ld.AR submitted that the reimbursement for warranty was only for parts of tractor exported by Same India and as such it is submitted that reimbursement is in relation to business carried on outside India or for the purpose of earning income from a source outside India. Therefore, ld.AR submitted that the decision of the Chennai ITAT in Tractors and Farm Equipment

Ltd and Nissan Motors (supra) is squarely applicable to the facts of the case.

5.12 The Assessee also relies on the following decisions in relation to Source of Income and exclusion under section 9(1)(vii)(b) of the Act.

1. **DIT Vs. Lufthansa Cargo India [2015] 60Taxmann.com 187(Delhi)**

"Thus, it is evident that the "source" rule, i.e the purpose of the expenditure incurred, i.efor earning the income from a source in India, is applicable. This was clearly stated by the Supreme Court, when it later held that:

"The exception carved out in the latter part of clause (b) applies to a situation when fee is payable in respect of services utilized for business or profession carried out by an Indian payer outside India or for the purpose of making or earning of income by the Indian assessee i.e. the payer, for the purpose of making or earning any income from a source outside India. On a studied scrutiny of the said Clause, it becomes clear that it lays down the principle what is basically known as the "source rule", that is, income of the recipient to be charged or chargeable in the country where the source of payment is located, to clarify, where the payer is located. The Clause further mandates and requires that the services should he utilized in India."

***25.** In the present case, the ITAT held that the overwhelming or predominant nature of the assessee's activity was to wet-lease the aircraft to LCAG, a foreign company. The operations were abroad, and the expenses towards maintenance and repairs payments were for the purpose of earning abroad. In these circumstances, the ITAT's factual findings cannot be faulted. The question of law is answered in favour of the assessee and against the revenue."*

2. [2023] 455 ITR 648 (Karnataka) CIT Vs.Ad2pro Media solutions Pvt Ltd.

"18. *After adverting to the following passage, the Delhi High Court has recorded that in Lufthansa Cargo India's case (supra) operations were not in India and expenses towards maintenance and repairs payments were made for the purpose of earning outside India.*

"The exception carved out in the latter part of clause (b) applies to a situation when fee is payable in respect of services utilized for business or profession carried out by an Indian payer outside India or for the purpose of making or earning of income by the Indian assessee i.e. the payer, for the purpose of making or earning any income form a source outside India. On a studied scrutiny of the said Clause, it becomes clear that it lays down the principle what is basically known as the "source rule", that is, income of the recipient to be charged or chargeable in the country where the source of payment is located, to clarify, where the payer is located. The clause further mandates and requires that the services should be utilized in India."

19. *In the case on hand, the services have been rendered in USA. In contradistinction in the case of GVK Industries Ltd. (supra) the advice of a Company called NRC8 was taken by GVK Industries Ltd. 's case (supra)for financial structure and with its advice GVK Industries had approached Indian Financial Institutions withIDBI9 Bank acting as lead financier for its Rupee loan requirement and for a part of its foreign currency.*

20. *In view of the admitted fact that the services were utilized in USA, we are persuaded to accept the authority in Lufthansa's Cargo India's Case. (supra)"*

The SLP (3 nos) has been dismissed *in [2024] 158 taxmann.com 432 (SC); [2023] 157 taxmann.com 205 (SC) and [2024] 158 taxmann.com 408 (SC) with the following observation:*

"High Court by impugned order held that in view of admitted fact that services were utilized in USA, findings returned by Tribunal did not call for any interference - Whether SLP filed by revenue against said impugned order was to be dismissed - Held, yes"

3. [2009] 318 ITR 237 (Bombay) Clifford Chance Vs. DCIT

47.With the above understanding of Law laid down by the Apex Court, if one turns to the facts of the case in hand and examines them on the touchstone, section 9(1)(vii)(c) which clearly states [11] •••• where the fees are payable in respect of services utilized in a business or profession

carried on by such person in India or for the purposes of making or earning any income from any source in India." It is thus, evident that section 9(1)(vii)(c), read in its plain, envisages the fulfilment of two conditions : ***services, which are source of income sought to be taxed in India must be (i) utilized in India and*** *(ii)* ***rendered in India.*** *In* ***the present case, both these conditions have not been satisfied simultaneously.*** *(emphasis supplied)*

4.[2023] 157 taxmann.com 699 (Chennai - Trib.) DCIT Vs Aspire Systems India (P) Ltd

12.We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee is in the business of software development service for offshore customers and for this purpose, had entered into a contract with ASUS for providing installation and testing services. As per the agreement between the assessee and ASUS, the service providers carried out testing, implementation, tutoring and demonstrating services. ***The work carried out by ASUS represents the services done on behalf of the assessee for a client located at USA.*** *If you go by the nature of service provided by non-residents, it appears that it is not purely technical services as defined, but a support service which may fall under the definition of fees for technical services. However, any payment made to non-resident are in the nature of fees for technical services has to be analysed in light of provisions of section9(1)(vii) of the Act and exception provided therein. As per exception to section 9(1)(vii) of the Act, payment made by a person who is a non-resident, except where the fees are payable in respect of services utilized in a business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India is outside the scope of section 9(1)(vii) of the Act. From a plain reading of clause (b) of section 9(1)(vii) of the Act,* ***it is evident that the services rendered by nonresident clearly falls under the exception whereby the same is not deemed to accrue or arise in India in case said services are utilized in a business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India.*** *In the present case, on perusal of contract between the assessee and the non-resident services providers,* ***it is clear that payment made by the assessee to non-residents is directly related to services rendered to the customers outside India and income earned from such customers, in turn form part of the business of the assessee. Therefore, in our considered view it falls under the category of services utilized for a business or profession carried on by such person outside India. Further, the second aspect of exception as per clause (b)to section 9(1)(vii) of***

the Act is that services utilized for the purpose of making income from any source outside India. In the instant case, services were carried on outside India by non-residents for offshore customers, because the customers of the assessee are situated outside India and services were utilized for earning income from source outside India. Therefore, in our considered view, the second part of exception as per section 9(1)(vii)(b) of the Act is also satisfied. Thus, from the above it is undoubtedly clear that the services were not rendered in India, the person to whom the payment was made is a non-resident and mall an amount aid is a business income to the recipient who does not have any permanent establishment in India. Therefore, in our considered view payment made to non-residents towards services rendered in connection with installation and testing services was not chargeable to tax in India as it is covered under exception to section 9(1)(vii)(b) of the Act.*"(emphasis supplied)*

5. [2024] 158 taxmann.com 45 (Delhi - Trib.) HCL Singapore Pte Ltd Vs ACIT

Para 15

"While the assessee performs services outside India in connection with contracts entered into by HCL India with foreign customers, no service or deliverable is provided by the assessee to HCL India and work is directly performed onsite at the foreign customer's location or near shore delivery centers. In other words, the assessee does not provide any services to HCL India and the services are rendered b the assessee directly to the customers located outside India. i.e.. no art of the services rendered by the assessee are transferred to India. Thus, as per the business model, the on-site services are entirely performed by the assessee from outside India and delivered for ultimate consumption or utilization by foreign clients in their business outside India.

Para 17

It is found that the assessee made an alternative argument on without prejudice bas HCL India provides both onsite and offshore services to the ***customers outside India*** *Onsite services are carried out through a separate business segment.* ***Such business carried on by the HCL India outside India utilizes the services of the assessee to provide onsite services outside India, therefore the payments are made by the HCL India to the assessee for services utilized business of HCL India carried by HCL India outside India. On this***

count also, such payments made by the HCL India to the assessee cannot be construed as FTS in the hands of the assessee. *In any event, since onsite services are carried out through a separate business segment and it is an independent identifiable source of earning income outside India, the income earned from such onsite services is from service rendered outside India and hence automatically the source is also outside India.* ***Hence as per the 'Source Rule' itself, the same would be falling under the exception provided in section 9(1)(vii)(b)."*** *(emphasis supplied)*

5.13 The ld.AR stated that the dealers have rendered warranty service and the Assessee acted as a conduit to facilitate the entire transaction. Further, the dealers have rendered warranty service outside India to foreign customers. Therefore, it cannot be deemed to be FTS under the Act.

5.14 In light of the above submissions and judicial precedents, the ld.AR prayed to consider the submissions on record and delete the additions made by the assessing officer and allow the appeal in favor of the Assessee.

6. Per contra, the ld.DR submitted that the assessee, M/s. Same Deutz Fahr Italia Spa, a foreign company and tax resident of Italy is also in receipt of an amount of Rs.1,99,03,858/- from India being re-imbursement towards warranty payments which was not offered

to tax for the reason that the said amount was not chargeable to tax in India as

(a) The cost incurred on account of warranty claim is recharged by M/s. Same Deutz Fahr India Pvt Ltd at cost without any mark-up i.e. made without any element of profit.

(b) Mere repair work would not constitute a managerial, technical or consultancy services as defined under the Income Tax Act.

(c) Assessee also relied on the exclusionary clause provided in the Section 9(1)(vii)(b) of the Income Tax Act

6.1 The ld.DR submitted that on assessee's appeal before the ITAT, the assessee took various grounds. On reopening of assessment u/s 147 of the Act, the plea of the assessee is that mere change of opinion cannot per-se be the reason for reopening u/s 147 since there was no fresh material on record which merits such reopening. The assessee also placed reliance on the judgement of the Hon'ble Madras High Court in the case of Tanmac India Vs DCIT [2017] 78 taxmann.com 155. In this regard, it is submitted that the reopening has been done within 4 years and after 143(1) of the Act. No assessment has been done and material furnished earlier for change of opinion to occur. Regarding assessee's argument that subsequent to submission of return of income by the assessee, there is no fresh tangible material basis on which reopening has been done and also that there is no failure on the part of the

assessee to disclose fully and truly all material facts necessary for the assessment. In this regard, reference is invited to the return of income filed by the assessee in India for the AY 2016-17. Even though the assessee is in receipt of various incomes accruing or arising from India, assessee has offered to tax in the return of income only the Fee for Technical Services received from India on account of prototype and research. There is no disclosure about the other incomes received by the assessee from Indian entities. Hence, it is submitted that based on fresh material facts obtained which was not disclosed by the assessee only in the return of income, formed the basis of assessment. Hence, the above ground of the assessee be dismissed. For the above reasons, the reliance placed by the assessee on the decision of the Hon'ble madras High Court in the case of Tanmac Vs DCIT are on different facts.

6.2 The next ground being that the amount received by the assessee were cost to cost re-imbursement without any element of profit and as such no income chargeable to tax has accrued in India to the assessee. In this regard, the ld.DR submitted that the nature of transaction under consideration is that on products sold by M/s. Same Deutz Fahr India Pvt Ltd to M/s. Same Deutz Fahr Italia Spa, the warranty cost on such sale is collected as part of the sale price

by M/s. Same Deutz Fahr India Pvt Ltd for which M/s. Same Deutz Fahr India Pvt Ltd has to render Warranty services for the product sold by it. For the reason that there is no presence of M/s. Same Deutz Fahr India Pvt Ltd in Italy, M/s. Same Deutz Fahr India Pvt Ltd for the sake of convenience grants exclusive right for the performance of warranty services with regard to the products sold by M/s. Same Deutz Fahr India Pvt Ltd to Mis. Same Deutz Fahr Italia Spa i.e. Same Deutz Fahr India Pvt Ltd engages the services of M/s. Same Deutz Fahr Italia Spa for rendering its warranty obligations. Hence, the present payment towards warranty is Fee for Technical Services in the form of repairs and replacement of parts carried out by M/s. Same Deutz Fahr Italia Spa as part of its service obligation as per the terms of the supply agreement between M/s. Same Deutz Fahr India Pvt Ltd and M/s. Same Deutz Fahr Italia Spa dated 02nd January 2008. And M/s. Same Deutz Fahr Italy Spa in-turn incurs the above expenditure by carrying out of the above work through its distribution network in the form of dealers etc. As part of this commitment, M/s.Same Deutz Fahr Italy Spa gets paid an amount of 26 Euro per hour as labour charge and current net price plus 10% handling fee on the parts replaced. Incidentally the present payment is more than a mere reimbursement but for the nomenclature used. The nature of arrangement is in such a way,

because since M/s.Same Deutz Fahr Italia Spa and it's distribution network only gets the warranty service claims from the customers, being the point of contact for customers. The customers ultimately buy the tractors only from M/s.Same Deutz Fahr Italia Spa. The expenditure is incurred by M/s.Same Deutz Fahr Italia Spa and it's distributors at the first instance and thereafter the amounts are then paid by M/s.Same Deutz Fahr India Pvt Ltd as per the terms of Supply Agreement.

6.3 Certain incomes of the Non-Residents are deemed to accrue or arise in India as provided in Section 9 of the Income Tax Act. While in the case of business income, profits &gains are taxed, in case Fee for Technical Service income as provided in section 9(1)(vii) of the Act read with section 115A of the Act, the same is taxed on gross basis. This is further affirmed by the relevant Article 12/13. Fee for Technical Services of various DTAAs including that of between India - Italy DTAA where-in it is provided that

*"**Article - 13- Royalties and Fees for Technical Services***

1. ……..

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services,

*the tax so charged shall not exceed 20 percent of the **gross amount** of the royalties or fees for technical services".*

Hence, for incomes of the nature of Fee for Technical Services, the same are taxed on gross basis and there is no need of a mark up of profit element involved. Hence, the ld.DR submitted that an element of income in the nature of Fee for Technical Services is embedded in the present receipts in the hands of M/s.Same Deutz Fahr Italia Spa. Had the services of labour cost towards Warranty being paid directly to the dealer who are executing the Warranty Service, then it is a clear case of receipt in the nature of Fee for Technical Services in the hands of said entities. Just because the receipts are routed through the present company as a re-imbursement, that does not extinguish the element of income from the receipts. It is just an arrangement for the sake of convenience. M/s.Same Deutz Fahr Italia Spa by virtue of the supply agreement between M/s.Same Deutz Fahr India Pvt Ltd and M/s. Same Deutz Fahr Italia Spa has undertaken to render this technical service for M/s.Same Deutz Fahr India Pvt Ltd and the amount received there-in are clearly Fee for Technical Services in nature.

6.4 For instance, a contractor sub-contracts a work and the subcontractor in turn gets the work done through third parties,

incurs expenditure and gets the contract payment for the contractor, that does not alter the nature of income in the hands of the sub-contractor. If assessee's argument were to be upheld in respect of reimbursements by holding that no income is embedded in reimbursements, all Non-Residents will receive the income accrued from AEs as reimbursements and evade taxes in India. Reliance in this regard is placed on the decision of the Delhi Bench of the Tribunal in the case of SPX India (P) Ltd Vs Commissioner of Income-tax (Appeals)-X/1, New Delhi where-in the Hon'ble Tribunal in the different context held that an element of income of the nature of Fee for the services paid is embedded in the reimbursement. Also co-ordinate bench of the Tribunal in the case of [2009] 120 ITDS 14 (Chennai)/[2008] 119 TTJ 716 (Chennai)[31.01.2008] held that reimbursements also attract the provisions of section 195 of the Act as income chargeable to tax in India. Hence, the argument that the present payments are only in the nature of re-imbursement and there exists no income element is without any basis.

6.5 The assessee also seeks to argue that assessee is not rendering any Technical Services to M/s.Same Deutz Fahr India Pvt Ltd. The same has been dealt very elaborately in the assessment order from page 7 onwards till page 11 and it is conclusively proved that the

payment received by the assessee is only towards the technical services rendered by the assessee to M/s.Same Deutz Fahr India Pvt Ltd.

6.6 The Assessee also seek to argue that the present receipts in its hand would fall under the exclusionary clause provided in Section 9(1)(vii)(b) of the Act and hence cannot be deemed to accrue or arise in India. This issue came up before the Hon'ble Madras High Court in the case of M/s.Regen Powertech Pvt Ltd Vs DCIT, International Taxation -2(1), Chennai [2019] 110 taxmann.com 55 where-in the Hon'ble High Court has clearly laid down the principle that in order to fall within the second exception provided in Section 9(1)(vii)(b) of the Act, the source of the income and not the receipts should be situated outside India. For this, the Hon'ble High court relied on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Havells India Ltd [2012] 21 taxmann.com 476 (Delhi) [21.05.2012]. In the case on hand also, the source of income for M/s.Same Deutz Fahr India Pvt Ltd from whom M/s. Same Deutz Fahr Italia Spa has received the Fee for Technical Services is manufacture of the tractor which is situated only in India. Hence, this argument of the assessee also fails. In light of the above, the ld.DR prayed for dismissing the appeal of the assessee.

7. The Ld.AR submitted the rebuttals to the departmental submissions as below :

a) **Technical service**

"Same Deutz Fahr India Pvt Ltd engages the services of M/s.Same Deutz Fahr Italia Spa for rendering its warranty obligations. Hence, the present payment towards warranty is Fee for Technical Services in the form of repairs and replacement of parts"

It is submitted that the services are rendered outside India in respect of SKD exported by Same India. Further, the warranty service is undertaken by dealers to ultimate customer as acknowledged by the DR in the very same para 5:

"January 2008. And M/s.Same Deutz Fahr Italy Spa in-turn incurs the above expenditure by carrying out of the above work through its distribution network in the form of dealers etc.

b) Not a reimbursement

At para 5 the DR has alleged that the payment received by the assessee is not a reimbursement:

"As part of this commitment, M/s.Same Deutz Fahr Italy Spa gets paid an amount of 26 Euro per hour as labour charge and current net price plus 10% handling fee on the parts replaced. ***Incidentally the present payment is more than a mere reimbursement but for the nomenclature used.***

It is just and necessary to note that warranty repair services to the customers was undertaken by dealers and if at all these are charges were incurred, it would be collected by the dealers from the Assessee. This fact is also impliedly acknowledged by the DR at Para 7:

"7 ....
Had the services of labour cost towards Warranty being paid directly to the dealer who are executing the Warranty Service, then it is a clear case of receipt in the nature of Fee for Technical Services in the hands of said entities."

Therefore, in the given case, dealers raise invoice on the Assessee and whatever the Assessee has paid to the dealers is claimed as reimbursement from Same India. This is also explicitly clear from the invoices raised by the Assessee wherein it is mentioned only as "reimbursement" for specific warranty claim number (refer pages 71 to 147). Assuming without admitting, these charges are collected by the Assessee from Same India, then the invoices would bear the details of the labour charges, time spent and the details of the spare parts procured etc. None of these details are mentioned in the invoice raised by the Assessee to Same India because it was pure reimbursement of what was paid by Assessee to the dealers.

7.1 Apart from the above, it is submitted that even assuming without admitting there is markup it is submitted that the services were rendered outside India and as such the same cannot be taxed in India.

c) <u>Direct payment</u>

"7 ....
Had the services of labour cost towards Warranty being paid directly to the dealer who are executing the Warranty Service, then it is a clear case of

receipt in the nature of Fee for Technical Services in the hands ofsaid entities."

Even assuming if the dealers were directly paid by Same India, the charges will not be taxable in India as the situs of the service is outside India. The DR has also drawn reference to sub-contracting as an example, however, it is to be noted that the primary transaction itself is not chargeable to tax in India as it is rendered outside India. The decisions sought to be relied upon by the DR at page 5 of her written submissions is already considered in the case of Nissan Motor (supra) and held to be inapplicable to the present set of facts.

d) <u>No service by Assessee to Same India</u>

In so far as the contention of the Assessee that it has not rendered any technical service to Same India and therefore the reimbursement received is not chargeable to tax in India, the ld.DR at Para 7 at page 5 of her written submissions stated that this aspect is dealt with in the assessment order at page 7 to 11 without appreciating that nowhere in the assessment order there is a finding that Assessee has rendered services to Same India.

<u>e) Source of income</u>

The ld.DR has relied on Regen Power Tech and Havells India and submitted that source of income and not the receipts should be situated outside India. In this context, the ld.DR has submitted that in the instant case source of income is in India because the tractors were manufactured in India. The relevant excerpt is as under:

"In the case on hand also, the source of income for M/s.Same Deutz Fahr India Pvt Ltd from whom M/s.Same Deutz Fahr Italia Spa has received the Fee for Technical Services is manufacture of the tractor which is situated only in India. Hence, this argument of the Assessee also fails.

It is crucial to note that the income under scanner is not the income of Same India and as such taking into consideration where the tractor is manufactured is of no relevance. The issue for consideration is determination of source of reimbursement received by the Assessee. The back-to-back reimbursement received by the Assessee is for warranty repair service undertaken by dealers of the Assessee outside India and the situs of the repair service is outside India. Therefore, the reimbursement received by the Assessee is in relation to warranty repair service rendered outside India to foreign clients and as such the source of such service income is also outside India. In fact, in the decision of Regen Power Tech at Para 12 it is held that the decision in the case of Pr.CIT v. Motif India Infotech

(P.) Ltd. [2018] 409 ITR 178 (Guj). is distinguishable on facts and it was held as under:

> *"the payments were for technical services provided by a non-resident for providing services to be utilized for serving the assessee's foreign clients and thus, the Fees for Technical Services was paid by the assessee for the purpose of making or earning any income from any source outside India and clearly the source of income, namely, the assessee's customers were the foreign based Companies. This decision also is clearly distinguishable on facts as noted by us above and does not render assistance to the case of the assessee.*

Therefore, it is submitted that Regen Powertech decision is not applicable to the facts of the present case and the decision of Motif India Ltd would be squarely applicable to the Assessee.

7.2 Further, the Assessee also relies on the Hon'ble Madras High Court Decision in the case of CIT Vs Aktiengesellschaft Kuhnle Kopp and Kausch W. Germany by BHEL reported in [2003) 262 ITR 513 (Madras) wherein it is held as under:

> ***"8.*** *As far as royalty on export sales is concerned, that amount is also exempt under section 9(1)(vi). Though the royalty was paid by a resident in India, it cannot be said that it was deemed to have accrued or arisen in India as the royalty was paid out of the export sales and hence, the source for royalty is the sales outside India. Since the source for royalty is from the source situate outside India, the royalty paid on export sales is not taxable. The Appellate Tribunal was therefore correct in holding that the royalty on export sales is not taxable within the meaning of section 9(1)(vi).*
>
> *9**.** Accordingly, we answer the question of law referred to us in the affirmative, in favour of the assessee and against the revenue. No costs."*

Therefore, the ld.AR prayed for setting aside the order of the ld.CIT(A) and allow the appeal of the assessee.

8. We have heard the rival contentions, perused the material available on record and gone through the decisions of the Hon'ble courts and orders of the lower authorities. It is admitted fact that the assessee is a non-resident and filed its return of income for the A.Y.2016-17 and offered tax the income from other sources being the Royalty and Fees for technical services. The AO has reopened the assessment and passed an order u/s.147 of the Act by bringing the reimbursement of expenses towards warranty payments which was not offered to tax, made by the M/s.Same Deutz Fahr India Pvt Ltd to the assessee as Fees for Technical Services under the head income from other sources. The same has been upheld by the ld.CIT(A) in his order dated 07/02/2024.

8.1 The assessee has raised legal issue as grounds of appeal by questioning the validity of the reopening of the assessment in ground No.2 and the grounds have been raised on merits in respect of taxability of warranty expenses reimbursed by an entity to the assessee on cost to cost basis in Ground No.3.

Firstly, we will adjudicate this appeal on merits of the case.

8.2 In the present case, the assessee purchases Tractors as well as Semi Knock Down (SKD) of Tractors from its subsidiary company SAME Deutz Fahr India Private Limited ('SAME India') on a principal-to-principal basis and assembles the same with other parts to sell the assembled/finished product/Tractors to the dealers as a part of their business activity. The dealers in turn sell the end product/tractors to the ultimate customers.

With respect to the Tractors and SKD of tractors sold to the assessee, SAME India, being the original equipment manufacturer, provides warranty for a maximum period of 12 months from the date of ultimate sale or rent or vehicle being put to use, against any defect in material and/or manufacture of Tractors or SKD of Tractors.

8.3 The warranty repair service was done by dealers to ultimate customers. The dealers claim the cost incurred for warranty service from the Assessee and the Assessee in turn claims the same as reimbursement from Same India. Therefore, the Assessee's role is restricted to acting as a conduit for facilitating the warranty service on behalf Same India for the Tractors sold in Italy. Therefore, there

is no technical service which is rendered by the Assessee on behalf of Same India to customers.

Explanation 2 to Section 9(1)(vii) of the Act defines 'fees for technical services' to mean any consideration for rendering of managerial, technical or consultancy services. In the present case, technical services were not rendered to Same India and as such any reimbursement in relation thereto cannot be deemed to be FTS in the hands of the Assessee.

Accordingly, the reimbursement received from Same India to honor/reimburse the cost incurred by dealers cannot be deemed to be FTS rendered by Assessee to the Same India.

8.4 At the time of warranty claim, it is the customer who avails the service for the cost paid by him as part of the sale price of the tractor he purchases from the dealer. It is the dealer who renders the repair/replacement service to the customer pursuant to independent contract as it forms part of warranty obligation included in its sales price. Further, on account of the above costs, the dealer claims reimbursements from the assessee and then the assessee claims reimbursement from SAME India for the cost

incurred by the dealer. It is further to be noted that transporting the product from Italy to India for servicing will not be an economically viable option and hence SAME India has requested the assessee to assist/facilitate in rendering warranty services through dealers to third party customers located outside India. Pursuant to the above, the assessee has requested third party dealers outside India to carry out warranty service to the ultimate customer outside India with regard to sale of tractors made outside India. The assessee has reimbursed the dealers and later the same amount was claimed as reimbursement from SAME India. In this entire gamut of the transaction, the assessee's role is limited to acting as a conduit/facilitator and the assessee does not render any repair service to the end customers.

8.5 As per the ld.AR mere repair work would not be in the nature of fee for technical service and referred to section 9(1)(vii) of the Act. In the present case warranty payments being reimbursement of repair/ replacement cost may not be in the nature of FTS and relied on the decision of the jurisdictional Tribunal in case of *BHELGE-Gas Turbine Servicing (P) Limited (24 taxmann.com 25)* (Hyderabad Tribunal) where the assessee had work orders with third parties in respect of repair and refurbishment of its product (turbines). It was

held that routine repairs including assembly, disassembly, inspection, evaluation, etc., form a part of technical repair services which are different from technical services. Further, only payments in the nature of 'technical services' attract the provisions of section 9(1)(vii).

8.6 Further, we note that the Assessee has sold the Tractors outside India and it is in relation to such tractors, during the warranty period, if required warranty service is provided by dealers outside India to customers outside India.

As per Section 5(2) of the Act, the income of a non-resident is taxable in India if the income is received or deemed to be received or accrues or arises or is deemed to accrue or arise in India. In the present case, reimbursement received by the Assessee cannot be construed as received or deemed to be received in India since the reimbursement is in relation to repair services undertaken outside India.

8.7 Apart from the above, we also note that the warranty repair service is done in relation to tractors sold in Italy. As per the exclusionary clause in Section 9(l)(vii)(b), where fees paid in

respect of services utilized in the business outside India or for the purposes of making or earning any income from any source outside India then such payment does not constitute as fees for technical service. In the given case the source of income arises outside India as the sale of tractors to customers take place outside India.

8.8 The assessee's reliance on the following decisions of the hon'ble courts are squarely applicable to the present facts of the case:

- Tractors and Farm Equipment Limited Vs DCIT Chennai ITAT in ITA.No.1069/Chny/2019
- Nissan Motor India Pvt Ltd Vs DCIT [2018] 92 taxmann.com 127 Chennai ITAT

We are in agreement with the assessee's reliance (in respect of the reimbursement on cost to cost basis) on the decision of the Hon'ble Supreme Court in the case of GE India Technology Cen. (P.) Ltd. vs. Commissioner of Income-tax [2010] 193 Taxman 234 (SC), wherein it is held at para 9 that when there is no element of income, then remittances cannot be held to be chargeable to tax in India.

8.9 Further, on perusal of the 'Supply Agreement' between the SAME India and the assessee for purchase and sale of Tractors/SKD of tractor outside India at Para 3(1)(c) (refer Page 61 of paper

book) it is agreed between the parties that the Assessee while assembling the remaining parts, the Assessee will ensure that it will assemble in a manner which in no way affects the SKD produced by SAME India. The relevant extracts are as under:

> *"c) SDFI undertakes to complete, at its own risk, the SKD by independently purchasing the remaining parts. The assembly of the remaining parts shall be performed by the SDFI according to the best techniques in a manner which in no way may affect SKD produced by SDF India."*

Further, we also note that the supply agreements also restrict the warranty to parts of assembled tractor by Same India. The warranty clause in the agreement is as under:

"8. **Warranty**

a) **Period of base warranty**

Concerning the furniture of SKD, the warranty is limited to the parts of the assembled tractors manufactured and assembled by SDF India and therefore does not cover any equipment, parts or component not manufactured or not assembled by SDF India or any defect or malfunctioning arising in the products due to any equipment parts or component not manufactured"

b) **Warranty service**

*SDFI shall have the exclusive right to perform or **arrange for the performance of warranty service** with respect to the products sold to SDFI." (emphasis supplied)*

"10. **Product Quality Information**

a) ……..

b) It is expressly understood and agreed that SDFI shall not be entitled to claim against SDF India any consequential or incidental damage or losses SDFI may suffer as a result of matters described in art. 8.a);"

From the above clauses of the agreement, it is clear that the Assessee while assembling the SKD into a Tractor shall ensure that there is no damage to SKD. Further, it is also agreed between the parties that Same India would reimburse the cost relating to SKD parts of tractor supplied by it, which impliedly means that Same India will not reimburse the warranty cost relating to other parts procured by the Assessee for the purpose of assembling the tractor. Therefore, in our considered view the AO and that of Ld.CIT(A) have erred in treating the reimbursement for warranty was for parts of tractor exported by Same India in relation to business carried on outside India or for the purpose of earning income from a source outside India as Fees for Technical services taxable in India. Therefore, the decision of the Chennai ITAT in Tractors and Farm Equipment Ltd and Nissan Motors (supra) is squarely applicable to the facts of the case.

8.10 Therefore, in the present facts and circumstances of the case and respectfully following the decisions of the Hon'ble Courts (supra), we are of the considered view that the payments received

by the assessee from SAME India is a reimbursement of warranty expenses and not the Fees for technical services and hence we allow the grounds of appeal of the assessee. Since, the assessee's appeal is decided on merits in favour of the assessee, the legal issues raised by the assessee are not adjudicated and kept open.

9. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 30th January, 2025 at Chennai.

Sd/-	*Sd/-*
(एबी टी वर्की)	**(**एस**.**आर**.**रघुनाथा**)**
(ABY T VARKEY)	**(S. R. RAGHUNATHA)**
न्यायिकसदस्य**/Judicial Member**	लेखासदस्य**/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated, the 30th January, 2025
JPV
आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF