

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

Before

SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

&

SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 616/KOL/2025

Assessment Year: 2022-23

Metso OYJ	Vs.	ACIT, (International Taxation), Circle-1(2), Kolkata
<i>(Appellant)</i>		<i>(Respondent)</i>
PAN: AABCO2957Q		

Appearances:

Assessee represented by : K.M. Gupta, AR.

Department represented by : Praveen Kishore, CIT, DR.

Date of concluding the hearing : 11-June-2025

Date of pronouncing the order : 25-August-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Assessing Officer (hereinafter referred to as Ld. 'AO') passed u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2022-23 dated 23.01.2025, which has been passed against the order of the Dispute Resolution Panel (the 'Ld. DRP/Ld. Panel') u/s 144C(5) of the Act, dated 30.12.2024.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

"1. That on the facts and in the circumstances of the case and in law, the order passed by the Ld. Assistant Commissioner of Income Tax ("Ld. AO")



under section 143(3) read with section 144C(13) of the Income tax Act, 1961 ("the Act") is bad in law.

2. Taxability of income earned from certain group services

2.1. That on the facts and in the circumstances of the case and in law, the Ld. AO erred in holding that the income earned from provision of various group services (such as treasury services, business area services and market area services) is taxable in India as fees for technical services ("FTS") under the provisions of Article 12 of the India-Finland Double Taxation Avoidance Agreement ("DTAA") without appreciating that such income is not chargeable to tax as FTS as per the provisions of section 9(i)(vii) of the Act in the first instance.

2.2. Without prejudice to the above and on the facts and in the circumstances of the case and in law, the Ld. AO erred in holding that the income earned from various group services is taxable as FTS under the provisions of Article 12 of the DTAA by not appreciating that income earned from these services performed entirely in Finland and none of the employees of the Assessee have visited India to provide these services. Therefore, income from these services would not be taxable in India in view of the provisions of Article 12(5) of the DTAA.

3. Taxability of income from guarantee fee

3.1 That on the facts and in the circumstances of the case and in law, the Ld. AO erred in holding that the guarantee fee received by the Appellant is taxable in India under section 56 of the Act read with Article 21 of DTAA.

3.2 That on the facts and in the circumstances of the case and in law, the Ld. AO erred in holding the guarantee fee is taxable in India without appreciating the fact that such income does not accrue or arise in India and accordingly cannot be brought to tax in India as per the relevant provision of the Act as well as DTAA.

3.3 Without prejudice to the above and on the facts and in the circumstances of the case and in law, the Ld. AO erred in not appreciating that guarantee fee being business income of the Appellant is not taxable in India in the absence of permanent establishment of the Appellant in India under Article 5 read with Article 7 of the DTAA.

4. Levy of interest u/s 234B of the Act

4.1 That on the facts and in the circumstances of the case and in law, Ld. AO erred in levying interest under section 234B of the Act whilst computing the tax liability of the Appellant for the year under consideration as after reducing the tax deducted at source ("TDS") from the Assessed tax on total



income, the Appellant was entitled to a refund and thus, section 234B was not applicable on the Appellant

5. Initiation of penalty, under section 270A of the Act

5.1 That on the facts and in the circumstances of the case and in law, Ld. AO erred in proposing to initiate penalty under section 270A of the Act.

6. That the Appellant reserves its right to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal.”

3. Brief facts of the case as appearing in the directions of the Ld. DRP are that the assessee M/s. Metso OYJ (Earlier known as "Metso Outotec OYJ") is a company incorporated in Finland and a tax resident of Finland. It claims to be a worldwide leader in providing innovative and environmentally sound solutions for a wide range of customers in metals processing industries. The return showing total income of ₹ 'NIL' was filed by Metso Outotec OYJ on 29.11.2022 for the impugned assessment year showing total taxable income of ₹ 'NIL' which was selected for complete scrutiny under Computer Assisted Scrutiny Selection (in short 'CASS') on the issue of large refund claimed by non-resident. During the year under consideration the assessee had earned revenue under the following heads in India:

- i. Recharge of group services fees, business area service fee and other centralized services
- ii. Guarantee fees
- iii. Reimbursement of External Training Cost

4. The Ld. AO proposed certain additions to the assessee and the assessee approached the Ld. DRP objecting to the same, which issued certain directions on 30.12.2024 to the Ld. AO, who incorporated the same and made an addition of ₹38,48,97,421/-. The addition was proposed on account of services provided under the Master Service



Agreement (in short 'MSA') which included provisions of certain centralised services to the subsidiaries of the assessee including but not limited to global communication and digital marketing, sales process and tool development, strategy and business intelligence, human resources, legal, treasury, finance and tax etc., which were named as group services. The Ld. AO examined Article 12 para 1 of the DTAA between India and Finland, the allocation rule of taxation between India and Finland as para 2 of the Article 12 and proposed an addition of ₹ 38,48,97,421/- to the income of the assessee as fee for technical services.

4.1 Regarding the taxability of income from IT services rendered under the service agreement with Outotec India Pvt. Ltd., the Ld. Panel upheld the Ld. AO's view that the income from the technical services amounting to ₹38,48,97,421/- was taxable in India as services benefited Outotec India Pvt. Ltd. and clause 2 of the Service Agreement further affirmed the connection by linking the services to the buyer's evolving business needs. The Ld. Panel concluded that the services are considered performed only when the beneficiary can utilise them. Since the legal and factual framework remained consistent across the years, the Ld. Panel reiterated its decision for AYs 2018-19, 2020-21 and 2021-22, dismissing the assessee's objections.

5. Another sum of ₹ 16,28,920/- on account of bank guarantee fee for corporate guarantee to the bank for Outotec India and Metso India during the year under consideration was examined and a sum of ₹ 16,28,920/- was proposed on account of guarantee fee from Metso India Pvt. Ltd./Metso Outotec India Pvt. Ltd. (merged entity), as income from other sources.



5.1 On the 2nd issue of income of bank guarantee fees being business income and not taxable in India due to the absence of a permanent establishment (PE), the Ld. Panel examined the submissions along with the Articles of Association and additional evidence provided by the assessee and referred to earlier observations for AY 2013-14 wherein the income from corporate guarantees was categorised as “income from other sources” rather than business income. The Ld. Panel upheld the view that the guarantee provision was not a routine business activity but rather an obligation arising from the parent-subsidary relationship and rejected the assessee’s reliance on article 7 of the DTAA, noting that the income did not qualify as business income and fell within the purview of Article 21(3). The Panel reasoned that the situs of utilization of the corporate guarantee service was in India, where the assessee earned the related income and emphasized that the corporate guarantees were utilized for the business of Outotec India, with the invoicing and related income accruing in India. Therefore, relying on the factual and legal framework established in prior assessments, the Ld. Panel upheld the Ld. AO's decision, reiterating its stance for AYs 2018-19, 2020-21 and 2021-22. The objections raised by the assessee were dismissed and the Ld. AO added an amount of ₹16,28,920/- to the total income which was assessed at ₹38,65,26,341/-.

6. Aggrieved with the assessment order, the assessee has filed the appeal before the Tribunal. Before us, the Ld. AR appeared and stated that the issues are covered against the assessee by the order of the Coordinate Bench of ITAT, Kolkata in ITA No. 300/KOL/2022 for AY 2018-19 and 269/KOL/2023 for AY 2020-21 in the assessee’s own case. However, the assessee was agitating the same so as to keep the issues alive. Our attention was drawn to the written submission filed

regarding the income from certain group services fee which is reproduced as under:

“3. The Appellant is engaged in the business of rendering group services, treasury services, business area services and market services to Outotec India Private Limited (“OIPL”), Metso India Private Limited (“MIPL”) and Metso Outotec India Private Limited (“MOIPL”) pursuant to a Master Services Agreement. A copy of the master service agreement entered with OIPL and MIPL is attached at page 19 to 50 of the paper book. Furthermore, copies of the relevant invoices are attached at page 10 to 18 of the paper book.

4. The taxability of revenue earned by the Appellant from provision of these services is governed as per the provisions of Article 12(5) of India-Finland DTAA. Since these services are provided from outside India and none of the employees of the Appellant have visited India to provide these services, the revenue earned by the Appellant from performance of group services outside India also does not accrue or arise in India and therefore, cannot be brought to tax in India as per Article 12 of the India-Finland DTAA. The relevant extract of Article 12(5) of the India-Finland DTAA is reproduced hereunder

“5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself a political sub-division, a local authority, or a resident of that State. Where, however, the right or property for which the royalties are paid is used within a Contracting State or the fees for technical services relate to services performed, within a Contracting State, then such royalties or fees for technical services shall be deemed to arise in the State in which the right or property is used or the services are performed. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

5. As per the first sentence of paragraph 5, FTS shall be deemed to arise in India when the payer is a resident of India. However, the second sentence in paragraph 5 of Article 12 of the India-Finland DTAA qualifies the first sentence and states that where FTS relates to services performed in Finland, then such FTS shall be deemed to arise in Finland and accordingly, shall not be taxable in India.



6. Accordingly, where FTS is paid by a resident of India to a resident of Finland, such fees would be deemed to arise in India as per the first sentence in paragraph 5 of Article 12 of the India-Finland DTAA. However, where such fees relate to services performed in Finland, the second sentence in paragraph 5 of Article 12 would override the first sentence and such income shall be deemed to arise in Finland and thus, would not be taxable in India.

7. The 'performance' condition mentioned in the second sentence in paragraph 5 of Article 12 of the India-Finland DTAA was not present in the old India-Finland DTAA (which was replaced by the currently applicable DTAA with effect from April 1, 2011). Copy of the India-Finland DTAA is enclosed at Page Furthermore, a similar performance condition only finds place in only one more DTAA entered into by India i.e., the India-Israel DTAA (wherein it has been mentioned that FTS shall be deemed to arise in a Contracting State when the services are rendered in that State and the payer is that State itself, a political sub-division, a local authority or a resident of that State). In fact, even after the new India-Finland DTAA has come into effect, India has entered into DTAA's with other countries such as Sri Lanka, Korea, Cyprus, Kenya etc. wherein a similar condition has not been mentioned. Accordingly, it is clear that while negotiating the India-Finland DTAA, there was deliberate intention and mutual agreement between both the parties to include this condition and accordingly, the same should be given due weight and meaning while interpreting the DTAA provisions.

8. DTAA's are entered between two countries to provide additional benefits/incentives, with a view to promote trade and cooperation between the two countries. It is an undisputed point that provisions of the Act clearly recognize that the income in the nature of FTS should be taxed on a source basis. However, India and Finland have consciously decided to tax the FTS income only on the basis of the performance condition provided under paragraph 5 of Article 12 of the India-Finland DTAA. If two countries have decided to provide this benefit, then it is respectfully submitted that the same cannot be denied. This fact is clearly fortified by comparing India-Finland DTAA with other DTAA's such as the India-Germany DTAA.

9. In the instant case, as mentioned above, the Appellant has rendered the group services, treasury services, business area services and market services through its offices and workshops situated in Finland and none of the employees of the Company have visited India to provide this service to OIPL, MIPL and MOIPL. Accordingly, the income earned by the Appellant from performance of services outside India do not accrue or arise in India

and therefore, cannot be brought to tax in India as per Article 12 of the India-Finland DTAA.

10. However, the Appellant most respectfully submits that on a similar issue relating to testing services rendered in Finland has been decided against the Appellant in its own case for AY 2018-19 & AY 2020-21 [ITAN0.300/KOL/ 2022 & ITA No. 269/KOL/2023] and in the case of the Appellant's group concern namely Outotec (Finland) Oy [previously known as Outotec (Finland)] for AY 2015-16 (I.T.A. NO.2601/KOI/2018), AY 2016-17 (ITA No. 2356/KOI/2019), AY 2018-19 and 2019-20 (ITA Nos. 350 & 351/KOI/2022). Copy of the order of this Hon'ble Tribunal in the Appellant's own case for AY 2018-19 & AY 2020-21 is attached at page 86 to 108 of the paper book.

11. Having said that, it is submitted that the aforesaid issue has not yet attained finality and the aforesaid orders are the subject matter of appeals filed by the Appellant and Outotec (Finland) Oy before the Hon'ble High Court of Calcutta. Copy of the admission order passed by the Hon'ble High Court of Calcutta is enclosed at page 62 to 77 of the paperbook.

12. In view of above, it is humbly submitted that the income earned by the Appellant from performance of group services outside India does not arise in India and therefore, cannot be brought to tax in India the hands of the Appellant in India in terms of the provisions of Article 12(5) of the India-Finland DTAA.”

7. In view of the fact that the issue has been decided against the assessee on the basis of the directions in the past years in its own appeals in ITA NO. 300/KOL/ 2022 & ITA No. 269/KOL/2023 as per paras 7 and 8 thereof and also in the cases of the group concerns as mentioned in para 10 of the written submissions, we find no infirmity in the directions of the Dispute Resolution Panel/the order of the Ld. AO and dismiss Ground No. 2 of the appeal.

8. As regards the issue relating to guarantee fees received by the assessee, the assessee has submitted as under:

“13. During the year under consideration, the Appellant had earned guarantee fee amounting to INR 16,28,920/- from MIPL/MO IPL for providing guarantees (performance, advance etc.) to the Appellant's customers. Copies of the invoices are enclosed at Pages 51 to 57 of the paperbook.



14. In the final assessment order, the Ld. AO has alleged that even if the guarantees were given in Finland, since the same were used in India, the guarantee fee earned by the Appellant shall be chargeable to tax as other income in India. By doing so, the Ld. AO has not followed the directions of the Ld. DRP's order in the case of Appellant for AY 2013-14 which are also enclosed at page 78-85 of the paper book.

15. In this regard, your Honors will appreciate that the criteria for bringing an income of a non-resident

to charge in India is laid out in section 5(2) of the Act. The following incomes derived by them are liable to tax in India:-

- Income received/ deemed to be received in India in the previous year by or on behalf of such person; or
- Income accruing or arising in India during the previous year; or
- Income deemed to be accruing or arising in India during the previous year

16. In the instant case, since the guarantee fee has been received by the Appellant outside India in foreign currency, it should not be considered to have been received in India.

17. Furthermore, coming to whether such income can be said to have accrued or arisen in India, it is humbly submitted that the right/entitlement of the Appellant to receive the guarantee fees has arisen out of the guarantees given by it to the customers of MIPL/ MOIPL. Thus, the trigger point for the guarantee fees is the giving of guarantees by the Appellant in Finland and therefore, the right to receive the income from India became vested at the instance when the guarantees were provided in Finland.

18. This argument of the Appellant has also been accepted by the Hon'ble DRP in the Appellant's own

case for AY 2013-14 vide directions dated November 16, 2016 (enclosed at Page 78 to 85 of the paperbook) wherein it was held that the guarantee fee earned by the Assessee did not arise in India and accordingly the same was not taxable in India as per Article 21(3) of the India-Finland DTAA. The relevant extract of the directions is reproduced hereunder:-

"The A.O. has held that the income is taxable by virtue of sub clause 3 of article 21 of Indo Finnish DTAA. This interpretation appears to be wrong. For the sake of clarity sub section 3 is reproduced once again:

"3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of Contracting State not dealt with in the

foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other state.

In this case, income of the Assessee which is a resident of Finland, is arising in Finland as bank/Parent Company guarantee has been given in Finland. The service was provided in Finland. Hence, the income has arisen in Finland. The income has not arisen in India, hence, as per sub clause 3 of article 21, income is not taxable in India”

19. Reliance in this regard is also placed on the decision of the coordinate bench of the Hon’ble Mumbai ITAT in the case of M/s Capgemini S.A vs ADIT (Mumbai ITAT) [ITA 7198/Mum/2012], wherein the assessee, a French company had given guarantee to BNP Paribas, a French Bank, whose Indian branch had extended loans to the Indian group company of the assessee. Based on the facts of the case, it was held that since the guarantee has been given by the assessee in France, the income from guarantee fee earned by it clearly arose in France and did not accrue in India nor it could be deemed to be accrued in India.

20. Thus, the amount received by the Appellant in the present case as guarantee fees does not accrue or arise in India.

21. Coming to whether the guarantee fee can be deemed have accrued or arisen in India, attention is drawn to section 9(i)(i) of the Act which states as under: -

“9(1) The following incomes shall be deemed to accrue or arise in India:

(i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situated in India.

22. In the instant case, since the guarantee fees has been earned by the Appellant in the normal course of its business, it should be regarded as business income of the Appellant.

23. Coming to the question of whether or not the guarantee fees can be treated as a business income in the hands of the Appellant, it is important to note that the term “business” is a word of large import. It means almost anything which is an occupation or duty requiring attention as distinguished from sports or pleasure and is used in the sense of occupation continuously carried on for the purpose of profit. In the case of Barendra Prasad Roy vs ITO [1981] 129 ITR 295 (SC), it was held by the Apex Court that the word business is of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour and skill with a view to earn an income.



24. Thus, the essential characteristics which are required to be fulfilled in order to qualify any receipt as a business income are as under.

- Continuous and systematic exercise of activity
- Profit motive
- Transaction between two persons
- Involves a twin activity

25. Applying the above in the instant case, it can be seen that the essential characteristics of business as spelt out above are being fulfilled to enable the transaction to get covered under the definition of business. In the instant case, it is humbly submitted that the Appellant gives similar guarantees to its various subsidiaries on a regular basis and as a continuous activity in order to protect its business interests which is also evident from Appellant's Articles of Association which are enclosed at page 58 to 61 of the paperbook. Thus, the act of providing guarantees on a regular and continuous basis has a direct effect on the profitability of the Appellant. Accordingly, the transactions between the Appellant and MIPL/MO IPL constitute regular business transactions, carried out with a profit motive and therefore, the guarantee fee earned by the Appellant is in the nature of its business income

26. Reliance in this regard is place on the decision of the High Court of Madras in the case of *Amalgamations (P.) Ltd. v. Commissioner of Income-tax 108 ITR 895* [affirmed by the Hon'ble Supreme Court in *Commissioner of Income-tax vs. Amalgamation (P.) Ltd. [1997] 92 Taxman 132 (SC)*] wherein the Hon'ble High Court referred its earlier decision in *Amalgamations (P) Ltd. v. CIT [1969] 73 ITR 380 (Mad)*, wherein it was held that furnishing guarantees for loans obtained by subsidiary companies formed part of the assessee's business. Applying this principle, the Court held that the guarantee was given in the ordinary course of the assessee's business activities.

27. Further, the Hon'ble Chennai ITAT in the case of *Assistant Commissioner of Income-tax, Company Circle HI (3), Chennai v. W.S. Industries (India) Ltd [2011] 128 ITD 98 (Chennai)* held as under:-

13. "It was further found that in the articles and memorandum of association of the assessee, it had been clearly mentioned that it was one of the assessee's business to give guarantees-financial or otherwise and/or to provide security to any person either on behalf of the company or on behalf of others on such terms and conditions as the company shall determine. Hence, giving corporate guarantee duly had the sanction of articles and memorandum of association of the company and as such it was a part of the assessee's business.

14. Moreover, when the transaction had been entered into in a commercially expedient manner, the resultant expense/loss was allowable

15. Therefore, it was clear that giving corporate guarantee was not only one of the objects of the assessee-company but the same was given for its subsidiary company and it was in the interest of the assessee-company and, hence, the commercially expedient decision. Under the circumstances, there was no reason to interfere with the order of the Commissioner (Appeals)".

28. However, as per the provisions of section 9(i)(i) of the Act, the guarantee fee earned by the Appellant can be deemed to have accrued or arisen only if the Assessee has a business connection in India. In this regard, it may be noted that the term "business connection" is not defined in the Act. However, in the case of *Carborandum Co v. CIT* 108 ITR 335, the Hon'ble Supreme Court of India has held that carrying of activities in India is essential to make non-residents have business connection in India.

29. Furthermore, it should be noted that as per Explanation 1(a) to Section 9(i)(i) of the Act, in case of a business of which all operations are not carried out in India, only such part of income can be deemed to accrue or arise in India that is reasonably attributable to the operations carried out in India. In other words, if no operation is carried out in India, no income can be deemed to have accrued or arisen in India. This interpretation is also in consonance with a decision of the Supreme Court of India in the case of *Hon'ble Supreme Court in the judgment of Ishikawajima-Harima Heavy Industries Ltd. vs DIT* [288 ITR 408].

30. In the instant case, as no operations were carried out in India in connection to the provision of guarantees, the question of attributing income to Indian operations does not arise at all. Accordingly, no portion of the guarantee fee earned by the Company can be deemed to have accrued or arisen in India. Therefore, the guarantee fee earned by the Appellant does not fall within the scope of total income, as outlined in section 5(2) of the Act, and the same is not chargeable to tax as per the provisions of the Act.

31. Applying the ratio of the aforesaid cases to the facts in the instant case, it is humbly submitted that the guarantee fees received by the Appellant cannot be brought to tax in the hands of the Appellant in India.

Rebuttal to finding of the ITAT in Appellant's own case of AY 2018-19 and AY 2020-21

32. It is pertinent to add that the issue of income from guarantee fee is decided against the Appellant by the Hon'ble Bench in Appellant's own case for AY 2018-19 & AY 2020-21 (ITA No. 300/KOI/2022 & ITA No.



269/KOI/2023) wherein your Honors have held that the Income from Bank Guarantee fee received by the Appellant is not a business activity, as apart from the subsidiary the Appellant has not given Bank Guarantee to anybody else which can establish that it was engaged in the business of providing Bank Guarantee. The Tribunal further noted that the Appellant was just only safeguarding the business interest of a subsidiary and thus concluded that Income earned by the Appellant from provision of guarantee fee is taxable under the head "Income from other sources". The relevant extract of the order is reproduced below for Honor's kind consideration:

"12. We have duly considered the rival contentions. We find that the ld. DRP has observed that as per Article 2 of the Article of Association of the assessee-company, its main line of business to carry on, by itself or through its subsidiary the design, manufacture, construction of a trade, machinery, devices etc. According to the ld. DRP, the activities of giving of guarantee are only a routine activity. It is an obligation to its subsidiary being the owner of the subsidiary. Hence it is more likely to be a shareholders' obligation/service than business activity. The Ld. DRP has held that it is not a business activity and we do not find any error in this finding of the ld. DRP. Because except its subsidiary, the assessee has not given Bank Guarantee to anybody else, which can establish that it was engaged in the business of providing Bank guarantee. It was just only safeguarding the business interest of a subsidiary and providing them this type of guarantee. The commission income earned on providing such guarantee is taxable under the head "income from other sources". The ld. DRP has rightly dealt with the issue and rightly directed the Ld. Assessing Officer to tax it under the head "income from other sources" as per Article 21."

Copy of the order of the Hon'ble ITAT is enclosed at Page 86 to 108 of the Paperbook.

33. In this regard, it is humbly submitted that in the year under consideration, guarantee fee received by the Appellant is not corporate guarantee but performance guarantee given to the customers of the Appellant's associated enterprises in India. Hence, the same is intrinsically linked with the business of the Indian entity i.e. MOIPL. Correspondingly, the Appellant is also engaged in the similar business that of the Indian entity and therefore the provision of guarantee by the Appellant is in the furtherance of its own business.

34. Further, as mentioned above, Appellant gives similar guarantees to its various subsidiaries on a regular basis and as a continuous activity which establishes that the Appellant is not safeguarding the interest of its

subsidiary but is engaged in the regular business of providing guarantee and the same should be considered to be in the nature of its business income.

35. However, it may be noted that the taxability of business income under the India-Finland DTAA is governed by the provisions of Article 7 which provide that business profits earned by a Finland resident can be taxed in India only if such resident carries on business in India through a PE in India in terms of Article 5 of the DTAA. In the present case since the Appellant does not have a PE in India the guarantee fee received by the Appellant from MIPL/MO IPL cannot be taxed in its hands in India under Article 7 read with Article 5 of the DTAA.

36. With regard to taxability of the guarantee fees received by the Appellant under Article 21 of the DTAA, it is humbly submitted that the provisions of the Act only consider an income as being earned from "other sources" only when it does not fall under any other specific heads of income, one of which is "profits and gains of business or profession". Since providing bank guarantees is a regular business activity for the Company, the guarantee fees received by it from MIPL/ MOIPL should be considered as its business income and not as its income from other sources.

37. Even otherwise, it may be noted that as per Article 21(3) of the India-Finland DTAA, 'other income' can only be taxed in India only if it arises in India. However, in the instant case, keeping in mind the fact that the guarantees were provided outside India and no operations in relation to provision of the said guarantee were carried out in India, the guarantee fee cannot be said to have arisen in India and thus, it cannot be taxed as 'other income' in India as per Article 21(3) of the said DTAA. This view is supported by the decision of the Hon'ble Mumbai Bench of the Tribunal in the case of *Capgemini S.A. v. DCIT (supra)*, wherein it was held that the guarantee commission received by French company for providing a corporate guarantee to a French bank in France, on behalf of its Indian subsidiaries, who were then sanctioned credit facilities by the Indian branches of the French bank, could not be said to have arisen in India and thus, was not taxable in India as 'other income' under Article 23(3) of the India-France DTAA (analogous to the provisions of Article 21 of the said Tax Treaty

38. In view of above, it is humbly submitted that the guarantee fee earned by the Appellant from MIPL/MO IPL is not taxable in India as per the provisions of the Act as well as India-Finland DTAA."

9. The assessee was required to inform whether it had charged a fee on the contract value and it was submitted that 0.1% of the contract



value was charged as guarantee fee. The performance guarantee being the passive income, no PE is required and similar to fees for Bank Guarantee, is in the nature of 'income from other sources'. The assessee contended that paras 25 and 29 of the written submission made may be considered, which have been considered. The Ld. DR relied upon the directions of the Dispute Resolution Panel and the order of the Tribunal in the assessee's own case for AY 2018-19 & AY 2020-21. Since this issue has been decided against the assessee, therefore, following the findings in para 12 of the order of the Tribunal in I.T.A. No. 300/KOL/2022 Assessment Year: 2018-2019 and I.T.A. No. 269/KOL/2023 Assessment Year: 2020-2021, Ground No. 3 is also dismissed and the order of the Ld. AO is confirmed.

10. Ground nos. 4 is consequential in nature and does not require any separate adjudication and Ground No. 5 is dismissed as a separate appeal lies against the penalty.

11. Ground Nos. 1 and 6 being general in nature do not require any separate adjudication.

12. In the result, the appeal filed by the assessee is dismissed and the order of the Ld. AO is confirmed.

Order pronounced in the open Court on 25th August, 2025.

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 25.08.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Metso OYJ, C/o Metso Outotec India Private Limited, First Floor, Building No. 10, Tower A, DLF Cyber City Phase II, Gurgaon, Haryana, 122002.**
2. **ACIT, (International Taxation), Circle-1(2), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata