

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
[DELHI BENCH : "DEHRADUN"/ NEW DELHI]
BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

I.T.A. No. 168/DDN/2024 (A.Y 2016-17)

I.T.A. No. 163/DDN/2024 (A.Y 2017-18)

I.T.A. No. 164/DDN/2024 (A.Y 2018-19)

I.T.A. No. 165/DDN/2024 (A.Y 2019-20)

I.T.A. No. 166/DDN/2024 (A.Y 2020-21)

I.T.A. No. 167/DDN/2024 (A.Y 2021-22)

Dy. Commissioner of Income Tax, Aayakar Bhawan, 13-A, Subhash Road, Dehradun, Uttarakhand	Vs	Weatherford Oil Tools M.E Limited. 6 th floor, Vaman Centre, Makwana Road, J. B. Nagar, Mumbai, Maharashtra PAN: AAACW1524G
Appellant		Respondent
Assessee by	Sh. Salil Kapoor, Adv, Sh. Amit Arora, Adv, Sh. ShivamYadav, adv & Ms. Somya Singh, Adv	
Revenue by	Sh. Mohan Lal Joshi, Sr. DR	
Date of Hearing	09/09/2025	
Date of Pronouncement	28/10/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The captioned Appeals are filed by the Revenue against the orders of Commissioner of Income Tax (Appeals) CIT(A)-Noida, 2 (‘Ld. CIT(A)’ for short), Delhi dated 31/07/2024 for the Assessment Years 2016-17, 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 respectively.

2. All the above Appeals are having identical issues to be decided, therefore, the captioned appeals filed by the Revenue were heard together and decided in this common order.

3. Ground No. 1 to 5 of the Revenue regarding the issue as to whether income of the Assessee shall be taxed as provisions of Section 44BB of the Income Tax Act, 1961 ('Act' for short) or not.

4. The Id. Counsel for the Assessee submitted that the issue involved in Ground No. 1 to 5 are squarely covered in Assessee's own case for Assessment Year 2013-14 to 2015-16 in ITA No. 7334/Del/2017, 7848/Del/2017& 5647/Del/2018 vide order dated 28/04/2025 and for Assessment Year 2012-13 in ITA No. 4424/Del/2017 vide order dated 22/12/2023. Thus, sought for dismissal of the Ground No. 1 to 5 of the Revenue's Appeals.

5. Per contra, the Ld. Department's Representative apart from arguing orally and seeking to allow the Ground No. 1 to 5 of the Revenue, the Ld. Department's Representative also filed detail written submission which is reproduced as under:-

“3. The issues involved in the case are (i) the taxability of some of the assessee's receipts as FTS covered u/s 9(1)(vii) r.w.s. 44DA by the Assessing Officer (AO) as against such receipts offered by the assessee under the ambit of Section 4488 of the Act and (ii) taxability of receipts on account of supply contracts.

3.1. It is an established and undisputed fact that the assessee has a Permanent Establishment (PE) in India through which the assessee has carried out its operations in India. The contracts entered into by the assessee run into several years and there is also addition of the new contracts. The AO after examining the various contracts and the scope & nature of work therein, has held that the receipts largely qualified for taxability u/s 44BB of the Act but NOT ALL receipts were covered u/s 44BB. The AO after examining the nature of work in the contracts has given the finding that the receipts emanating from such service contracts are covered under the definition of Royalty/FTS. The receipts from the

nature of activities, covered under these contracts were considered as FTS and not having any connection with mining activity as mentioned in the order dated 01.07.2015 of the Hon'ble Supreme Court in the case of ONGC vs. CIT

3.2 The Ld. Commissioner of Income-tax (Appeals) relying on the decision of the Hon'ble Supreme Court order in in the case of ONGC vs CIT &Anr in Civil Appeal No. 731 of 2007 dated 01.07.2015 decided the appeal in favour of the assessee.

4. The AO in the assessment order has excluded from other contracts and enumerated the provision of services contained in these service contracts. All the services in these contracts as mentioned in the assessment order and as examined by the Assessing Officer, are in the nature of managerial or technical or consultancy services and further, none of the services mentioned therein indicate any mining like activity; therefore, the receipts generated from such contracts are Royalty/FTS covered under Explanation (2) to Section 9(1)(vi)/9(1)(vii) of the Act, which reads as under:-

Sec. 9(1)(vii) of Income Tax Act, 1961

"(vii) Income by way of fees for technical services payable by -

(a) the Government, or

(b) a person who is a resident, except where the fees are payable in respect of services utilized in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or

Services utilized in a business or profession carried on by such person in India or a person who is a non-resident, where the fees are payable in respect of for the purposes of making or earning any income from any source in India; Provided that nothing in this clause shall apply in relation to any income by way of fees for technical services payable in pursuance of an agreement made before the 1st day of April, 1976 and approved by the Central Government.

[Explanation 1. For the purposes of the foregoing proviso, an agreement made on or after the 1st day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date.

Explanation 2- For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or

consideration which would be income of the recipient chargeable under the head "Salaries"

The assessee does not get the benefit of exclusionary clause 2 of sec. 9(1)(vii) since this activity executing annual maintenance contract and consultancy is not a mining activity and is purely technical service.

Similarly, these nature of activities are not covered under provisions of sec. 44BB and are Royalty in nature as defined in sec. 9(1)(vi) of the Act. Some jobs are for provision of software, software maintenance, AMC of software supplied, EDM 8 Software License AMC for 3 year, support services for landmark drilling software are covered under the definition of Royalty as per provision of sec. 9(1)(vi) of I.T. Act and specifically covered by Explanation -3, Explanation-4, Explanation-5 and Explanation-6 thereof.

As a result the following income/receipts have been specifically included as Royalty receipts as per Explanation 4 to sec. 9(1)(vi):-

i. For the removal of doubts, it is hereby clarified that the transfer of all rights in respect of any rights, property for information includes and has always included transfer of all or any right to use a computer software (including granting of license) irrespective of the medium through which the right is transferred.

Explanation 5

For the removal of doubts, it is hereby clarified that the Royalty includes and has always included consideration in respect of any right, property or information, whether or not-

(a) the possession or control of such right, property or information is with the payer,

(b) (such right, property or information is used directly by the payer,

c) the location of such right, property or information is in India.

Explanation 6-

1. For the removal of doubts, it is hereby clarified that the expression "process includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fire or by any other similar technology, whether or not such process is secret

The receipts falling under the ambit of Royalty/FTS as mentioned in the assessment order, have emanated from the contracts with the following nature of activities/work:-

For inspection and servicing drilling jar

➤ For provision of inflatable plugs, redress kits alongwith related services and operating personnel ➤ For provision of e line services for Rajasthan block

For provision of rock mechanics studies

➤ For provision for P & A package on monthly rental basis

➤ For hiring of core handling, desorption and other lab studies

➤ For provision of annual maintenance of wellfio&reco software

AMC of Liner Hanger System

AMC of Edinburg software

4.1 These are services requiring expertise of highly technical nature. The services do not indicate any construction, mining or like project. This aspect differentiates it from the spirit and findings of the decision of Hon'ble Apex Court in the case of ONGC vs. CIT & Anr in Civil Appeal No. 731 of 2007 dated 01.07.2015, relied upon by the assessee.

4.2 Besides the above, the reliance upon the Hon'ble Apex Court in the case of ONGC vs. CIT & Anr in Civil Appeal No. 731 of 2007 dated 01.07.2015 is misplaced in as much as the case under consideration pertains to AYs to which the amended provisions to section 44BB and 44DA are applicable, unlike in the ONGC case dated 01.07.2015. The ONGC case (supra) applies to Assessment Years prior to the amendment of 2010 whereby the second proviso to Section 44DA was inserted w.e.f. 01.04.2011.

4.3 The AO in the assessment order has emphasized upon the Finance Bill 2010 placed before the Parliament. The AO has noted 'that even before the amendment was introduced, the intention of the legislature was to exclude income in the nature of FTS or Royalties from the purview of section 44BB and it was on account of certain judicial pronouncement which raised doubts regarding the scope of section 44BB vis-a vis Section 44DA that clarificatory amendments had to be brought in to clarify provisions of section 44BB and 44DA.'

5. Further, the Hon'ble High Court of Delhi in the order dated 13.03.2020 in the case of Paradigm Geophysical Pty Limited has analyzed and concluded the pivotal controversy surrounding the interpretation of Section 44BB and 44DA of the Act. These provisions have undergone amendments over the years, the last one being introduced by the Finance Act, 2010. The Hon'ble High Court in Para 13 to Para 16 of the said order has discussed Sections 44BB, (44D) and 44DA of the Act and their interplay. The Hon'ble ITAT has concluded that,

"The principles relating to interpretation of statute, emphatically lay down that statute should be interpreted to preserve the legislative intent. A reading of the overall scheme of section 44BB and 44DA leaves no manner of doubt that section 44BB applies if the assessee is engaged in the business of providing services or facilities in the prospecting for, or extraction or production of minerals oils. However, if income earned by such assessee takes the colour of royalty or FTS, then the computation

for the purposes of determining "profits and gains of business or profession" is to be done as per the provisions of section 44DA of the Act. Therefore, now in the current scenario if the income of the assessee is Royalty or FTS, then the same would be taxed under Section 9(1)(vi)/(vii) read with Section 115A or 44DA, as the case may be."

What transpires from the above referred judgment is that it is the nature of the income/receipts in the hands of the assessee that will determine whether such receipts are to be taxed u/s 44BB or 44DA of the Act. If income earned by such assessee takes the colour of royalty or FTS, then the computation for the purposes of determining "profits and gains of business or profession is to be done as per the provisions of section 44DA of the Act and to be taxed under Section 9(1)(vi)/(vii) read with Section 115A or 44DA, as the case may be.

5.1 The Hon'ble High Court of Delhi in the order dated 13.03.2020 in the case of Paradigm Geophysical Pty Limited, has categorically analyzed and discussed in depth, the order of the Hon'ble Apex Court in ONGC vs. CIT & Anr in Civil Appeal No. 731 of 2007 dated 01.07.2015 (supra). The Hon'ble Delhi High Court of Delhi in Para 17 of the order dated 13.03.2020 has observed as under:

"In Oil and Natural Gas Corporation (ONGC) v. Commissioner of Income Tax and Anr. (supra), the "pith and substance" test was applied in respect of the position that existed prior to the amendments taken note of hereinabove and, therefore, the said judgment does not deal with the situation that we are faced with on question of interplay of the two provisions. Furthermore, in the said case, the Supreme Court concluded that the services provided to ONGC by Contractors in the batch of appeals do not qualify as FTS, in view of the exclusionary part of Explanation 2 to Section 9 (1) (vii). In that view of the matter, the Court held that the services are to be taxed under Section 44BB. The Court, thus did not have the occasion to consider the import, effect and purpose of proviso to Section 44BB, that existed during the relevant time."

6. In the instant case, the Hon'ble Commissioner of Income-tax (Appeals), while adjudicating the appeal in assessee's case, has largely relied upon the ONGC case (supra). The Ld. CIT(A) has ignored the amended provisions of Section 44BB and Section 44DA of the Act, applicable in the assessee's case which pertains to AYs after the amendments applicable w.e.f. 01.04.2011. The amended provision to Section 44BB clearly carves out that sub-section (1) to Sec 44BB shall not apply in a case where the provisions of section 42 or section 44D or [section 44DA or] section 115A or section 293A apply for the purposes of computing profits or gains or any other income referred to in those sections."

7. From the scope of work as discussed in the assessment order the AO has inferred that the contracts are for services which are in the nature of managerial or technical or consultancy services (including provision of services of technical or other personnel) and therefore, fall under the

ambit of FTS/Royalty as defined in Explanation (2) to Section 9(1)(vii)/9(1)(vi) of the Act. The AO arrived at the said conclusion after examining the contractual receipts which then were segregated by the AO as covered u/s 44BB and as covered u/s 44DA of the Act. Once the receipts are established to be in the nature of Royalty/FTS, it is the provisions of section 44DA which are applicable for taxability of such receipts.”

6. We have heard both the parties and perused the material available on record. The Co-ordinate Bench of the Tribunal in Assessee’s own case for Assessment Year 2013-14 to 2015-16 in ITA No. 7334/Del/2017 and other connected Appeals vide order dated 28/04/2025, while deciding the above issue held as under:-

“8. The Revenue’s first and foremost substantive ground herein seeks to assess the assessee’s revenue receipts derived from core/fluid analysis services and software maintenance contracts, as fee for technical services u/s 9(1)(vii) r.w.s. 115A/44DA of the Act.

9. It emerges during the course of hearing that the instant issue is indeed a recurring one between the parties having travelled upto the tribunal in at least from assessment year 2007-08 onwards. Learned counsel refers to the tribunal’s order in A.Y. 2011-12 involving the Revenue’s appeal ITA No. 6586/Del/2014 decided on 31.05.2018 in assessee’s favour as under:

“2. Brief facts of the case are as under: Assessee for the year under consideration filed its return of income declaring total income of Rs. 10,83,04,365/- under section 44BB on total receipts of Rs. 122,79,09,521/-. The case was processed under section 143(1) and notices under section 143(2) was issued to assessee along with the questionnaire under section 142(1) of the Act. In response to the notices issued representatives of the assessee appeared before Ld. AO and filed necessary details as called for.

3. Ld. AO completed the assessment at Rs.21,94,29,740/- by including the reimbursement of service tax expenses incurred by assessee in the gross receipts and treating the royalty received from another non-resident as income of assessee thereby estimating 25% of the Gross revenue towards the same.

4. Aggrieved by the order of Ld. AO assessee preferred appeal before Ld. CIT (A) who deleted additions made by Ld. AO.

5 . *Aggrieved by the order of Ld .CIT (A) the revenue is in appeal before us now.*

6 . *In a nutshell the issues that requires to be considered is: Whether the income of assessee shall be taxed as per the provisions of section 44AB; Whether the service tax forms part of the receipts as per provisions of section 44B of the act;*

6 .1 . *Both parties admit that issues raised by assessee in the present appeal is covered in favour of assessee by decision of coordinate bench of this Tribunal in ITA No. 3910/del/2014 for assessment year 2010-11 vide order dated 29/01/18. This Tribunal has decided the issue as under:*

“4 . Heard arguments of both sides and perused the material on record. Learned AR submitted that the issue relates to the 2 treatment of income from PSC and non PSC contracts for taxability as per provisions o f Section 44BB ofthe Ac t had come up for consideration be fore a coordinate bench of this Tribunal in ITA Nos .5290/Del/2010 , 419/De1/2012 and 6391/De1/2013 for the Asstt. Years 2007-08 , 2008-09 and 2009-10 respectively wherein it has been held that the income on account of provision of equipment and services earned by the assessee company shall be taxable as per the provisions of Section 44BB of the Act. He further submitted that the appeal preferred by the revenue against the said order was dismissed by the Hon'ble Uttarakhand High Court. At the very threshold, he further submitted that the Hon'ble Apex Court in the case of ONGC vs . CIT. 376 ITR 306 held that the services in connection with exploration and production of mineral oil shall fall within the purview of S .44 BB and outside the purview of fees for technical services as de fined in Section 9(1)(vii) of the Ac t. He also brought it to our notice that in the assessment order for the Asstt . Year 2014-15 , learned AO had accepted the taxability o revenue as per provisions of Section 44BB. Learned OR placed reliance on the assessment order.

5 . *We have perused the order dated 11 .7 .2014 by a coordinate bench of this Tribunal in ITA No .5282 of 2012 and batch wherein the assessee is also a party in ITA No .5290/0el/2010. Vide paragraph 227 of this order, the Bench while dealing with the addition qua equipment rental, service charges and sale of consumables and services rendered by assessee in connection with exploration/prospecting/ex traction of mineral oil held that the income arising on account of royalty/FTS , letting out o equipment etc. was to be taxed u/s 44BB . Appeal preferred against this order by the revenue in ITA No.76/14 and Income-tax Appeal No.27/15 was dismissed by the Hon'ble Uttarakhand High Court by order dated 6 .8 .15 and vide para No.6(i), the Hon'ble High Court decided the issue against the revenue. Since the issue of assessment of the revenue from PSC and non PSC contracts was substantially involved*

in ITA No .5282/2012 and batch and decided by the Tribunal and also by the Hon'ble High Court in favour of the assessee, while respect fully following the same , we answer this issue that the income on account of provision of equipment and services earned by the assessee company shall be taxable as per the provisions of Section 44BB of the Act .

6 . Now, coming to the second issue relating to the service tax, learned AR placed reliance on the decision of the Hon'ble Jurisdiction High Court in the case of CIT vs. Mitchell Drilling International P. Ltd . 380 ITR 130 in support of his contention that the service-tax being statutory levy , should not form part of gross receipts as per provision of Section 44BB of the Act . He further placed reliance on the decision of the coordinate bench in the case of DDIT vs. Sundowner Offshore International (Bermuda) Ltd. ITA 1067/De1/2016 for a similar principle. We find that the principle laid down in the above decision squarely applies to the facts of this case also , as such, while respect fully following the same, we answer the issue that the service-tax does not form part of the gross receipts for computation u/ s 44BB of the Act .”

7 . Respectfully following the same, we do not find any infirmity in the observations of Ld . CIT (A) and the same is upheld .

8 . Accordingly ground raised by revenue stands dismissed.“

10. A perusal of the case file further indicate s that hon'ble jurisdictional high court (Uttarakhand) had also declined the Revenue's tax appeal. We thus conclude in these facts and circumstances that the CIT(A)'s detailed discussion directing the assessee's assessment u/s 44BB of the Act does not warrant any inference going by judicial consistency. We thus reject the Revenue's instant first and foremost substantive ground in very terms.”

7. By respectfully following the above ratio laid down by the Hon'ble High Court of Uttarakhand which has been followed by the Tribunal in Assessee's own case for Assessment Year 2013-14 to 2015-16 (supra), we dismiss the Ground No. 1 to 5 of the Revenue's Appeals as devoid of merit.

8. The Ground No. 6 to 8 of the Revenue are on the issue as to whether income on account of offshore sale of equipment shall be taxed 44BB of the Act attribution as per A.O. or @2% as offered by the Assessee based on profit attribution report or not.

9. The Ld. Counsel for the Assessee submitted that the above issue is also covered in Assessee's own case decided by the Tribunal for Assessment Year 2013-14 to 2015-16 (supra), wherein it has been held that the entire revenue on account of sale of material from composite contracts and sale of material from pure supply/standalone contract taxed at profit margin of 2% as offered to tax by the Assessee.

10. Per contra, the Ld. Department's Representative apart from making oral arguments, filed the written submission which is reproduced as under:-

“8. Regarding the issue of Supply Contracts, it is submitted that, the supply contracts have been further categorized into two type of contracts (i) Composite contract and (ii) pure supply contracts. Composite contracts are the ones which contain both an element of supply as well as activities covered u/s 44BB and the receipts from such composite contracts including sales were found eligible for income to be computed u/s 44BB of the Act. However, it is not so in respect of the independent pure supply contracts. The AO has found that the supply contracts are independent sale contracts and therefore, provisions of sec. 44BB of I.T. Act are not get attracted. Therefore, income is to be computed outside the purview of sec. 44BB of I.T. Act. The supply contracts involve supply of imported material and any associated services are not involved.”

8.1 *The assessee has offered standalone sales at 2% of total revenue from sale to tax in India. This has been worked out after taking unadjusted arithmetic mean from a range of 0.35% to 2.94% and also provided a list of comparable namely Aseem Global Ltd, Hazel Mercantile Ltd. and Veritas India Ltd. The AO after examining the comparables has given his findings that the nature of activities of the so called comparable relied upon by the assessee are quite different from the nature of activities in which the assessee is involved. So they are not reliable leading to the conclusion that Profit Attribution Report (PAR) filed by the assessee also cannot be relied upon for computing profit in respect of sale of imported material as done by the assessee.*

8.2 *The revenues generated from the sale component pertained inside India transactions. The profits from such sales/supply of equipment is estimated at 35% in AY 2016-17 and 10% in subsequent AYs. Further 50% of such profit is attributed to sale in India.*

Submitted, for your kind perusal and kind consideration, with the request, that the above submissions may kindly be considered before deciding the issue.”

11. Heard the parties perused the material. The Co-ordinate Bench of the Tribunal while deciding similar issue for Assessment Year 2013-14 to 2015-16 in ITA No. 3734/Del/2017 and other connected matters vide order dated 28/04/2025 held as under:-

“4. Now come the basic relevant facts. This assessee is admittedly a company engaged in providing slick line services, mud logging services , casing services , completion services, LWD/MWD services, directional drilling services, core/ fluid services , AMC for well test interpretation software etc. It had offered it’s revenue on account of sale of material/equipment amounting to Rs.17,27 ,92,605/- at profit margin of 2% going by the corresponding profit attribution report maintained which was assessed u/s 44BB of the Act to the tune of Rs .7 ,25,92 ,605/- representing sale of material from composite contracts and the other head of sale of material from pure supply/standalone contract amounting to Rs.10 ,01,44,938/- was taxed @8%, as it is evident from the Assessing Officer’s detailed discussion dated 18

.05.2016 in para 7.3 page 17 thereof. And that the CIT(A)'s order has followed A.Y. 2012-13 findings for the purpose of taxing the assessee's entire amounting to Rs.17,27,37,543/- at a profit rate/margin of 3.98%. We are informed that the CIT(A) has further excluded the negative data of profit of less than 1% of the comparables as per para 5.27 page 20 onwards.

5. It is in this factual backdrop that we sought to know about the finality of the proceedings between the parties relevant to the preceding assessment year 2012-13. We are informed that the instant issue travelled up to the tribunal and the Revenue's appeal in ITA No. 4424/Del/2017 with cross objection CO No. 192/Del/2017 stands decided on 22.12.2023 as under:

"11. Though the assessee has raised several grounds in its cross objection, the only effective issue to be decided is with regard to attribution of profit on the activities of overseas sale of equipment of the assessee which has been considered by the ld AO as fee for technical services and the ldCIT(A) held the profit rate @3.13 % of gross sales to be attributed to Indian operation, as against the profit rate of 2% attributed by the assessee.

12. We have heard the rival submissions and perused the materials available on record. The assessee offered to tax in respect of sale of tools and equipments made overseas at profit rate of 2% of gross sales of Rs. 38,34,76,937/- as profit attributable to Indian operations carried out in India and accordingly, the same alone would be income deemed to accrue or arise in India. The ld AO however, held that the sales made by the assessee are in nature of composite activities involving supply of consumable and spares which are connected and form intricate part of service contract therefore, to be taxed u/s 44BB of the Act. Before the ldCIT(A), the dispute got narrowed down pursuant to various additional evidences furnished by the assessee and remand report given by the ld AO. The ldCIT(A) vehemently held that the profit attribution rate to Indian operations @3.13 % as against 2% declared by the assessee. Now the short point that arises for our consideration is whether the profit attribution should be estimated at 2% or 3.13%. The ld DR vehemently argued that the profit attribution @2% made by the assessee was without any basis and it was arbitrary and the assessee did not give any details to justify the estimated profit rate 2%. The ld CIT(A) on taking certain comparables had arrived at the weighted average arithmetic mean of 3.13% as under:-

Sl No.	Company name	NPM FY 2009-10 (%)	NPM FY 2010-11 (%)	NPM FY 2011-12 (%)	Weighted average
1.	Hazel Mercantile Limited	3.61%	3.71%	2.97%	3.38%
2.	Super Domestic Machines Limited	0.75%	3.98%	1.70%	2.21%
3.	Jainex Ltd.	2.73%	4.30%	3.99%	3.81%
	Arithmetic mean				3.13%

13. The assessee on the other hand furnished the comparables and arrived at the weighted average arithmetic mean of 1.69% worked out in the following manner:-

Sr.No.	Company Name	NPM FY 2009-10 (%)	NPM FY 2010-11 (%)	NPM FY 2011-12 (%)	Weighted Average
1	Assem Global Limited	1.56%	0.89%	0.40%	0.80%
2	Hazel Mercantile Limited	3.61%	3.71%	2.97%	3.38%
3	P O C L Enterprises Limited	-0.77%	-1.80%	0.14%	-0.87%
4	Veritas (India) Limited	1.37%	1.77%	0.01%	0.85%
5	Super Domestic Machines Limited	0.75%	3.98%	1.70%	2.21%
6	Jainex Ltd.	2.73%	4.30%	3.99%	3.81%
	Arithmetic mean				1.69%
	Min				-0.87%
	Max				3.81%

14. The ld AR before us argued that the ld CIT(A) had ignored the comparable cases where the weighted average of net profit margin were either negative or less than 1%, which has got absolutely no basis. acceptance of comparables given by the assessee to be justified workings for adoption of 2% profit attribution rate as against the comparables of the assessee wherein, arithmetic mean margin of the comparables were 1.69%. Similar issue had arose before the coordinate bench of this tribunal in the case of Smith International Inc. Vs. ADIT in ITA No. 4561/Del/2013 for AY 2010 assessee had offered 2% of which was reworked by the ldCIT(A) @5.08% after ignoring the comparable companies (KOA tools India Ltd) which had incurred loss. The relevant observations of this tribunal are reproduced below:

“14. It was argued that ignoring the functional comparability of KOA Tools Limited which is against comparability study. The company operates in 3 segments i.e., segment tools, Trading of tools and parking. Since the profile of this company, in respect of its trad SIO in terms of functions performed, risks assumed and assets employed, the trading segment of this company has been considered as comparable to SIO for AY 2009 trading segment was not available, hence the company has not been considered comparable for these years. As regards the losses for AY 200910, the assessee submitted that losses are a regular business phenomenon. If a company is otherwise comparable in terms of functions performed, risks assumed and the assets employed, it cannot be rejected as a comparable merely because it has incurred losses in a particular year.

15. It was argued that Koa Tools India Limited meets all comparability criteria examined by the Appellant in view of income-tax regulations and OECD guidelines and

hence, should be considered as comparable as per the law.

16. The assessee relied on the ruling of the Special Bench of Chandigarh ITAT in the case of DCIT vs. M/s Quark Systems Private Limited [2010- TIOL-31-ITAT-CHD-SB], wherein it was held as under:

"25..... While we agree that merely because a comparable is making loss, it cannot be excluded from the list of comparables, Imercius is a case in which not only functional area is different...

17. The above principle has also been upheld by other benches of ITAT in the case of UCB India (P) Limited vs. ACIT (2009) (121 ITD 131) (Mumbai ITAT), ACIT vs. Wockhardt Limited (6 Taxmann.com 98) (Mumbai ITAT), Brigade Global Services Private Limited vs. ITO (ITA No 988/Hyd./2011) (Hyderabad ITAT).

18. In view of the orders of the Co-ordinate bench of ITAT, we hold that Koa Tools India Limited which clears the FAR test should not be rejected as a comparable for the AY 2009-10."

15. It is not in dispute that the comparables chosen by the assessee duly fulfilled the comparability test i.e. FAR (Functions performed, Assets employed and Risks assumed). The ldCIT(A) had also not disputed the comparability test of the 6 comparables chosen by the assessee. He had merely ignored the comparables incurring losses or having weighted average net profit margin less than 1%. Accordingly, we have no hesitation to hold that the comparables chosen by the assessee duly fulfilled the comparability test of FAR analysis and in view of the decision of the Special Bench of Chandigarh Tribunal in the case of M/s Quark Systems Pvt Ltd Vs ITO, Chandigarh reported in 2010-TIOL-31- ITAT-CHD-SB, we hold that Assem Global, POCL Enterprises Ltd and Veritas (India) Ltd should also be included as comparable companies and when these three are included, the weighted average margin of the comparable companies works out @1.69% and the assessee itself had attributed 2% as profit for the Indian operations. Hence, there is no need for further attribution of profit for the Indian operations. Accordingly, we direct the ld AO to accept 2@ profit attribution made by the assessee. Hence, the ground raised by the assessee in its cross objection is allowed."

6. Faced with this situation, we are of the considered view that once there is no distinction on facts and law involved between the parties on the instant issue of the assessee's profit attribution , we hereby adopt judicial consistency in the instant appeal raising the sole substantive ground of income attributed on account of offshore sale of equipment in very terms and direct the learned Assessing Officer to frame his consequential computation . No other ground or argument has been pressed. This assessee's appeal ITA No . 7334/Del/2017 is accepted in very terms."

12. By respectfully following the above ratio laid down by the Tribunal in Assessee's own case for Assessment Year 2013-14 to 2015-16 (supra), we dismiss the Ground No. 6 to 8 of the Revenue's Appeals as devoid of merit.

13. In the result, Appeals of the Revenue's are dismissed

Order pronounced in the open court on 28th October, 2025

Sd/-

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Date:- 28.10.2025

R.N, Sr.P.S*

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1. **Appellant**
2. **Respondent**
3. **CIT**
4. **CIT(Appeals)**
5. **DR: ITAT**

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**