IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.3178/Mum/2023 & 4092/Mum/2023
(**Assessment Year :2020-21 & 2021-22**)

Swiss Re Asia Pte Ltd C/o. Ernst and Young LLP, 14th Floor The Ruby, 29 Senapati Bapat Marg Dadar (W) Mumbai- 400 028	Vs.	Deputy Commissioner of Income Tax (International Taxation) Circle- 4(2)(2), Mumbai
PAN/GIR No.AAXCS8346P		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Anish Thacker & Shri Pranay Gandhi
Revenue by	Shri Satya Pal Kumar, CIT DR
Date of Hearing	**03/11/2025**
Date of Pronouncement	**20/11/2025**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

These two appeals by the assessee, Swiss Re Asia Pte Ltd Singapore, arise from the final assessment orders passed for assessment years 2020-21 and 2021-22 pursuant to directions of the Dispute Resolution Panel under section 144C of the Income tax Act 1961. In the grounds of appeal assessee has raised various grounds including challenging that the impugned order is barred by limitation however, on merits assessee has merely challenged that re-insurance premium

amounting to Rs.422,87,22,703/- earned by the assessee from its Indian cedents. Assessee has a business connection in India as per the provision of Section 9(1)(i) of the Act and permanent establishment in India As per Article 5 of India-Singapore DTAA and also treating the retrocession premium amounting to Rs.8,5116,158,941/- earned by the assessee from SRCL Indian Branch a business income after alleging that it has a business connection and PE in India. Since the facts, the rival contentions and the core issues in both years are substantially identical, and since the very issues already stand adjudicated in favour of the assessee in its own earlier years by co ordinate benches for A.Y.2018-19 and 2019-20, we find it convenient to dispose of both appeals by this consolidated order.

2. The brief facts and background qua the issue involved are that the assessee is part of the Swiss Re Group, a globally recognised reinsurance conglomerate. Within this group structure, three entities are relevant for the present controversy, as elaborated in the factual and legal submissions placed before us. First, Swiss Reinsurance Global Business Solutions India Private Limited, referred to as SRGBS, is an Indian company engaged in providing standardised information technology enabled back office and support services to various Swiss Re group entities across the globe, including the assessee. Its role is confined to support services. It does not carry on any insurance or reinsurance business in India and does not possess any licence from the Insurance Regulatory and Development Authority of India to

render core reinsurance services. It is separately assessed to tax in India in respect of its own profits.

3. Second, Swiss Reinsurance Company Limited, referred to as SRCL, had historically entered into reinsurance contracts outside India with several Indian insurance companies, that is, Indian cedents. Under those treaties, the Indian cedent paid reinsurance premium to SRCL, which in turn undertook to indemnify the cedent on the happening of specified insured events. These treaties were underwritten by the Singapore branch of SRCL. Due to subsequent amendments in the IRDAI regulatory framework, SRCL established an Indian branch, Swiss Reinsurance Company Limited India Branch, referred to as SRIB, which commenced operations with effect from 1 February 2017. From that date, all new reinsurance treaties with Indian cedents were written by SRIB in India, whereas the residual treaties entered into prior to 1 February 2017 continued to remain with the Singapore branch of SRCL until 1 January 2018.

4. Third, the assessee, Swiss Re Asia Pte Ltd, referred to as SRAPL, commenced its reinsurance business in Singapore with effect from 1 January 2018 with a view to take over the existing business of the Singapore branch of SRCL. In pursuance of that group reorganisation, SRCL Singapore branch transferred all of its business, assets and liabilities, including the existing reinsurance contracts with Indian cedents, to the assessee. With effect from 1 January 2018, the assessee therefore stepped into the shoes of SRCL Singapore branch and earned reinsurance premium from Indian cedents

under these pre existing treaties. This portfolio has been described as the run off portfolio. The risk taking and underwriting functions in relation to this run off portfolio were already performed by SRCL Singapore branch at the time of original underwriting and the assessee thereafter continued to bear the ongoing risks and capital commitments in respect of that portfolio for the remaining tenure of those treaties.

5. Apart from the run off portfolio, SRIB in India, in the ordinary course of its reinsurance business, retrocedes a part of the risk that it has assumed from Indian cedents to the assessee under a retrocession agreement. This arrangement is on a principal to principal basis and complies with the applicable IRDAI regulations. In substance, SRIB remains solely and directly liable to the Indian cedents from whom it originally assumes risk under reinsurance treaties entered in India, whereas the assessee contracts with SRIB to assume a part of that risk and earns retrocession premium from SRIB. The capital required in relation to both the run off portfolio and the retrocession business is maintained by the assessee in Singapore.

6. For the financial year ending 31 March 2020 relevant to assessment year 2020 21, the assessee earned reinsurance premium of INR 4,228,722,703 from the run off portfolio and retrocession premium of INR 8,516,158,941 from SRIB. For the financial year ending 31 March 2021 relevant to assessment year 2021 22, the assessee earned reinsurance premium of INR 3,699,288,184 from the run off portfolio and

retrocession premium of INR 17,328,179,294 from SRIB. In addition, the assessee derived income from support services rendered to SRIB and to SRGBS as per intra group service agreements, amounting to INR 277,254,821 and INR 296,270,688 respectively for assessment year 2020 21, and INR 398,374,941 and INR 345,064,016 respectively for assessment year 2021-22. These streams of income constitute the subject matter of the present appeals and the factual narrative is drawn from the detailed paper book placed before us.

7. Underlying these streams of income is the fundamental nature of the reinsurance activity. As explained before us, the most critical function of a reinsurer, and the principal entrepreneurial function in such business, is the assumption of risk and the deployment of capital to meet claims. These Key Entrepreneurial Risk Taking functions, often described as KERT functions, are inextricably linked to underwriting decisions. According to the assessee, such underwriting and risk assumption decisions, both for the run off portfolio and for retrocession business, are taken in Singapore and the capital required to support those risks is maintained in Singapore. On the other hand, claims handling is essentially a verification mechanism and not a risk taking function in itself, as the risk is assumed when the contract is entered into.

8. The assessee has also received support services from SRIB and SRGBS in India under intra group service agreements. These services relate to routine support in

relation to reinsurance treaties in the runoff portfolio, administrative and information technology functions and other back office activities. SRIB and SRGBS are stated to be remunerated on a cost plus basis in line with group transfer pricing policy. The assessee has emphasised that SRIB and SRGBS do not assist or support the assessee in performing its responsibilities in the retrocession business, and that all critical underwriting and risk taking functions in respect of retrocession remain with the assessee in Singapore.

9. For assessment year 2020-21, the assessee filed a return declaring a total income of INR 437,500. In the draft assessment order, the learned Assessing Officer treated the assessee as having a business connection in India under section 9(1)(i) of the Act and as having a permanent establishment in India under Article 5 of the India Singapore tax treaty, both in relation to the reinsurance premium from Indian cedents and the retrocession premium from SRIB. He further held that the service income received from SRIB and SRGBS constituted Fees for Technical Services under Article 12 of the treaty. On this basis he attributed profits to the alleged permanent establishment and taxed the service income as FTS at a rate of 10.92 percent, thereby assessing total income at INR 1,211,357,091 as against the returned income of INR 437,500. The assessee raised objections before the Dispute Resolution Panel, which were rejected by following its earlier directions for preceding years. In sum and substance, the reasonings of the AO are as under:-

"The re-insurance is an agreement between the insurer (cedent) and the reinsurer, whereby a part of the risk gets transferred from one party to another. The party accepting the risk is termed as the reinsurer and the party transferring the risk is termed as the reinsured/ reassured or cedent. In the case of the retrocession agreement the retrocedent transfers a part of its risk to the retrocessionaire (assessee).

ii. The income of the assesses is being earned from India on a regular and continuous basis. In view of this, there is clear cut business connection and the income of the assessee is taxable in India in terms of Sec 9(1)(1) of the Indian Income Tax Act, 1961 i.e the Domestic Income Tax Act

iii. The assessee is having regular flow of income emanating from India under the domestic Act, hence the assessee has a clear-cut business connection in India. The arguments of the assessee on this account are flawed

9.10.3. Further, the total income of Non-Resident Re-insurer like assessee would be chargeable to tax in India, if income is

i. Received or is deemed to be received in India.

ii. Accrues or arises or is deemed to accrue or arise in India

iii. In such a scenario, the contention that assessee does not have any operations in India, is not correct since the business of the assessee is to provide re-insurance services to the clients/ cedents in India.

9.10.4 The income of the assessee is being earned from India on a regular and continuous basis. There is a "real and intimate" connection between the trading activity outside India i.e. business of the assessee and the trading activity done within India by SRIB based on the agreement between SRIB and the assessee In the course of such business, SRIB and SRGBSIPL, acts as Permanent Establishment of SRAPL in India.

10. The Assessing Officer begins by explaining the nature of reinsurance and retrocession, emphasising that the essence of this arrangement is the transfer of risk from the insurer or

cedent to a reinsurer, and in the present case from a retrocedent to the assessee as the retrocessionaire. According to him, the assessee earns income from India in a regular and continuous manner in the course of providing reinsurance support to Indian cedents. This, in his view, creates a clear and direct business connection with India within the meaning of section 9 of the Income Tax Act. He rejects the assertion of the assessee that it has no operations within India, holding that once the risk originates from cedents in India and the reinsurance activity revolves around Indian exposures, the income can only be regarded as having accrued or arisen in India. He further observes that the income of a non-resident reinsurer is chargeable to tax if it is received in India or if it accrues or arises or is deemed to accrue or arise in India, and in the present factual context, the assessee satisfies these statutory conditions because the commercial substance of its business is intimately linked with Indian risks.

10.1. The Assessing Officer then turns to the activities performed in India by Swiss Reinsurance Company India Branch and Swiss Re Global Business Solutions India Private Limited. He examines the intragroup service arrangements and notes that these entities undertake substantial functions that are central to the reinsurance business of the assessee. These include risk assessment, underwriting support, collection of business and client information, actuarial evaluation, liaisoning with cedents, coordination of reinsurance proposals, financial and analytical support, information technology and human resource support, legal

assistance, business facilitation, and processing of claims submitted by cedents. According to him, these activities are not in the nature of preparatory or auxiliary functions but constitute the very core of a reinsurance enterprise. He stresses that the risk assessment function in particular, which forms the heart of any reinsurance activity, is carried out substantially in India, and once this process is completed, very little of commercial importance remains to be performed outside India except for the formal act of signing the contract.

10.2. Proceeding on this analysis, the Assessing Officer concludes that the assessee has a Fixed Place Permanent Establishment in India because the premises and facilities of the Indian entities function as a place of business through which the essential and revenue-generating activities of the assessee are carried on. He further evaluates the matter under Article 5 of the India Singapore Double Taxation Avoidance Agreement and examines whether a Service Permanent Establishment is constituted. For this purpose, he refers to Article 5 paragraph 6 which deems a permanent establishment to arise when technical services are furnished in the source country for more than the threshold period. He records that Swiss Reinsurance Company India Branch and Swiss Re Global Business Solutions India Private Limited provide a wide variety of reinsurance related services for more than ninety days in the relevant fiscal period. These include risk evaluation, underwriting facilitation, business information gathering, and professional services based on specialised domain knowledge. Relying on the decision of the

Supreme Court in the case of GVK Industries, he characterises these functions as technical services and therefore concludes that the conditions for the existence of a Service Permanent Establishment are fully satisfied.

10.3. The Assessing Officer also analyses the matter through the lens of Article 5 paragraph 8 of the Treaty which deals with the creation of an Agency Permanent Establishment. He notes that the Indian entities habitually secure orders for the assessee by interacting with cedents, gathering detailed business information, understanding the reinsurance needs of clients, preparing drafts of underwriting proposals, coordinating with cedents for additional information, and performing the entire chain of activities that ultimately leads to the conclusion of reinsurance contracts. According to him, although the reinsurance contracts may be signed outside India, the substantive commercial actions that culminate in such contracts arise almost entirely within India. Relying on the converse logic of the decision of the Supreme Court in Ishikawajima Harima, he observes that merely signing a contract outside India does not break the commercial nexus to India when the decisive functions and essential inputs that shape the contract are performed in India. He also notes that the processing and evaluation of claims submitted by cedents takes place in India and this, in his view, is a critical component of any reinsurance business and further anchors the business operations of the assessee within India.

10.4. The Assessing Officer additionally observes that the Indian cedents themselves exercise significant control over

the business of the assessee through gross acceptance limits, net premium restrictions, and other commercial parameters that determine the exposure levels of the assessee. According to him, this degree of influence amounts to a form of agency since the cedents collectively and indirectly possess authority that impacts the contractual decisions of the assessee. He therefore concludes that the cedents too can be regarded as agents of the assessee in India. After analysing the functions performed by Swiss Reinsurance Company India Branch and Swiss Re Global Business Solutions India Private Limited in light of the Fixed Place Permanent Establishment, the Service Permanent Establishment, and the Agency Permanent Establishment tests, he reaches the overarching conclusion that all the elements required for establishing a Permanent Establishment under Article 5 are satisfied. On this basis, he holds that the business of the assessee is being carried out in India through these entities and that the income earned by the assessee from Indian cedents is taxable in India under both the domestic law and the Treaty.

11. For assessment year 2021-22, an analogous approach was adopted by the Assessing Officer. He again held that the assessee had a business connection and a permanent establishment in India in relation to the run off portfolio and retrocession business, and that the support service income from SRIB and SRGBS was taxable as FTS. On that basis he assessed total income at INR 5,795,240,824 as against the returned income of INR 125,805,870.

12. Aggrieved, the assessee has come in appeal and has taken detailed grounds of appeal for both years. For assessment year 2020-21, Ground 1 challenges the validity of assessment on the footing that notice under section 143(2) was issued by the National Faceless Assessment Centre instead of the jurisdictional Assessing Officer. During the course of hearing, this ground was not pressed and we therefore dismiss it as not pressed. Ground 2 assails the assessment as time barred under section 153 and Ground 3 is general. Grounds 4 and 5 challenge the finding that the assessee has a business connection and permanent establishment in India in respect of reinsurance premium from Indian cedents and retrocession premium from SRIB. Ground 6, without prejudice, challenges the attribution of INR 637,394,082 as profits to the alleged permanent establishment. Ground 7 challenges the characterization of service income from SRIB and SRGBS as FTS under Article 12. Grounds 8 to 11 assail, respectively, the rate of tax on alleged FTS, short credit of tax deducted at source, short grant of interest under section 244A, and treatment of a refund amount as already issued. Ground 12 challenges initiation of penalty under section 270A as premature and consequential.

13. For assessment year 2021-22 also Ground 1 alleges that the final assessment order was passed beyond the outer time limit prescribed under section 153 and is therefore time barred. Ground 2 is general. Grounds 3 and 4 challenge the finding of business connection and permanent establishment

in relation to reinsurance premium from Indian cedents and retrocession premium from SRIB. Ground 5, without prejudice, challenges attribution of INR 4,925,995,997 as profits to the alleged permanent establishment. Ground 6, again without prejudice, challenges the method of attribution in which the Assessing Officer has considered only claim payments as allowable expenditure while determining profits attributable to the alleged permanent establishment. Ground 7 challenges the characterisation of support service income as FTS under Article 12 and Ground 8, without prejudice, challenges the tax rate of 10.92 percent applied on such income instead of 10 percent provided in the treaty. Ground 9 alleges short credit of tax deducted at source. Grounds 10 and 11 challenge interest charged under sections 234A and 234B as consequential. Ground 12 again assails initiation of penalty under section 270A as premature and consequential.

14. The learned Authorised Representative for the assessee drew our attention at the very threshold to the detailed written submissions in the paper book and submitted that the controversy is entirely covered in favour of the assessee by decisions of the co ordinate benches in the assessee's own case for assessment years 2018 19 and 2019 20. In those years, on identical facts and on the basis of the same business model, the co ordinate benches held that the assessee did not have any permanent establishment in India in relation to its reinsurance or retrocession business, and that the service income from SRIB and SRGBS did not qualify as FTS under Article 12 for want of satisfaction of the make

available test. It was contended that the Dispute Resolution Panel itself has repeatedly acknowledged that the material facts remain the same, but has still chosen to adhere to its earlier reasoning which already stands disapproved by the co ordinate benches.

15. The learned Authorised Representative further relied on a long line of decisions in the case of Swiss Reinsurance Company Limited, the sister concern of the assessee, wherein for assessment year 2010-11 and for subsequent assessment years up to 2017-18, the co ordinate benches considered the role of an Indian support subsidiary that rendered risk assessment, market intelligence and administrative support services on a cost plus basis, and held that such support does not create either a business connection under section 9(1)(i) or a permanent establishment under the India Switzerland tax treaty. In those decisions it was clearly recorded that the Indian support entity was a separate legal person, that its employees were not employees of the foreign reinsurer, that it had no authority to conclude contracts on behalf of the foreign entity and that the foreign entity's business was carried on outside India. The learned Authorised Representative submitted that the present assessee, SRAPL, is nothing but a successor to the Singapore branch of SRCL for the run off portfolio and operates on a similar model in relation to India.

16. In particular, we were taken through the orders in the assessee's own case for assessment year 2018-19 in ITA No. 1492/Mum/2022 and for assessment year 2019-20 in ITA

No. 1995/Mum/2022, where the co ordinate benches, after referring to the Dispute Resolution Panel's own finding that the issues are covered by the earlier Swiss Reinsurance Company Limited decision, held that the assessee had no permanent establishment in India and directed deletion of the additions in respect of reinsurance and retrocession premiums as well as the alleged FTS. The learned Authorised Representative stressed that the revenue has not pointed to any change in law or facts for the present years and that judicial discipline demands that we follow those orders in the absence of any distinguishing feature.

17. Apart from the Swiss Re line of cases, the learned Authorised Representative placed reliance on a series of decisions in the case of RGA International Reinsurance Company Designated Activity Company, where the Mumbai benches of this Tribunal examined a substantially similar reinsurance and retrocession model involving Indian support entities. For multiple assessment years from 2018-19 to 2021-22 the co ordinate benches in those cases have held that no permanent establishment arises merely because associated enterprises in India render support functions and that the reinsurance and retrocession premium is not taxable in India in the absence of a permanent establishment. These decisions were commended to us as further persuasive authority that the revenue's approach to taxing reinsurance premium in such circumstances has repeatedly been disapproved.

18. On the question of FTS, the learned Authorised Representative placed detailed reliance on the earlier orders in the assessee's own case and on the jurisprudence surrounding the make available clause. It was submitted that the co ordinate bench has already held, after examining the agreements and the nature of services, that the support services rendered by the assessee to SRIB and SRGBS do not result in any transfer of technical knowledge, skill, experience or know how which enables the Indian entities to perform such functions independently in future. The learned Authorised Representative submitted that the revenue has not brought any fresh material in these years to suggest that the nature of services or the contractual framework has changed and, therefore, we should follow the earlier years in holding that the consideration is not FTS under Article 12.

19. Summarising the above, the assessee's case before us is that every substantive issue in dispute is already covered by co ordinate bench decisions in its own case and in the case of its sister concerns, and that in the absence of any change in facts or law, we should apply the rule of consistency and follow those orders to hold that there is no business connection, no permanent establishment and no FTS in India. At the same time, the assessee invited us, without prejudice, to examine the factual and legal position afresh to demonstrate that even on first principles the revenue's conclusions cannot be sustained.

20. The learned Departmental Representative, while supporting the orders of the Assessing Officer and the

Dispute Resolution Panel, attempted to distinguish the earlier decisions and argued that SRIB and SRGBS perform substantial functions in relation to the assessee's business, such as risk assessment, market analysis and claims related functions, without which the assessee could not have earned premium from Indian cedents or from SRIB. It was contended that by remunerating SRIB and SRGBS on a cost plus basis, the assessee has in effect seconded their personnel as de facto employees, thereby creating a fixed place, service and dependent agency permanent establishment. The learned Departmental Representative also supported the Dispute Resolution Panel's reasoning that the services rendered by the assessee to SRIB and SRGBS are of an enduring and continuous nature and, therefore, fall within the ambit of FTS under Article 12 even on a proper understanding of the make available clause.

21. We have carefully considered the rival submissions and perused the orders of the authorities below, the material placed on record and the case law cited at the bar. We have also minutely examined the earlier orders of the co ordinate benches in the assessee's own case for assessment years 2018-19 and 2019-20 and the series of decisions in the case of Swiss Reinsurance Company Limited and RGA International Reinsurance Company Designated Activity Company. For the sake of ready reference the relevant observation and finding of the Tribunal in the case of the assessee as well as in the case of the sister concern of the

assessee for A.Y.2018-19 in ITA No. No.1492/Mum/2022 are as under:-

Relevant extract of ITAT order for the AY 2018-19:

> *"7.8 Thus, it is clear that the DRP was of the view that the issues raised were covered in favour of the Appellant by the decision of the Tribunal in the case of Swiss Reinsurance Company Limited (SRCL)...*
>
> *Therefore, taking a view consistent with the view taken by the tribunal in the case of SRCL in order dated 04/07/2017, passed in appeal for the Assessment Year 2013-14 (ITA No. 2759/Mum/2017), we delete the additions made by the Assessing officer in view of the finding returned by the DRP that the 'impugned addition already stand adjudicated by the ITAT in the case of a sister concern in identical facts and circumstances*

Relevant extract of ITAT order for the AY 2019-20

> *"7. We find that in the earlier AY, the Co-ordinate Bench in ITA No. 1492/Mum/2022, vide order dated 17/01/2024 has held as under-*
>
> *"It is clear that the DRP was of the view that the issues raised were covered in favour of the Appellant by the decision of the Tribunal in the case of Swiss Reinsurance Company Limited (SRCL).*
>
> *8. As there is a categorical mention by the DRP that the material facts remain the same, therefore respectfully following the decision of the Co-ordinate Bench, we direct the AD to delete the impugned additions. Accordingly, Ground No. 2 to 7 are allowed."*

22. Further, it has been pointed out that this Tribunal in A.Y.2010-11 in the case of SRCL i.e. sister concern had to consider similar issue wherein the Revenue had alleged that Swiss Re Services India Pvt. Ltd., a wholly an Indian subsidiary of SRCL which provided SRCL with basic market intelligence and admin support services in India was a business connection as well as a PE. The Tribunal negated this argument and held that SRCL neither has a business connection in India in light of Explanation 2 to section 9(1) of the Income-tax Act, 1961

(Act') nor does it have a PE in India under the provisions of India-Switzerland tax treaty and, therefore, no income earned by SRCL from Indian cedents is taxable in India. The relevant extract of the order of the Tribunal for AY 2010-11 is reproduced below.

"2. Briefly stated, the facts are as under:-

Swiss Re-Insurance Company Limited i.e. the assessee is a company incorporated in Switzerland which receives income from providing reinsurance to various Cedants in India. The re-insurance premium received by the assessee is claimed as business income and it is further claimed that in absence of any Permanent Establishment (PE) in India the entire business income is not taxable in India.

2.1 During the course of assessment proceedings, the assessee filed necessary details and information in support of its claim. After carefully going through the information/details furnished by the assessee the AO observed that the business of the assessee is to provide reinsurance services to the clients in India. The AO further observed that in the course of such business Swiss Re-Services India Pvt. Ltd. (SRSIPL), which is an Indian Company and wholly owned subsidiary of the assessee is a PE of the assessee in India. The AO further noticed that the assessee through its Singapore Branch has entered into service agreement since 01/04/2009 with SRSIPL for obtaining risk assessment services, market insurance and administrative support in India and in tum remunerate/compensate SRSIPL on a cost+ 12% margin. The AO was of the opinion that since the assessee has remunerated SRSIPL and all its employees on a cost + basis, it is clear that the personnel and staff have rendered services to the assessee as de-facto employees. The AO was of the firm belief that the Indian subsidiary SRSIPL provides technical and core reinsurance services, therefore, Dependent Agency Permanent Establishment (DAPE) comes into play. The AO further noted that as per the domestic Income Tax Act, 1961, since the income of the assessee is being earned from India on a regular and continuous basis, the income of the assessee is taxable in India in terms of section 9(1)(i) of the Act. The

assessee has regular flow of income emanating from India, hence, the assessee has clear cut business connection in India.
2.2 The AO gave the assessee an opportunity to substantiate its claim that the reinsurance premium receipts of the company are not taxable in India. The assessee filed a detailed reply explaining the nature of activities of the assessee. It was explained and strongly contended that services provided by SRSIPL do not create existence of a PE in India. It was explained that SRSIPL is a separate legal entity and its entire control and management is in India. The decisions regarding its business are taken and executed in India. It is both legally and functionally independent company. It was explained that the employees of SRSIPL render services to SRSIPL and not to the assessee, either as assessee's employees or on behalf of SRSIPL. It was pointed out to the AO that the pricing between SRSIPL and the assessee is at arm's length. The profit earned by SRSIPL belongs to it and cannot be treated as profits of the assessee and such profits are assessed to tax in India in the hands of SRSIPL
....
....
5.5 Considering the services rendered by SRSIPL in the light of the OECD commentary, SRSIPL cannot be considered as PE of the assessee. The decision relied upon by Ld. DR do not support the Revenue on the facts of the present case, like in the case of Delhi Bench of the Tribunal in the case of Motorola Inc. (supra, the facts were that the employees of the assessee had worked both for the assessee as well as its Indian subsidiary. The employees also had the right to enter the office of the Indian subsidiary either for the purpose of working for Indian subsidiary or for the purpose of working for the assessee and the Indian subsidiary provided perquisite to the employees of the assessee and the assessee paid salaries to the employees, on these facts the Indian subsidiary was considered as place of business. However, facts of the case in hand clearly show that the employees of the SRSIPL has only provided services to SRSIPL and there is no noting on record to prove that the employees had provided services to the assessee or the assessee is paying their salaries or perquisites. The decision of the Hon'ble Supreme Court in the case of Morgan Stanley (supra) has been duly considered by the Hon'ble Delhi High Court in the case of E-Funds IT Solutions (supra). The decision

in the case of Jebon Corporation of Indi(supra) is not at all relevant on the facts of the case in hand

5.6 To sum up, the assessee does not have any business connection in India in the light of Explanation-2 to section 9(1) of the Act. The assessee does not have any PE in India.
The facts on record show that there is neither Service PE nor Agency PE in the form of SRSIPL Considering the facts in totality in the light of the relevant provisions of the law and the DTAA and the judicial decisions referred to herein above, we have no hesitation in setting aside the assessment order and accordingly we direct the AO not to treat the income of the assessee as taxable under the Act With this Ground No 1, 2 and all its sub-grounds are allowed...

25. Further, the Hon'ble Mumbai ITAT has followed the above mentioned decision of AY 2010-11 for subsequent years as well i.e., from AY 2011-12 to AY 2017-18 in case of SRCL.

26. We find that the factual matrix, the contractual arrangements and the nature of activities in India as well as in Singapore remain materially the same in the years under appeal as in the earlier years. No change in law or facts has been pointed out by the revenue which would warrant a departure from the settled position.

27. At the threshold, therefore, we are of the considered view that the issues in the present appeals are squarely covered in favour of the assessee by the co ordinate bench decisions in the assessee's own case. Judicial discipline and the need for certainty in tax administration require that a co ordinate bench follow earlier orders unless there is a compelling reason to differ, in which event the matter ought to be referred to a larger bench. No such compelling reason has been demonstrated before us. On this ground alone, the

substantive additions made in these years would deserve to be deleted by respectfully following the earlier orders.

28. Nevertheless it would be relevant to briefly recapitulate the salient features of assessee's business model unexplained why the Revenue's contention cannot be accepted. The assessee's business in relation to India consists of two streams. The first is the run off portfolio which comprises reinsurance treaties originally underwritten by SRCL Singapore branch prior to 1 February 2017 and transferred to the assessee with effect from 1 January 2018. All critical underwriting decisions, risk evaluation and pricing for those contracts were taken by SRCL Singapore branch at the time of original entry into the treaties. The assessee merely stepped into the shoes of SRCL for the remaining tenure of those treaties and continued to bear the risk and maintain requisite capital in Singapore. No fresh reinsurance contracts have been entered into by the assessee directly with Indian cedents after 1 January 2018.

29. The second stream is the retrocession business, where SRIB, which writes new reinsurance business in India in its own name and for its own account, retrocedes a portion of its assumed risk to the assessee under a retrocession agreement. The contractual relationship in the retrocession arrangement is solely between SRIB and the assessee, each dealing with the other on a principal to principal basis. The terms and conditions of retrocession, including pricing and extent of risk transfer, are negotiated and agreed between these two parties directly. The assessee assumes risk from SRIB and maintains

capital in Singapore to support that risk. At all times, SRIB remains directly and solely liable to the Indian cedents under the reinsurance treaties written in India.

30. Parallel to this, SRIB and SRGBS in India render support services to the assessee under intra group service agreements. These services cover administrative, operational, information technology and similar support functions. They are remunerated at arm's length on a cost plus basis. The decisions regarding their own operations are taken by their respective managements. Their employees are employed by them, are on their payrolls and are subject to Indian regulatory and tax laws. There is no material on record to show that any employee of the assessee has been seconded to India or that the assessee has any right to occupy or use the premises of SRIB or SRGBS as its own place of business.

31. On these facts, we find ourselves in complete agreement with the reasoning of the co ordinate benches in earlier years that no fixed place permanent establishment of the assessee exists in India. A fixed place PE requires that the foreign enterprise has a place of business at its disposal in the source country through which its business is carried on. The offices of SRIB and SRGBS in India belong to them and are used by them to carry on their own business as service providers. The mere rendering of services by associated enterprises in their own premises does not automatically confer disposal or control of such premises on the foreign enterprise. This proposition has been clearly laid down in the Swiss Re and RGA decisions and we see no basis to take a different view.

32. Likewise, there is no service permanent establishment of the assessee in India. Article 5 of the India Singapore treaty contemplates a service PE where an enterprise furnishes services in India through its employees or other personnel for a stipulated duration. The assessee does not furnish any services in India. It is on the contrary the recipient of services from SRIB and SRGBS. No employees or personnel of the assessee have rendered services in India to any third party. Occasional stewardship visits, if any, by personnel of the assessee or group level officials are only for oversight and protection of investment and do not amount to furnishing of services to a customer in India. The essential condition for existence of a service PE is, therefore, conspicuously absent.

33. The allegation that SRIB and SRGBS constitute a dependent agency permanent establishment of the assessee is equally unsustainable. For a dependent agent PE to arise, the agent in the source country must habitually conclude contracts on behalf of the foreign enterprise or habitually play the principal role leading to the conclusion of contracts which are routinely concluded without material modification by the enterprise. In the present case, the run off portfolio consists of contracts that were concluded in the past by SRCL Singapore branch. Subsequent to their transfer to the assessee there is no evidence that any Indian entity has participated in conclusion or renegotiation of those contracts on behalf of the assessee. For fresh reinsurance business, the contracts are entered into by SRIB in its own name and on its own account. The retrocession contract, as we have already

noted, is directly between SRIB and the assessee and there is no evidence that SRIB or SRGBS habitually conclude contracts for the assessee with any Indian cedent.

34. The entire business origination function in relation to Indian cedents is either carried out in Singapore, in the case of the run off portfolio, or in India by SRIB in its own right as a cedent, in the case of fresh reinsurance business. There is nothing to show that SRIB or SRGBS act as brokers, agents or legal representatives of the assessee in relation to Indian cedents. To the contrary, the material on record confirms that SRIB and SRGBS are independent service providers which do not have authority to secure or conclude contracts on behalf of the assessee. In these circumstances, the essential ingredients of a dependent agent permanent establishment are not satisfied.

35. We also note that the Assessing Officer has not set out any separate reasoning for treating the assessee as having a business connection in India under section 9(1)(i) in relation to retrocession business. The reasoning proceeds on the assumption that presence of associated enterprises in India by itself suffices to create a business connection and permanent establishment. This approach has already been rejected in the decisions of the co ordinate benches in Swiss Reinsurance Company Limited and in RGA International Reinsurance Company. Those decisions emphasise that where the core business of assuming risk and deploying capital is carried on outside India, and where Indian affiliates are remunerated at arm’s length for their support services, no

further income can be said to accrue or arise in India either by way of business connection or permanent establishment attribution.

36. For all these reasons, we respectfully follow the earlier decisions and reiterate that the assessee does not have any permanent establishment in India in relation to its reinsurance business in the form of the run off portfolio or its retrocession business with SRIB. Consequently, the reinsurance premium from Indian cedents and the retrocession premium from SRIB are not taxable in India as business profits under Article 7 of the India Singapore tax treaty. The additions made by the Assessing Officer and sustained by the Dispute Resolution Panel on this account for both years under appeal cannot, therefore, be sustained and are liable to be deleted.

37. Insofar as attribution of profits is concerned, we note that for assessment year 2020-21 the Assessing Officer attributed INR 637,394,082 to the so called permanent establishment, and for assessment year 2021-22 he attributed INR 4,925,995,997. For assessment year 2021-22 he further adopted a method of attribution which treated claims paid as the sole deductible expenditure. Since we have held that no permanent establishment exists in India, the question of attribution of profits does not arise at all. The grounds challenging the quantum and method of attribution thus become purely academic and we do not consider it necessary to examine them on merits.

38. We now turn to the taxability of service income received by the assessee from SRIB and SRGBS and its characterisation by the revenue as Fees for Technical Services under Article 12 of the India Singapore tax treaty. The Assessing Officer has proceeded on the footing that the services rendered by the assessee are highly technical in nature and that they make available technology to SRIB and SRGBS for further exploitation and use as income generating inputs. The Dispute Resolution Panel has not only endorsed this view but has also taken the position that the make available clause in Article 12(4)(b) applies only to technical services and not to managerial or consultancy services which may have an enduring impact.

39. Article 12 of the India Singapore treaty, however, uses language which is now well understood in international tax jurisprudence. Even where a service is technical or consultancy in nature, it can be brought within the fold of FTS under the treaty only if it makes available technical knowledge, experience, skill, know how or processes, or consists of development and transfer of a technical plan or design, to the recipient. The make available requirement mandates that the recipient should be enabled to apply the technology independently in future, without the continued involvement of the service provider. The mere rendering of technical, specialised or managerial services, no matter how valuable or continuous, is not sufficient if there is no transfer of the underlying technology or know how.

40. The co-ordinate bench, in the assessee's own case for assessment years 2018-19 and 2019-20, has already applied this principle to the very same agreements and to the very same categories of services rendered by the assessee to SRIB and SRGBS. It has held, after detailed analysis, that while the services may assist SRIB and SRGBS in their operations, they do not equip the Indian entities to perform such functions by themselves without the assessee's ongoing involvement. The Assessing Officer had not identified any specific technology, process or know how that was transferred, nor had he shown that SRIB or SRGBS could dispense with the assessee's services and continue to apply such technology independently. On that basis, the co ordinate bench held that the income in question does not qualify as FTS under Article 12 and deleted the corresponding additions.

41. The reasoning of the co ordinate bench is fully consistent with the decision of the Hon'ble Bombay High Court in Shell India Markets Private Limited, where the Court dealt with a similar make available provision in the India United Kingdom treaty and held that consultancy services which assist the recipient in its business do not become FTS unless there is an actual transfer of technical know how or processes. The Court emphasised that the continuous rendering of services over a long period is, in fact, an indicator that the underlying technology has not been transferred, because if the recipient had truly acquired the know how, there would ordinarily be no need for such continued dependence.

42. The same approach has been followed in the decisions of the Mumbai bench in Jefferies LLC, the Delhi High Court in Guy Carpenter and the Karnataka High Court in De Beers India Minerals Private Limited, all of which underline that the make available clause is a substantive limitation and not a mere formality. The decision of the Cochin bench of this Tribunal in U S Technology Resources Private Limited, on which the Assessing Officer placed reliance, has been reversed by the Kerala High Court and, therefore, no longer supports the revenue's stand.

43. In the present appeals, the revenue has not brought any additional material to show that the nature of services provided by the assessee to SRIB and SRGBS has undergone any change in the relevant years as compared to the earlier years where relief has already been granted. The intra group service agreements and the functional descriptions remain the same. The services are still characterised as support services, managerial guidance and coordination, and not as transfer of any proprietary system or know how. The continuous and recurring nature of these services only reinforces the conclusion that the Indian entities continue to rely on the assessee and are not in a position to perform the relevant functions without that support.

44. In these circumstances, we respectfully follow the earlier decisions in the assessee's own case and the settled jurisprudence on the make available test and hold that the consideration received by the assessee from SRIB and SRGBS for support services does not fall within the ambit of Fees for

Technical Services under Article 12 of the India Singapore tax treaty. In the absence of any permanent establishment of the assessee in India, such income also cannot be taxed as business profits under Article 7. The additions made by the Assessing Officer and sustained by the Dispute Resolution Panel on this count for both assessment years under appeal are accordingly deleted.

45. Once we have held that there is no taxability of such service income in India, the alternative grievance regarding the rate of tax applied by the Assessing Officer, namely 10.92 percent instead of 10 percent mandated by the treaty, becomes entirely academic. Grounds 8 in both years are, therefore, rendered infructuous and do not call for any separate adjudication.

46. We now advert to the grounds relating to short credit of tax deducted at source, short grant of interest under section 244A and the treatment of a certain amount as refund already issued. For assessment year 2020-21, Ground 9 alleges that the Assessing Officer has granted short credit of tax deducted at source of INR 24,316,101. Ground 10 alleges short grant of interest on income tax refund under section 244A and Ground 11 contends that the Assessing Officer has erroneously treated an amount of INR 12,914,151 as refund already issued although the assessee has not in fact received that amount. For assessment year 2021-22, Ground 9 alleges short credit of tax deducted at source amounting to INR 27,243,519.

47. These grounds are factual in nature and rest on reconciliation of figures with the department's records. In principle, the assessee is entitled to full credit of taxes deducted at source in terms of section 199 and the applicable rules and to interest on any refund due under section 244A. At the same time, the Assessing Officer is entitled and obliged to verify the assessee's claims with reference to Form 26AS and the internal records of the department and to confirm whether any refund has already been issued or adjusted. In the interests of justice, we deem it appropriate to restore these limited issues to the file of the Assessing Officer with a direction to verify the factual position after affording reasonable opportunity of being heard to the assessee and thereafter to grant due TDS credit and interest and to issue or adjust refunds, as the case may be, strictly in accordance with law.

48. As regards the grounds relating to limitation under section 153, we note that for assessment year 2020-21 Ground 2 asserts that the assessment is time barred but the assessee has itself submitted that this ground may be treated as academic where we accept the assessee's submissions on merits. For assessment year 2021-22, Ground 1 raises an analogous plea. Having already granted substantive relief on the core issues of business connection, permanent establishment and FTS, we are of the view that adjudication of these jurisdictional grounds is not necessary for disposal of the present appeals and would be purely academic. We

therefore leave those grounds open and decline to express any concluded opinion on them.

49. The grounds relating to interest under sections 234A and 234B for assessment year 2021-22 are consequential. The Assessing Officer shall recompute such interest, if any, while giving effect to this order and while recomputing the assessed income and tax liability in accordance with law.

50. The grounds challenging initiation of penalty under section 270A for both assessment years are clearly premature at this stage. Initiation of penalty is a tentative satisfaction recorded by the Assessing Officer in the course of assessment and does not, by itself, result in any civil consequences. In any event, since we have deleted the substantive additions forming the foundation of such satisfaction, the Assessing Officer will necessarily have to take a fresh call on the question of penalty, if he still so chooses, in the light of the final assessed income. We therefore hold that these grounds do not require any separate adjudication and are dismissed as infructuous, without prejudice to the assessee's liberty to challenge any penalty order that may be passed in future.

51. For the sake of completeness, we also record that Ground 3 for assessment year 2020-21 and Ground 2 for assessment year 2021-22 are general in nature and do not survive for separate consideration in view of our detailed findings on the substantive issues.

52. To recapitulate, we have first taken note of the fact that the issues in these appeals are fully covered in favour of the

assessee by co ordinate bench decisions in the assessee's own case for assessment years 2018-19 and 2019-20 and by the consistent line of authority in the cases of Swiss Reinsurance Company Limited and RGA International Reinsurance Company Designated Activity Company. We have then independently examined the factual matrix and the applicable law and have found that the business model, the nature of activities and the contractual framework remain unchanged in the years under appeal. On both counts, therefore, the revenue's case does not survive.

53. In the result, we hold that the assessee does not have any permanent establishment in India, whether as fixed place PE, service PE or dependent agency PE, in relation to its reinsurance business comprising the run off portfolio or its retrocession business with SRIB. The reinsurance premium from Indian cedents and the retrocession premium from SRIB are accordingly not taxable in India as business profits. We further hold that the service income received by the assessee from SRIB and SRGBS does not qualify as Fees for Technical Services under Article 12 of the India Singapore tax treaty and is also not taxable as business income in the absence of any permanent establishment.

54. The substantive additions made by the Assessing Officer and sustained by the Dispute Resolution Panel on account of alleged permanent establishment and FTS for both assessment years under appeal are therefore deleted. The issues relating to attribution of profits and the rate of tax on alleged FTS are rendered academic. The grounds regarding

TDS credit, interest under section 244A and refund are restored to the file of the Assessing Officer for limited verification and consequential relief. The jurisdictional grounds relating to limitation are left open and treated as academic in view of our findings on merits. The grounds relating to interest under sections 234A and 234B are held to be consequential and the grounds relating to initiation of penalty under section 270A are dismissed as premature and infructuous.

55. In the result, both appeals of the assessee are allowed in the above terms.

Order pronounced on 20th November, 2025.

Sd/-	**Sd/-**
(GIRISH AGRAWAL)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 20/11/2025
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai