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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No.5580/Del/2011
Assessment Year: 2008-09
With
ITA No.2144/Del/2012
Assessment Year: 2007-08
With
ITA No.1074/Del/2014
Assessment Year: 2007-08
With
ITA No.6106/Del/2012
Assessment Year: 2009-10
With
ITA No.6359/Del/2014
Assessment Year: 2010-11
With
ITA No.6161/Del/2015
Assessment Year: 2011-12

M/s. SMS Siemag AG (formerly SMS Demag AG) C/o- Mohinder Puri & Co., CA, 1A-D, Vandhna, 11 Tolstoy Marg, New Delhi	**Vs.**	Addl. DIT/DDIT, Circle-2(2), Intl. Taxation, New Delhi
PAN: AADCS1173J		
(Appellant)		**(Respondent)**

With
ITA No.256/Del/2017
Assessment Year: 2012-13
With
ITA No.7569/Del/2017
Assessment Year: 2013-14
With
ITA No.7570/Del/2017
Assessment Year: 2014-15

With
ITA No.5521/Del/2018
Assessment Year: 2015-16
With
ITA No.4044/Del/2019
Assessment Year: 2016-17

M/s. SMS Group GmbH (former known as SMS Siemsag AG), C/o- Mohinder Puri & Co., CA, 1A-D, Vandhna Building, 11 Tolstoy Marg, New Delhi	**Vs.**	ACIT/DCIT/JCIT (Intl. Taxation), Circle-3(1)(2), New Delhi
PAN: AADCS1173J		
(Appellant)		**(Respondent)**

With
ITA No.3070/Del/2019
Assessment Year: 2015-16
With
ITA No.9738/Del/2019
Assessment Year: 2016-17

M/s. SMS Mevac UK Ltd., C/o- Mohinder Puri & Co., CA, 1A-D, Vandhna Building, 11 Tolstoy Marg, New Delhi	**Vs.**	ACIT/DCIT/JCIT (Intl. Taxation), Circle-3(1)(2), New Delhi
PAN: AAMCS7193M		
(Appellant)		**(Respondent)**

With
ITA No.375/Del/2020
Assessment Year: 2016-17

M/s. SMS Meer GmbH., C/o- Mohinder Puri & Co., CA, 1A-D, Vandhna Building, 11 Tolstoy Marg, New Delhi	**Vs.**	ACIT/DCIT/JCIT (Intl. Taxation), Circle-3(1)(2), New Delhi
PAN: AALCS8877R		
(Appellant)		**(Respondent)**

Assessee by	Sh. Percy Pardiwalla, Sr. Adv. Sh. C.S. Mathur, CA Ms. Richa Aggarwal, CA
Department by	Sh. Vijay B. Basanta, CIT(DR)

Date of pronouncement	09.04.2025

ORDER

PER SATBEER SINGH GODARA, JM

This assessee(s) herein, M/s. SMS Group GMBH and other associate/group entities herein have filed the instant batch of fourteen appeals whose relevant details are hereby tabulated as under:

Sl. No.	Appeal No.	Appellant	Respondent	Order Appealed against	Date of Hearing
1.	5580/Del/2011 for AY: 2008-09	M/s. SMS Siemag AG	Addl. DIT, Range-2, Intl. Taxation, New Delhi	Addl. DIT, New Delhi's order dated 13.10.2011 involving proceedings under Section 144C r.w.s. 143(3) of the Act.	03.03.2025
2.	2144/Del/2012 for AY: 2007-08	M/s. SMS Siemag AG	DDIT (Intl. Taxation), Circle-2(2), New Delhi	DIT [Intl. Taxation]-II, New Delhi's order dated 23.03.2012 involving proceedings under Section 263(1) of the Act.	11.03.2025
3.	1074/Del/2014 for AY: 2007-08	M/s. SMS Siemag AG	DDIT (Intl. Taxation), Circle-2(2), New Delhi	DDIT, Intl. Taxation, New Delhi's order dated 23.12.2013 involving proceedings under Sections 143(3) r.w.s. 144C/263 of the Act.	11.03.2025
4.	6106/Del/2012 for AY: 2009-10	M/s. SMS Siemag AG	DDIT (Intl. Taxation), Circle-2(2), New Delhi	DDIT, Intl. Taxation, New Delhi's order dated 28.09.2012 involving proceedings under Sections 143(3) r.w.s. 144C of the Act.	03.03.2025
5.	6359/Del/2014 for AY: 2010-11	M/s. SMS Siemag AG	DDIT (Intl. Taxation), Circle-2(2), New Delhi	DDIT, Intl. Taxation, New Delhi's order dated 23.09.2014 involving proceedings under Sections 143(3) of the Act.	03.03.2025

6.	6161/Del/2015 for AY: 2011-12	M/s. SMS Seimag AG	DDIT (Intl. Taxation), Circle-3(1)(2), New Delhi	DDIT, Intl. Taxation, New Delhi's order dated 28.09.2015 involving proceedings under Sections 143(3) r.w.s. 144C(13) of the Act.	03.03.2025
7.	256/Del/2017 for AY: 2012-13	M/s. SMS Group GmbH	DCIT (Intl. Taxation), Circle-3(1)(2), New Delhi	DCIT, Intl. Taxation, New Delhi's order dated 08.11.2016 involving proceedings under Sections 143(3) r.w.s. 144C(13) of the Act.	03.03.2025
8.	7569/Del/2017 for AY: 2013-14	M/s. SMS Group GmbH	ACIT (Intl. Taxation), Circle-3(1)(2), New Delhi	ACIT, Intl. Taxation, New Delhi's order dated 06.10.2017 involving proceedings under Sections 143(3) r.w.s. 144C(13) of the Act.	03.03.2025
9.	7570/Del/2017 for AY: 2014-15	M/s. SMS Group GmbH	ACIT (Intl. Taxation), Circle-3(1)(2), New Delhi	ACIT, Intl. Taxation, New Delhi's order dated 06.10.2017 involving proceedings under Sections 143(3) r.w.s. 144C(13) of the Act.	03.03.2025
10.	5521/Del/2018 for AY: 2015-16	M/s. SMS Group GmbH	JCIT (Intl. Taxation), Circle-3(1)(2), New Delhi	ACIT, Intl. Taxation, New Delhi's order dated 18.12.2017 involving proceedings under Section 144C(1) of the Act.	03.03.2025
11.	3070/Del/2019 for AY: 2015-16	M/s. SMS Mevac UK Ltd.	ACIT (Intl. Taxation), Circle-3(1)(2), New Delhi	CIT(A), New Delhi's order dated 16.01.2019 passed in case no. 155/2017-18 involving proceedings under Section 143(3) r.w.s. 144C of the Act.	03.03.2025
12.	4044/Del/2019 for AY: 2016-17	M/s. SMS Group GmbH	ACIT (Intl. Taxation), Circle-3(1)(2), New Delhi	ACIT, Intl. Taxation, Delhi's order dated 28.03.2019 involving proceedings under Section 143(3) r.w.s. 144C(13) of the Act.	03.03.2025
13.	9738/Del/2019 for AY: 2016-17	M/s. SMS Mevac UK Ltd.	ACIT (Intl. Taxation), Circle-3(1)(2), New Delhi	CIT(A)-43, New Delhi's order dated 31.10.2019 passed in case no.10287/2018-19 involving proceedings under Section 143(3) r.w.s. 144C(3) of the Act.	03.03.2025
14.	375/Del/2020 for AY: 2016-17	M/s. SMS Meer GmbH	ACIT (Intl. Taxation), Circle-3(1)(2), New Delhi	CIT(A)-43, New Delhi's order dated 29.11.2019 passed in case no.10288/2018-19 involving proceedings under Section 143(3) r.w.s. 144C(3) of the Act.	03.03.2025

2. Heard both the parties at length through their respective learned representatives. Case files perused.

3. Learned senior counsel Mr. Percy Pardiwalla submits at the outset that all these fourteen cases involve identical substantive grounds; both in law and on facts. We thus treat 'M/s. SMS Group GmbH's ITA No. 5580/Del/2011 for AY: 2008-09 as the "lead" appeal raising the following substantive grounds:

1. *That on the facts and circumstances of the case and in law the order of Additional Director of Income-tax (International Taxation), Delhi (A.O) u/s 143(3) in pursuance of direction issued u/s 144C by Dispute Resolution Panel (DRP) is perverse, bad in law and void, being contrary to law and principles of natural justice.*
2. *That the learned A.O./DRP has erred in computing income at Rs. 159,851,648/- as against returned income of Rs. 41,12,262/-*

3.(a) That the learned A.O. and DRP have erred in law and on facts in holding that consideration received for supply of drawings and designs, forming integral part of the supply of equipment, received under various contracts is taxable as 'Fees for Technical Services', u/s 9(1)(vii) of the Act.

(b) That the learned A.O. and DRP have misdirected themselves on wrong assumptions of facts and in law in not accepting the claim that supply of drawings and designs was inextricably linked to sale of plant and equipment and represented consideration of the nature of 'Business Profits' not liable to tax in India, as per the provision of DTAA between India and Germany read with Indian Income-tax Act.

4. (a) That the learned A.O./DRP has erred on facts and in law in holding that sale of plant and equipment was concluded in India based on wrong assumptions that risk and title passed in India without taking into consideration terms and conditions of contracts in respect of supply of plant and equipment and drawings and designs.

(b) That the learned A.O./DRP has wrongly and without any basis erred in holding that the assessee has 'Fixed Place P.E.' in India where from business of the assessee was wholly or partly carried on.

(c) That the learned A.O./DRP has erred in not considering the provisions of Protocol 1(a) of the DTAA between India and Germany as relied

upon by the assessee, in terms of which, on the facts, no part of consideration for supply of equipment from Head Office is attributable to P.E., if any, in India.

(d) That the learned A.O./DRP has erred in holding that profit from supply of equipment are attributable to supervisory P.E. in India and thus taxable in India in terms of Rule 10 of the Income-tax Rules, 1962.

(e) Without prejudice, the learned A.O./DRP has erroneously held that on facts, profit attributable and taxable in India in respect of supplies was 30% of global profit rate. The said attribution made at Rs. 11,14,83,934/- is arbitrary, highly excessive and has no rationale whatsoever, and is against the principles of attribution as laid down under the provisions of Income-tax Act, DTAA between India and Germany and various decisions of Hon'ble High Court, Supreme Court of India.

5. *That the learned A.O./DRP has erred in erroneously holding that amounts received towards reimbursement of cost towards intranet, SAP are liable to tax in India as 'Fees for Technical Services'.*

6. *That the learned A.O./DRP has erred in levying interest u/s 234B of the Income-tax Act which provision is not applicable in case of non-resident company as held by the jurisdictional High Court of Delhi in the case of Director of Income-tax Vs. Mitsubishi Corporation ITA No. 209/2009.*

7. *That the assessee may be allowed to add, supplement, revise, amend grounds as raised hereinabove.*

4. Mr. Pardiwalla states very fairly that the assessee's 1st and 2nd grounds are general in nature. Rejected in very terms.

5. Next come assessee's third and fourth substantive grounds canvassing its inter-connected grievances that both the learned lower authorities have erred in law and on facts, inter alia, in treating its consideration received from supply of designs and drawings forming integral part of the sale/supply of equipments, received under various contracts, as taxable under section 9(1)(vii)

of the Act, being in the nature of "fee for technical services" (FTS) under the above former and its receipt derived from sale of plant and equipments as alleged to have been concluded in India and assessable in India, involving varying sums; respectively.

6. We now advert to the basic relevant facts. The assessee herein "M/s. SMS Seimag AG" formerly known as "M/s. SMS Demag AG", is a German company engaged in the business(es) of supply of plant, equipment, drawings & rendering of technical services to customers in the metallurgical sector world-wide. Learned Assessing Officer's assessment herein dated13.10.2011 suggests that he treated the assessee's business activities in four heads i.e. supply of plant and equipment from Germany, supply of drawings and designs in relation to plants from Germany, supervision/erection and commissioning, performance, guarantee test of equipment supplied and rendering of technical services etc., as taxable in India. He further noted that the assessee's receipts arising from the above business activities under four heads i.e. the income from technical services, qua receipts derived from M/s. Ispat Industries Ltd. and M/s. JSW Steel Limited, supervision charges from M/s. Tata Steel Limited, receipts from designs and

drawings in case of seven entities and sale of plants and equipments etc.; involving varying sums, as liable to be assessed in India. The assessee appears to have duly recognized its income from the above first and foremost receipt of Rs.41,12,262/- only. It thus sought to explain during the course of assessment that the remaining three receipts hereinabove, inter alia, represented advances from customers in the balance-sheet of its Permanent Establishment (PE), the third category herein constitute off-shore supply for which the corresponding sales as well as payments had been finalized and received outside India and the last one was only an off-shore sale of plants/equipments, respectively.

7. Learned Assessing Officer's assessment discussion went on to consider the assessee's above corresponding detailed objections which stood rejected, inter alia, on the ground that its case was covered under section 9(1)(vii) of the Act since the income herein was "FTS" and was not entitled for any relief under the India – Germany Double Taxation Avoidance Agreement "DTAA". We are informed during the course of hearing that the main dispute(s) between both the parties in the assessee's instant "lead" appeal is

that of taxability of the income derived from sale of the designs and drawings and supply of equipment (in off-shore mode) only.

8. Be that as it may, learned Assessing Officer first of all added the assessee's designs and drawings receipts of Rs.147,72,46,452/- as its business receipts quantified from sale of equipments to Rs.11,14,83,934/- qua sale/supply receipts of Euro 9,98,50,420 and assessed its total income at Rs.159,28,51,648/- in the assessment order. Firstly proposed the impugned twin additions in his draft assessment order dated 31.12.2010. The assessee filed it's statutory objections before the learned DRP which stood rejected in the former's directions dated 30th September, 2011, as follows:

> *"2. The grounds of objection, filed as Appendix A with Form No. 35A, are as under:*
> 1. *That the order of learned Assessing Officer is bad both in law and on facts of the case.*
> 2. *That the learned Assessing Officer has erred in computing income at Rs. 176,00,77,547/- as against returned income of Rs. 41,12,262/-*
> 3. *That the learned Assessing Officer has erred in making assessment without providing adequate opportunity and thus acted contrary to principals of Natural Justice, which is illegal.*
> 4. *(a) That the learned Assessing Officer(A.O.) has erred in holding that consideration received by the assessee in relation to contract for supply of drawings and designs, is essentially in the nature of "Fees for Technical Services under the provisions of Section 9(1)(vil) of the Indian Income-Tax Act.*
>
> *(b) That the learned Assessing Officer has made erroneous observations, a assumptions on facts, erroneous interpretation of terms of the contract, incoming to the conclusion that the amounts*

received by the assessee were taxable as 'Fees for Technical Services'

(c) That the learned Assessing Officer has erred in not following the decision of the Hon'ble High Court of Delhi, in the case of Mitsui Engineering and Shipbuilding [174 CTR 66 (Delhi)] and erroneously observing that the same did not deal with the issue of 'Fees for Technical Services' covered by provisions of section 9(1)(vii) of the Income Tax, Act.

(d) That the learned Assessing Officer has erred in rejecting the contention of the assessee that supply of drawings and designs, linked/incidental sale of plant and equipment, represents consideration of the nature of 'Business Profits' not liable to tax in India as per the provisions of Indian Income-Tax Act as well as the DTAA between the India and Germany.

(e) That the learned Assessing Officer has erred in rejecting the argument of the assessee that in terms of provisions of DTAA between India and Germany, read with Protocol Para 1(b) the amounts as received for sale of drawings, designs, documents were not liable to tax in India.

(f) That the decisions as relied upon by the Learned Assessing Officer are distinguishable, not applicable, on facts of the assessee.

5. *(a) That the Learned Assessing Officer has erred in holding that on facts sale of plant and equipment was concluded in India.*

(b) That the learned Assessing Officer has made incorrect appreciation of the provisions of the contract, inaccurate interpretation of the provisions of the Income-Tax Act and DTA between India and Germany and holding consideration for same was liable to tax in India.

(c) That the learned Assessing Officer has erred in not applying decisions of Hon'ble Supreme Court of India in the following cases where, on similar facts, it has been held that consideration for supply of plant and equipment, from outside India, was not liable to tax in India.

(i) Commissioner of Income Tax and Another Vs. Hyundai Heavy Industries Company Limited (291 ITR 482 SC);

(ii) Ishikawajima - Harima Heavy Industries Ltd. -Vs. Director of Income Tax, Mumbai(228 ITR 408Sc).

(d) That the learned Assessing Officer has erred in holding that the assessee has 'Fixed place P.E. in India where from business of the assessee was wholly or partly carried on.

(e) That the learned Assessing Officer has erred in not considering the provisions of Protocol 1(a) of the DTAA between India and Germany as relied upon by the assessee, in terms of which, on the facts, no part of consideration for supply of equipment from Head Office, is attributed, to P.E., if any, in India.

(f) That without prejudice the learned Assessing Officer has erred in invoking the Rule 10 of the Income-Tax Rules, in computing profit attributable in India in relation to supply of equipment. The said Rule has no application on facts.

(g) Without prejudice, the learned Assessing Officer has erroneously held that on facts, profit attributable in respect of supplies was 75% of global profit rate. The said attribution is arbitrary, highly excessive and has no rationale whatsoever, and is against the principals of attribution as laid down under the provisions of Income-Tax, Act, DTAA between India and Germany and various decisions of Hon'ble High Court, Supreme Court of India.

6. That the Learned Assessing Officer has erred in erroneously holding the amounts received towards reimbursement of cost towards intranet, SAP are liable to tax in India as 'Fees for Technical Services'.

7. That the learned Assessing Officer has erred in directing charging of interest without specifying the same, not attracted on facts.

8. That the learned Assessing Officer has erred in initiating penalty proceedings under section 271(1) (C) of the Income Tax, Act, 1961. The provisions of which are not attracted on the facts.

9. That the assessee may be allowed to add, supplement, revise, amend grounds as raised hereinabove.

2. Facts of the case: The assessee is a company incorporated in Germany. During the year under consideration it was engaged in the business of supply of plant, equipment, drawings and rendering of technical services to customers in the metallurgical sector. It filed a return for the assessment year under consideration on 26.9.2008 declaring an income of Rs. 41,21,262. The case was taken up for scrutiny and after necessary enquiry the A.O has passed a draft order proposing some variations in the returned income of the assessee. Aggrieved by this the assessee has filed the above objections before this Panel. The assessee has filed detailed submissions along with the application in Form 35A and during the hearing before the Panel the A.R made further submissions which have been taken into account and the objections are disposed of as under.

3. Objections no. 1 to 3: These objections are preliminary and general in nature and are therefore not being discussed in details here as they will be covered in the course of the subsequent submissions.

4. Objection no. 4: This objection which has been further sub divided into six subsidiary objections relate primarily to the proposal in the draft order to tax the income from supply of drawing and designs as fees for technical services u/s 9(1)(vii) of the I.T Act. During the

assessment proceedings the A.O observed that the assessee received Rs. 147,72,46,452 during the year from seven Indian companies on account of sale of drawings and designs and this amount was not offered from tax on the ground that this amount was not taxable in India as the sale took place outside India and the consideration was also received abroad. The assessee furnished a detailed submission giving its reasons why this amount was not taxable in India and after considering these submissions the A.O has held that the receipts in question are taxable in India as fees for technical services in view of the provisions of Explanation to sub section (2) of sec 9 of the IT Act.

4.2 The assessee has made the following submissions contesting the above proposal:

"1. At the outset it is submitted that payments received in respect of supplies of drawings and designs cannot be subject to tax in India as the same are inextricably linked to supplies of equipments and not pertaining to rendering of technical services. The Explanation 2 to Section 9(1)(vii) that defines fees for technical services does not apply where the consideration is for outright sale of plant with essential drawings and designs and not for rendering of engineering and technical services. Such payments would fall in the definition of business profits and cannot be subjected to tax unless the assessee had a P.E. and supplies are connected therewith.

2. A separate price is stipulated under the Agreements for such supplies, which is payable outside India. Terms of delivery, involving transfer of title outside India are specified under the Agreements. During course of hearing specific evidence regarding supply of drawings and designs, from outside India, comprising Air-shipment Bills etc. relating to some contracts were submitted to the learned Assessing Officer.

3. On bare perusal of terms of contracts executed for supply of drawings and documents, it is clear that drawings, designs and documents to be supplied are in relation to equipments to be manufactured and fabricates by the assessee at its plants outside India and not for providing any engineering or technical services to the assessee. There is no rendering of technical services as envisaged under section 9(1)(vii) of the Act read with Art. 12 of DTAA with Germany

4. The argument that drawings and designs are taxable as fees for technical services merely because these have to be prepared according to requirement of customers is misplaced. The real issue is whether these drawings from part of the plant which are of complex nature and whether the same can be manufactured/fabricated or

installed without necessary drawings and designs. Since the plant and equipment is tailor-made as per requirement of customers those drawings have to be prepared before equipment supplies.
5. In Hyundai Heavy Industries Co. Ltd. (2007) 291 ITR 482, the Supreme Court has held that where income from designing fabrication and procurement had arisen outside india it was not taxable.

6. The information provided on website is of general nature and is not in respect of the specific contracts which are subject matter of this case. The taxability of receipts ought to be determined according to the terms and conditions of the agreement and not on the basis of general information.

7. The different clauses of the contracts cannot be viewed in isolation and needs to be examined in its proper prospective taking into account the nature of supplies made.

8. The cases relied by the Assessing Officer have no bearing to the facts of the case. In the case of AEG Aktiengesellschaft Vs. CIT (2004) 267 ITR 209-(KAR) the German company had undertaken to supply electrical portions of the Mill and payments for drawings and documents were received separately for rendering services. These drawings were not linked to supply contract and thus held as fees for technical services.

In second case of GMP International GmbH Vs. DIT (Intl. Tax) AAR/837/2009, the assessee company was engaged in the business of architectural designs and drawings. The company in response to a tender agreed to prepare drawings and designs for construction of a complex for Tamil Nadu Legislative Assembly. The scope of work in this case related to consultancy work and preparation of architectural designs and drawings. The ratio of these cases therefore do not help the case of revenue as essentially the contract here is of supply of plant and equipment along with drawings and designs.

4.3 The above submissions have been considered by this Panel. The main thrust of the assessee's argument is that all acts relating to the transaction have taken place outside India and that the designs and drawings are connected to the sale of the equipment and not for any engineering or technical services to the assessee. In order to come to a proper conclusion it would be appropriate to examine the terms of the relevant agreements. For this purpose the contract for supply of drawings and documents for Steel Melt Shop with JSW Steel Ltd. India can be looked into.

i. *From the Terms of Payment as given in Article 7 it is seen that 5% of the unit wise contract price for drawing and document shall be payable on completion of commissioning of the respective units (para 7.3). A further 5% of the unit wise price shall be paid upon successful completion of Performance Guarantee Tests of the respective units (para 7.4). The seller is to furnish a performance bank guarantee of 5% of the contract price at the time of release of payment against commissioning under Art 7.3 (para 7.4). The seller is to give another guarantee of 5% at the time of release of payment against performance guarantee tests under Art (7.4). Both these guarantees are to remain valid till expiry of warrantee period.*

ii. *Article 10 provides for liquidated damages. Art 10.2.1 provides that in case on or more of the performance guarantee parameters for any of the units under the responsibility of the seller are not achieved then the seller shall pay liquidated damages for non-achievement of performance guarantee parameters for such units. Art 10.2.3 provides that even after the repeat tests the guaranteed figures are not within the acceptable range then the Purchaser shall have the option to reject the equipment or accept it with liquidated damages.*

iii. *Art 12 lays down detailed rules for performance guarantees in which the seller continues to be liable even after delivery/ sale of the drawings and designs and is responsible for performance of the units.*

iv. *Article 14 provides for patent, intellectual property rights and confidentiality. Art 14.5 provides that the drawings, specifications, documents, data, manual etc are proprietary information of the Seller and are to be kept strictly confidential by the Purchaser. The purchaser is not to disclose this information to any third party for any purpose. Art 14.7 provides that all the drawings, designs etc shall remain vested n the Seller. The Seller agrees only to grant the purchaser a non-exclusive and non-transferable license to use the patent or know how which are specified in the Contract and technical specification. Art 14.8 provides that the provisions of the Art 14 relating to intellectual property rights will apply for five years after completion of the execution of this contracts.*

Taking into consideration the above elements of the contract for the supply of drawings and design the Panel is of the view that it is not a case of a sale of commodity per se or a transaction which has taken place outside the Indian Territory. The rights and obligations of the purchaser and the Seller continue for a much longer period (five years). The designs and drawings also enable the purchaser to be able to perform all the functions relating to repair and maintenance of the equipment. To this extent it cannot be denied that there is no

transfer of know how or 'making available' technical know-how by the Seller to the assessee Further even though the drawings and designs etc. are linked to the sale of equipment, the fact remains that a separate contract has been made between the two parties spelling out separate terms and conditions that govern this transaction. Therefore, the sale of equipment and the transfer of know-how under the agreement in respect of drawings, designs etch cannot be confounded with each other. Had it been inextricably linked with supply of equipment there would have been no reason to enter into two separate agreements. Taking into consideration the facts of the case the Panel is of the view that the transaction is not of the nature the profit from which would be taxable as business profits but fees for technical services. The objection made by the assessee is therefore rejected."

This leaves the assessee aggrieved.

9. We have given our thoughtful consideration to the assessee's and the Revenue's vehement respective contentions against and in support of the impugned additions, inter alia, holding the former's receipts derived from sale of designs and drawings and off-shore sale/supply of plants/equipments as taxable in India. We first of all sought to verify the final status of the very issues in the preceding and succeeding assessment years. It, inter alia, emerges during the course of hearing that so far as the assessee's instant former head income of his income derived from designs and drawings and off-shore sale of plants and equipments are concerned, this tribunal's recent order dated 06.01.2025 (authored by one of us, S. Rifaur Rahman, AM) has already settled the issue

against the department in assessments year 2005-06, 2014-15 to 2017-18 as under:

"3. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order. We take up the assessee's appeal being ITA No.1073/Del/2014 for AY 2005-06 as lead case to adjudicate the issues under consideration.

4. The relevant facts of the case are, assessee filed its return of income on 29.11.2006 declaring income at Rs.8,11,98,063/-. The return was processed under section 143(1) of the Income-tax Act, 1961 (for short 'the Act') on returned income. Subsequently, the case was selected for reassessment and notices u/s 148 of the Act was issued and served on the assessee. In response, assessee filed its return of income at Rs.78,44,243/-. Notices u/s 142(1) was issued and served on the assessee. In response, ld. AR for the assessee attended the proceedings and filed the relevant information as called for.

5. Assessee is a company incorporated under the laws of Germany. It is engaged in the business of supply of plant, equipment, drawings and rendering of technical services to customers in the metallurgical sector in various parts of the world. During the year under consideration, assessee has entered into various contracts with Indian clients for supply of plant and equipment in Germany, supply of drawings and designs in relation to the plant from the Germany and rendering of technical services. The assessee recognized the receipts from drawings and designs and technical services to the following entities:-

i	*Tata Iron Steel Co. Ltd.*	*Rs.7,69,20,032/-*
ii.	*ISPAT Industries Ltd.*	*Rs. 3,96,701/-*
iii	*SMS Demag Pvt. Ltd.*	*Rs. 38,81,330/-*
		Rs.8,11,98,063/-

6. The assessee has recognized the above revenue and offered to tax as 'Fee for technical services' @ 10% as per the DTAA between India and Germany.

7. During the course of assessment proceedings, the AO observed that the receipts from Jindal Steel and Power Limited amounting to Euro 12,15,200 (Rs.6,94,96,347/-) was shown as exempt in the return of income originally filed. The said Indian company had not deducted/paid any income-tax on the said consideration on the ground that the same is not liable to tax in India. Accordingly, a claim of exemption was made in the return of income filed by the assessee.

However, the AO observed that the nature of receipts is same as that made from other Indian company in relation to supply of drawings and designs, the same have been offered for taxation @ 10%, therefore, consideration received in relation to drawings and designs from Jindal Steel and Power Limited should also be taxed @ 10% on the gross amount. Accordingly, he made addition of Rs.6,94,96,347/- to the income of the assessee.

8. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT(A)-XXIV, New Delhi. Before ld. CIT (A), assessee has raised various grounds including jurisdictional issues for initiating reassessment proceedings in the case of the assessee and also on merit, assessee has submitted before the ld. CIT (A) as under:-

"9.3 It would be observed that amount of Rs. 6,94,96,347/- which has been added to the income comprises of the following receipts from Jindal Steel & Power Limited.

(a) Offshore sale of drawing and design Rs.1,67,32,800
(b) Offshore supply of equipment Rs.5,27,63,546
Rs.6,94,96,346

The learned AO in the reassessment order as made, has erroneously treated the whole of the amount including that for the supply of equipment as "Fees for Technical Services". He has failed to consider that consideration for supply of equipment in any case is not liable to tax in India, which position he has himself accepted in respect of other supplies. As such an amount of Rs. 5,27,63,546/- included relating to supply of equipment is in any case not liable to tax under Art 12 of the DTA as erroneously referred to by the AO.

9.4 Regarding non-taxability of consideration for sale of drawings and designs, it was submitted to the AO that the said claim was based on the following:- (a) (b) (c) (d)

a) Terms of contract;
b) Decisions of ITAT in the case of the assessee where such receipts for the sale of drawing and designs were not held to be taxable in various Assessment Years
c) Decisions of Hon'ble Madras High Court in the case of CIT Vs. Neyveli Lignite Corporation Ltd (Neyveli), 243 ITR 459.
d) Decision of Hon'ble High Court of Delhi in the case of Mitsui Engineering & Ship Building 259 ITR 248.

9.5 Pursuant to the contractual terms, consideration for sale of drawings and designs is not liable to tax in India as the same does not accrue or arise in India. Even under the provisions of DTAA between India and Germany, the same is not liable to tax in the absence of P.E. of the assessee in India, in the relevant year. Reference may be made to following clauses of the agreement with Jindal Steel & Power Ltd."

9. After considering the submissions of the assessee, ld. CIT (A) rejected the plea of the assessee on the jurisdictional issue and with

regard to merits, ld. CIT (A) partly allowed the grounds raised by the assessee with the following observations :-

"10.1 I have gone through various submissions made by the appellant and other material placed on record. At the outset, it is seen that the appellant has filed return in response to notice u/s 148 wherein certain incomes have been claimed as non-taxable which were offered to tax in original and revised returns. This action of the appellant is not as per law on the issue as Hon'ble Supreme Court has long ago in its decision in case of CIT v Sun Engineering Works Pvt. Ltd. 198 ITR 297 has laid down that reassessment jurisdiction is available only to the AO and not to the assessee and the assessee in reassessment proceedings cannot claim that certain incomes originally declared as taxable are not taxable. Therefore, the AO has rightly considered the income returned in the revised return as starting point and not the income returned in response to notice u/s 147 of the Act.

10.2 I have also gone through copies of invoices pertaining to receipts from Jindal Steel and Power Ltd. and it is seen that receipt of 949,600 Euro (Rs. 5,27,63,546) pertains to supply of equipment for an Electric Arc Furnace. The other two receipts of 235,000 and 30,600 Euros amounting to Rs. 1,67,32,800 are regarding drawing and designs. The AO in his assessment order has not alleged that there existed any PE in India for the AY under consideration. Therefore, in view of Article 7(1) of Indo-Germany DTAA, business income from sale of equipment is not taxable in India. Similar treatment has been given by the AO to business receipts in AY 200708 also, as is seen from assessment order for AY 2007-08 a copy of which has been furnished by the appellant. Regarding receipts for drawings and designs from Jindal Steel and Power Ltd., the appellant has not explained how these receipts are different from similar receipts from other clients. Receipts for drawings and designs are in nature of fee for technical services (FTS) both u/s 9(1)(vii) of the act and Article 12 of Indo-Germany DTAA. It is pertinent to note that for taxation of FTS under Article 12 of DTAA, existence of PE in India is not required. Accordingly, I find no infirmity in action of the AO in bringing this sum to tax as FTS taxable on gross basis @ 10% as per DTAA. Accordingly, the AO is directed to give relief regarding Rs. 5,27,63,546 as discussed supra. The ground of appeal is partly allowed."

10. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal :-

"1. That the order of learned Commissioner of Income-tax (Appeals) [CIT (A)) is bad both in law and on facts of the case.

2. That the Ld. CIT (A) has erred in holding that the reassessment proceedings Initiated by Ld. A.O. are valid.
3. (a) That the learned CIT (A) has erred in law and on facts in holding that consideration received for supply of drawings and designs forming integral part of the supply of equipment, received under various contracts is taxable as "Fees for Technical Services".
(b) That the learned CIT (A) has failed to appreciate that on the facts and material on record, the receipts constituted "Business Profits" not accruing, arising or received in India or deemed to accrue or arise or received in India.
(c) That the learned CIT (A) has erred in not accepting that supply of drawings and designs was inextricably linked to sale of plant and equipment and represented consideration of the nature of 'Business Profits' not liable to tax in India, as per the provisions of DTA between India and Germany read with Indian Income-tax Act.
(d) That the learned CIT (A) has grossly erred in law in ignoring and not following the ratio of jurisdictional High Court of Delhi in the case of Mitsui Engineering and Shipbuilding [174 CTR 66(Delhi)] and other decisions as relied upon by the assessee.
4. That the learned CIT(A) has erred in ignoring the decision of Hon'ble High Court of Delhi in the case of DIT Vs Jacabs Civil Inc and other High Courts and upholding the chargeability of interest under section 234B, not attracted on facts of the case.
5. That the assessee may be allowed to add, supplement, revise, amend grounds as raised hereinabove."

11. At the time of hearing, ld. AR for the assessee brought to our notice relevant facts on record and he brought to our notice page 9 of the factual paper book which is the original return of income filed by the assessee wherein assessee has clearly disclosed that three invoices raised to Jindal Steel and Power Limited which assessee has not offered to tax and further he brought to our notice page 11 of the paper book which is the revised computation of total income filed for the purpose of revised return of income. He submitted that the assessee has not changed the declaration made with regard to transaction with Jindal Steel and Power Limited and assessee has declared the same as exempt and at the same time, he submitted that first two invoices of Euro 2,35,000 and 30,600 are relating to drawings and designs and with regard to third invoice of Euro 9,49,600 pertains to supply of machineries. He brought to our notice page 12 of the paper book which is a letter submitted before the AO dated 23.03.2006 in which the assessee has clearly disclosed the fact that two invoices referred in the return of income are relating to supply of designs and engineering for electrical ARC and the other invoice is relating to supply of equipment for electronic ARC. Further he brought to our notice page 15 of the paper book which is issued by the AO u/s 148 dated 28.03.2011 alongwith the reasons for

reopening. The AO has mentioned the sum involved therein. He submitted that the sum mentioned in the reasons are Rs.31,11,699/- and he also brought to our notice page 19 of the paper book which is the annexure of the reasons to believe. The amount mentioned in page 19 and reasons to believe recorded are wrong and factually incorrect. He submitted that basis of reasons are factually incorrect. Accordingly, he brought to our notice page 25 of the paper book which is the decision of ITAT, Vishakhapatnam for AY 1992-93 wherein ITAT considered the facts on record and held by referring to the case of CIT v. Klayman Porcelains Ltd. (1988) 229 ITR 735 (AP) wherein Hon'ble Andhra Pradesh High Court held that the design and documentation fees cannot be considered as royalty but is only to be considered as part of plant supplied from abroad. Further he brought to our notice pages 30 to 38 of the paper book wherein ITAT, Vishakhapatnam gave relief to the assessee on the similar ground.

12. Ld. AR for the assessee brought to our notice page 67 of the paper book which is the letter submitted by the assessee raising preliminary objections and brought to our notice relevant submissions made along with reliance of the decision of ITAT, Vishakhapatnam objecting to the reasons recorded for reopening the assessment. Further, he referred to page 1 of supplementary paper book, which are the submissions made before the ld. CIT (A) dated 19.11.2013 and he also brought to our notice page 2 of the assessment order and page 20 of the paper book which is the return of income filed in response to notice u/s 148 of the Act. He submitted that the assessee has rightly computed taxable income. He brought to our notice page 5 of the first appellate order and submitted that ld. CIT (A) has rejected the plea of the assessee wherein AO has made a reasoned observation that receipts for drawings and designs received from some clients is taxable then similar receipts from Jindal Steel and Power Limited should also be taxable and the assessee has wrongly taken these receipts as non-taxable. It was submitted that even if the AO has treated these receipts as FTS in reassessment order instead of treating them as business receipts as mentioned in the reasons recorded. However, ld. CIT (A) observed that it does not vitiate the reassessment proceedings because some receipts as mentioned in the reasons recorded has been brought to tax in the reassessment order though after characterizing them differently.

13. With regard to merits, ld. AR for the assessee brought to our notice the findings at page 8 of the appellate order and submitted that ld. CIT (A) even though gave partial relief on supply of equipment but he sustained the supply of designs and engineering drawings as taxable overlooking the fact that the issue under considered is settled as far as assessee is concerned and the ITAT, Vizag has

already decided the issue that it will not fall under the term royalties. He submitted that findings of ld. CIT (A) is not as per precedent.
14. On the other hand, ld. DR for the Revenue relied on the findings of the lower authorities with regard to reopening as well as on merits.
15. Considered the rival submissions and material placed on record. We observed that the assessment for the current assessment year was processed u/s 143(1) of the Act and the AO while processing the assessment records observed that the assessee has not offered to tax certain receipts from Jindal Steel and Power Limited and he was of the opinion that the income escaped in this assessment year. He was of the view that assessee has offered to tax receipts from other parties whereas it has not offered to tax the receipts from Jindal Steel and Power Limited. Accordingly, he proceeded to reopen the assessment by recording the relevant reasons on record. Assessee before us raised the issue that the AO has wrongly recorded the reasons with the wrong sum of money and with the factually incorrect observation. After considering the facts on record, we observed that as per the information on record, the AO was of the opinion that there is substantial receipts not offered to tax by the assessee and accordingly, he reopened the assessment. Even though there is a small factual error, however the gross amount in terms of rupees mentioned in the reasons supplied to the assessee and the additions made in the assessment order are same. Therefore, we are not inclined to proceed with the objections raised by the assessee for reopening of the assessment.
16. Coming to the issue on merits, we observed that the assessee has declared three invoices in its return of income as exempt from tax however when the case was reopened it has filed its return of income by bringing on record facts clearly and it was submitted before the AO as well as ld. CIT (A) that two invoices of Euro 2,35,000 and 30,500 relates to supply of drawings and designs to Jindal Steel and Power Limited and which is exempt from tax on the basis of ITAT, Vishakhapatnam decision which is in favour of the assessee (it is decided in the case of M/s. SMS Schloemann Siemag AG Germany vs. DCIT which is the sister concern of the assessee). With regard to third invoice of Euro 9,49,600, it was submitted before the ld. CIT (A) that it is relating to supply of equipment. We observed that ld. CIT (A) appreciated the above facts on record and deleted the addition made by the AO relating to supply of equipments. However, he did not consider the decision of ITAT, Vishakhapatnam relating to supply of drawings and designs as royalty/FTS and he proceeded to sustain the addition on the two invoices which assessee has not declared in their return of income. After considering the factual matrix on record, we observed that the ITAT, Vizag has considered the similar issue on record and decided the issue of supply of drawings and designs in favour of the assessee even though as royalties. However, the provisions of royalties and FTS are similar

in nature, therefore, we are inclined to accept the submissions of the assessee and we direct the AO to delete the additions proposed in this case.

17. In the result, the grounds raised by the assessee on merits are allowed and other grounds are dismissed. Accordingly, the appeal filed by the assessee being ITA No.1073/Del/2014 is partly allowed.

18. The Revenue in the cross appeal for AY 2005-06 has taken various issues with regard to the deletion of addition of Rs.5,27,63,546/- out of total addition of Rs.6,94,96,346/- made by the Assessing Officer on account of consideration received by the assessee from M/s. Jindal Steel & Power Ltd. for supply of drawings and designs. This issue is decided by us in the assessee's appeal for AY 2005-06 as above which relates to supply of equipment, this can never form part of 'FTS' and the same is decided in favour of the assessee. Accordingly, the grounds taken in the Revenue's appeal are rejected and the appeal filed by the Revenue is dismissed."

10. This tribunal's yet another coordinate bench in SMS Concast AG Vs. DDIT in ITA No. 1361/Del/2012, dated 16.06.2023, has further decided both these issues against the department as follows:

"11. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. The short issue arising for consideration is, whether the amount received by the assessee for supply of drawing and design is taxable as FTS in India. Insofar as the factual aspect of the issue is concerned, there is no dispute that the designs and drawings were made outside India in Switzerland and were supplied to the contractee from Switzerland. It is a fact that the sale transaction qua the drawings and designs was completed in Switzerland and amounts were received in Switzerland. It is also a fact on record that both the supply of equipments and supply of designs and drawings are in relation to a single project of the contractee, viz., 1 X 8 Strand Billet Caster for Long Product Plants required for contractee's project located in the state of Karnataka.

12. Materials on record reveal that the drawings and designs are in relation to basic engineering, which means, basic data as well as draft drawings, schematic drawings or layouts, diagrams, configuration and calculations necessary to design the equipment, structure and systems, as the case may be. It also includes, the necessary calculations, functional descriptions, final equipment list, preliminary bills of materials for media systems, line routing

drawings, main cables routings, foundation outlines with load data, motors and components list. It also includes reference component drawings with reference bills of material where applicable. Details design consists of the final design engineering to procure or manufacture the equipment and plants. It means the detail design of the equipment includes all necessary calculations, arrangement drawings, detail drawings for manufacturing where applicable, bills of materials, engineering of electrical components as well as associated standard and catalogue parts, instructions for manufacturing, assembly, inspection and construction if applicable, spare part lists, operation and maintenance instructions as the case may be.

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

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

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

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

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

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

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

19. In ground no. 3, the assessee has challenged the taxability of Rs.5,56,822/-. As could be seen from the facts on record, the assessee received Euro 8,981 from rendition of supervisory services relating to erection and commissioning of Mormugao Steel Ltd. The assessee did not offer the income to tax in India claiming that the receipts are in the nature of business profit and in absence of PE in India, it is not taxable. The Assessing Officer, however, did not find merit in the submission of the assessee. He held that the receipts are in the nature of FTS under Article 12 of India Switzerland DTAA. Accordingly, he brought the amount to tax at the hands of the assessee. Learned first appellate authority also confirmed the addition.

20. Before us, learned counsel for the assessee submitted that as per the terms of the contract the assessee was required to provide duly qualified technical personnel for supervisory work and the consideration to be received for providing such personnel was fixed at daily rate. He submitted, fees for supervisory services being incidental to sale of plant do not fall within the ambit of Article 12 dealing with taxation of royalty and FTS. He submitted, the provision of such services is a normal part of contract of sale of plant to enable the supplier to ensure that the plant is properly erected, installed by the customer, keeping in view the performance guarantee obligation undertaken by it. He submitted, therefore, the amount is taxable as business profit, however, since, the tenure of supervisory services did not exceed the threshold limit of six months under Article 5(2)(j) of the treaty, there being no PE, amount is not taxable.

21. We have considered rival submissions and perused the materials on record. From the facts on record, it is observed, the assessee had entered into a contract for supply of electromagnetic stirrer. As per the scope of the contract, the assessee shall engineer, manufacture and deliver the plant and equipment. The scope of contract also included supervision, erection and commissioning of plant and equipment. As per assessee's own admission, technical personnel were deputed to supervise the erection and commissioning of the plant and equipment. Thus, it is quite clear, in course of such supervisory activity, the qualified technical personnel deputed by the assessee must have imparted technical services for erection and commissioning of the plant and equipment. Therefore, in our considered opinion, the amount received clearly falls within the definition of FTS, both under the domestic law as well as under the treaty provision. Once the receipts fall within the definition of FTS under Article 12(4) of the DTAA as well as the domestic law, it becomes immaterial whether the assessee has a PE in India or not. Therefore, in our view, the amount in dispute having qualified as FTS, has rightly been brought to tax at the hands of the assessee. This ground is dismissed.

22. In the result, the appeal is partly allowed."

Mr. Pardiwalla case accordingly is that both the learned lower authorities' impugned action assessing the assessee's income derived from sale of designs and drawings and sale of plants and equipments, deserves to be reversed in very terms in light of *Ishikawajma-Harima Heavy Industries Ltd. Vs DIT [2007] 288 ITR 408 (SC)* dealing with identical off-shore services.

11. Learned CIT(DR) on the other hand places vehement reliance on both the authorities' action holding the assessee's impugned receipts from sale of designs and drawings as well as plant and machinery, as taxable in India. Mr. Basanta further seeks to buttress the point that in some of the instances, the assessee's designs and drawings do not even have a clear-cut nexus with the relevant projects executed in the assessment year(s) in question.

12. We find only a part merit in the Revenue's foregoing contentions. We make it clear that the earlier learned coordinate bench(es) hereinabove has already decided the issue of taxability of assessee's income, be it from sale of designs and drawings or off-shore sale of plant and machinery, against the department by quoting the corresponding adjudication right from AY 1992-93 onwards whilst holding that the impugned receipts are not taxable

in India under the provisions of the Act. Coming to the Revenue's foregoing limited objection of reconciliation of the assessee's designs and drawings vis-à-vis, the corresponding projects (supra), we direct the learned Assessing Officer to re-verify its details as per law within three effective opportunities. We make it clear that it shall be the assessee's onus only to plead and prove the relevant facts in the consequential reconciliation. These assessee's third and fourth substantive grounds succeed in very terms.

13. Next comes the assessee's fifth substantive ground challenging both the learned lower authorities' action holding its alleged reimbursements representing installation of SAP software, regular breakup and maintenances and intranet charges, as the case may be, as taxable in India, under the head "fee for technical services. We find that the DRP's directions dated 28.08.2014 in assessee's case itself for AY 2010-11 have already accepted the instant claim thereby concluding in para 15 thereof that the same are neither taxable as a "FTS" under section 9(1)(vii) of the Act for want of any technical services being provided nor royalty under section 9(1)(vii) Explanation 1 of the Act. All these clinching intervening developments have gone unrebutted from the Revenue

side. We thus adopt judicial consistency in absence of any distinction of facts or law, as the case may be, to delete the impugned addition. The assessee's firth substantive ground is accepted.

14. Lastly comes the assessee's sixth substantive ground contesting the chargeability of interest in its case under section 234B of the Act being a non-resident. Suffice to say, the case law (2021) 438 ITR 174 (SC), DIT Vs. Mitsubishi Corporation has already settled the instant issue in assessee's favour and against the department, thereby holding that section 209(1) proviso inserted in the Act vide Finance Act, 2012, carries prospective effect only. We reiterate that the assessment year before us is AY 2008-09. That being the case, we accept the assessee's sixth substantive ground in very terms.

15. This assessee's "lead" appeal ITA Nos. 5580/Del/2011 for AY 2008-09 partly succeeds in above terms.

ITA Nos.2144/Del/2012 & 1074/Del/2014 for AY: 2007-08 (M/s. SMS Siemag AG)

16. The assessee has filed its twin appeals ITA Nos. 2144/Del/2012 and 1074/Del/2014. We note with the able assistance coming from both the parties that the above former

appeal is directed against learned Director of Income Tax [Intl. Taxation]-II, New Delhi, section 263 revision direction holding the Assessing Officer's section 143(3) assessment framed on 22.12.2009, as an erroneous one causing prejudice to the interest of the Revenue for not having examined the relevant contracts/agreements relating to designs and drawings and sale of plants/equipments (supra). The assessee's latter appeal 1074/Del/2014 raises its identical substantive grounds in the very factual backdrop, since arising from the Assessing Officer's consequential assessment framed on 23.12.2013 u/s 143(3) r.w.s. 263 r.w.s. 144C, inter alia, holding receipts under both the above heads as taxable in India followed by charging of section 234B interest.

17. Faced with this situation, we find that the learned Assessing Officer's former round of scrutiny assessment had not examined the assessee's relevant contracts/agreements by way of detailed inquiry, and therefore, we find no fault in section 263 revision directions herein in principle in plight of Malabar Industrial Co. Lt. Vs. CIT, (2000) 243 ITR 83 (SC). We accordingly uphold the learned

DIT's section 263 revision direction in very terms. The assessee's former case ITA No. 2144/Del/2012 fails therefore.

18. So far as the assessee's latter appeal ITA No. 1074/Del/2014 is concerned, we note that all three substantive grounds of taxability of receipts derive from designs and drawings, off-shore sale of plants/equipments and section 234B interest involve identical set of facts as in the "lead" assessment year 2008-09. We thus accept the assessee's instant three substantive grounds in very terms. So is the outcome of it's main appeal ITA No. 1074/Del/2014, which stands allowed.

ITA No. 6106/Del/2012 for AY: 2009-10
(SMS Siemag AG)

9. We note herein as well that assessee's former three substantive grounds of taxability of its receipts/income derived from sale of designs and drawings, off-shore sale/supply of plants and equipments and charging of section 234B industrial, involve identical set of facts as in the "lead" assessment year 2008-09, as fairly conceded by both the parties. We thus accept all these three substantive grounds in assessee's favour.

20. Lastly comes the assessee's sixth substantive grounds raising TDS credit issue, which mainly requires the Assessing Officer's

afresh factual verification and computation than our substantive adjudication. The same is accordingly restored back to the learned Assessing Officer in very terms.

21. This assessee's appeal ITA No. 6106/Del/2012 is partly allowed.

ITA No. 6359/Del/2014 for AY: 2010-11
(SMS Siemag AG)

22. The assessee's instant appeal admittedly raises three substantive grounds, inter alia, contesting taxability of income/receipts derived from sale of designs and drawings, off-shore sale/supply of plants and equipments and charging of section 234B interest, in identical factual backdrop as in the "lead" assessment year 2008-09; and the same succeeds in very terms therefore.

23. This assessee's appeal is allowed.

ITA No. 6161/Del/2015 for AY: 2011-12
(SMS Siemag AG)

24. It transpires during the course of hearing that the assessee's third, fourth and sixth substantive grounds raise as many issues of taxability of its income/receipts, derived from sale of designs and drawings, off-shore sale/supply of plants and equipment and

charging of section 234B interest with the last ground of short credit of TDS deducted at source; respectively. That being the case, we accept the above former three assessee's grounds in the assessee's favour and direct the learned Assessing Officer to verify and compute the corresponding TDS deducted as per law, in preceding terms.

25. This assessee's appeal ITA No. 6161/Del/2015 is partly allowed.

ITA No.256/Del/2017 for AY: 2012-13
(SMS Group GmbH)

26. We note at the outset that the assessee's instant appeal raises four issues as in the immediately preceding assessment year 2011-12 decided hereinabove. We make it clear before parting that so far as the assessee's section 234B interest liability is concerned, explanatory memorandum to Finance Act, 2012; regarding section 209(1) amendment (supra), has made it clear that the same applies from FY 2012-13 onwards only. We reiterate that we are dealing with FY 2011-12 herein. That being the case, we partly accept the assessee's instant appeal as in the preceding assessment year 2011-12 in very terms. Ordered accordingly.

27. This appeal is partly allowed.

ITA No.7569/Del/2017 for AY: 2013-14
(SMS Group GmbH)

28. This assessee's appeal ITA No.7569/Del/2017, inter alia, raises four issues as in the immediately preceding assessment year since the only difference therein is qua chargeability of section 234B interest; applicable in its case as per the statutory amendment (supra).

29. That being the case, we accept the assessee's former twin substantive grounds raising the issues of taxability of its income derived from sale of designs and drawings and off-shore supplies involving plants and equipments and restore the latter as many issues of TDS credit and section 234B back to the learned Assessing Officer for afresh factual verification and consequential computation in very terms

30. This appeal ITA No. 7569/Del/2017 is partly accepted.

ITA No. 7570/Del/2017 for AY: 2014-15
(SMS Group GmbH)

31. This assessee's appeal raises identical four substantive grounds as in the preceding assessment year 2013-14, and therefore, in light of both the parties' fair stand adopted during the

course of hearing, the same is partly accepted in very terms. Ordered accordingly.

32. This appeal ITA No. 7570/Del/2017 is partly allowed.

ITA No.5521/Del/2018 for AY: 2015-16
(SMS Group GmbH)

33. This assessee's appeal, inter alia, raises three substantive grounds raising as many issues of taxability of its income/receipts arising from sale of designs and drawings, supply of plant and equipments and charging of section 234B interest. In identical factual backdrop, we thus accept the instant former twin substantive grounds and restore the last one of section 234B interest computation back to the learned Assessing Officer as consequential in nature in very terms.

34. This assessee's appeal ITA No. 5521/Del/2018 is partly allowed.

ITA No.3070/Del/2019 for AY: 2015-16
(M/s. SMS Mevac UK Ltd.)

35. The assessee/appellant herein M/s. SMS Mevak UK Ltd. raises only its twin substantive grounds of income derived from sale of designs and drawings as not taxable in India and that of charging of section 234B interest in identical factual backdrop. We thus accept the instant former substantive grounds and restore the

matter latter one of section 234B interest issue back to the learned Assessing Officer for his afresh computation as per law in very terms.

36. This assessee appeal ITA No. 3070/Del/2019 is partly allowed.

ITA No.4044/Del/2019 for AY: 2016-17
(SMS Group GmbH)

37. It emerges during the course of hearing that both the parties' identical fair stand that the assessee's instant appeal raises twin substantive grounds of taxability of income from sale of designs and drawings and chargeability of section 234B interest involving identical factual backdrop, as in the preceding case, which has been partly accepted.

38. This assessee's appeal ITA No.4044/Del/2019 is partly allowed in very terms.

ITA No.9738/Del/2019 for AY: 2016-17
(M/s. SMS Mevac UK Ltd.)

39. This assessee's instant appeal raises twin substantive grounds of taxability of its income/receipts derived from sale of designs and drawings and section 234B interest computation as in

the preceding case hereinabove. Faced with this situation, we partly accept the assessee's instant appeal in very terms.

40. This assessee's appeal ITA No.9738/Del/2019 is partly allowed in above terms.

ITA No. 375/Del/2020 for AY: 2016-17
(M/s. SMS Meer GmbH)

41. Lastly comes M/s. SMS Meer GmbH (ITA No.375/Del/2020) raising the identical substantive grounds of taxability of income derived from alleged supervisory services and fee for technical services along with charging of section 234B interest; involving varying sums. We note from a perusal of the learned CIT(A)'s lower appellate discussion in para 5.4, page 10, onwards that he has admittedly placed reliance on his earlier findings in AY: 2015-16 appeal in the assessee's case. We make it clear that we have already rejected the Revenue's very argument in the said preceding assessment year. We thus adopt judicial consistency to accept assessee's former substantive grievance and restore section 234B interest computation as consequential issue back to the Assessing Officer in very term.

This assessee's appeal ITA No. 375/Del/2020 is partly allowed.

42. To sum up, the decisions in all the assessees' fourteen captioned appeals are as under:

Sl. No.	Appeal No.	Appellant	Decision
1.	5580/Del/2011	M/s. SMS Siemag AG	Partly allowed
2.	2144/Del/2012	M/s. SMS Siemag AG	Dismissed
3.	1074/Del/2014	M/s. SMS Siemag AG	Allowed
4.	6106/Del/2012	M/s. SMS Siemag AG	Partly allowed
5.	6359/Del/2014	M/s. SMS Siemag AG	Allowed
6.	6161/Del/2015	M/s. SMS Seimag AG	Parly allowed
7.	256/Del/2017	M/s. SMS Group GmbH	Partly allowed
8.	7569/Del/2017	M/s. SMS Group GmbH	Partly allowed
9.	7570/Del/2017	M/s. SMS Group GmbH	Partly allowed
10.	5521/Del/2018	M/s. SMS Group GmbH	Partly allowed
11.	3070/Del/2019	M/s. SMS Mevac UK Ltd.	Partly allowed
12.	4044/Del/2019	M/s. SMS Group GmbH	Partly allowed
13.	9738/Del/2019	M/s. SMS Mevac UK Ltd.	Partly allowed
14.	375/Del/2020	M/s. SMS Meer GmbH	Partly allowed.

A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 9th April, 2025

Sd/-	***sd/-***
(S. RIFAUR RAHMAN)	**(SATBEER SINGH GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 9th April, 2025.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi