IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 1817/MUM/2025 (AY: 2022-23)
(*Physical hearing*)

General Reinsurance Corporation 1209, Orange Street Delaware, Wilmington, United States, 19801 USA [**PAN:AAHCG8162B**]	Vs	ACIT (International Taxation), Circle -2(3)(2), Mumbai Room No. 610, 6th Floor, Kautilya Bhavan, G Block, BandraKurla Complex, Bandra (East), Mumbai-400051.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Madhur Agarwal Advocate
Revenue by	Shri Krishna Kumar, Sr. DR
Date of institution of appeal	18.03.2025
Date of hearing	16.10.2025
Date of pronouncement	07.01.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the final assessment order dated 14.01.2025 passed under section 143(3) r.w.s. 144C(13) passed in pursuance of direction of ld Dispute Resolution Penal (DRP) dated 18.12.024 for A.Y. 2022-23. The assessee in its appeal has raised following grounds of appeal:

> "1. On the facts and in the circumstances of the case, and in law, the notice issued under section 143(2) of the Act, dated 31 May 2023, by the Assistant / Deputy Commissioner of Income-tax, 1(1)(1), Delhi, to initiate assessment proceedings for AY 2022-23, is without jurisdiction in terms of the Central Board of Direct Taxes order (No. F. No. 187/3/2020-ITA-I) dated 31 March 2021, and thus the assessment order passed by the learned AO is bad in law, since the same is without jurisdiction.
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> 2. Without prejudice to ground no. 1 above, the learned AO has on the facts and in the circumstances of the case, and in law, and based on the directions of the learned DRP, erred in holding that the Indian Branch of General Reinsurance AG ('GRAG India Branch') constitutes a business connection in India for the Appellant as per the provisions of section 9(1)(1) of the Act.

3. Without prejudice to ground no. 1 above, the learned AO has, on the facts and in the circumstances of the case, and in law, and based on the directions of the learned DRP, erred in concluding that the Indian Branch of General Reinsurance AG (GRAG India Branch') is a Dependent Agent Permanent Establishment ('DAPE') of the Appellant in India as per Article 5(4) of the India-United States of America tax treaty ("Tax Treaty'). In doing so, learned AO has completely disregarded the fact that the key element of agency i.e., principal-agent relationship is missing as GRAG India Branch is not; representing or acting on behalf of the Applicant when it is dealing with Indian cedants.

4. Without prejudice to ground nos. 1 and 3 above, the learned AO has on the facts and in the circumstances of the case, and in law, and based on the directions of the learned DRP, erred in concluding that the retrocession premium earned by the Appellant is taxable in India under Article 7 of the Tax Treaty being income attributable to the operations of the Appellant carried on through/ by its PE in India (i.e., GRAG India Branch).

5. Without prejudice to ground nos. 1 to 4 above, the learned AO has on the facts and in the circumstances of the case, and in laws and based on the directions of the learned DRP, erred in estimating 10 per cent of the gross receipts of the Appellant astaxable profits by applying Rule 10 of the Income-tax Rules, 1962 ('the Rules'), while attributing profits to the alleged PE of the appellant in India.

6. Without prejudice to ground nos. 1 to 5 above, the learned AO has on the facts and in the circumstances of the case, and in law, and based on the directions of the learned DRP, erred in not using any scientific method in determining 50 per cent of the alleged taxable profits (as arrived by applying Rule 10 of the Rules) as being attributable to Indian operations.

7. Without prejudice to ground nos. 1 to 6 above, the learned AO has on the facts and in the circumstances of the case, and in law, and based on the directions of the learned DRP, erred in not considering the deduction of change in premium reserves, claims (including claim reserves). and other incidental expenses while arriving at the taxable profit.

8. Without prejudice to ground no. 1 above, the learned AO has on the facts and in the circumstances of the case, and in law, and based on the directions of the learned DRP, erred not applying the correct tax rate as per Article 14(2) of the India-US DTAA, which limits the tax rate to 15 percentage points above the rate applicable to domestic companies in India.

9. Without prejudice to ground no. 1 above, the learned AO has on the facts and in the circumstances of the case, and in law, and based on the directions of the learned DRP, erred in assessing the total income of the Appellant at INR

2,25,96,386 with respect to the additions made in the assessment order and computing the gross tax liability of the Appellant at INR 96,77,060.

10. Without prejudice to ground no. 1 above, the learned AO has on the facts and in the circumstances of the case, and in law, erred in charging interest of INR 2,78,832 without specific reference to any section of the Act.

11. Without prejudice to ground nos. 1 to 9 above, the learned AO has on the facts and in the circumstances of the case, and in law, erred in not granting interest under section 244A of the Act.

12. Without prejudice to ground nos. 1 above, the learned AO has on the facts and in the circumstances of the case, and in law, erred in initiating penalty proceedings under section 270A of the Act.

The Appellant craves leave to add to, alter, vary, omit, substitute or amend any or all of the above grounds of appeal, any time before or at the time of the appeal, so as to enable the Hon'ble Income-tax Appellate Tribunal to decide this appeal according to law."

2. Vide application dated 01.07.2025, the assessee has raised following additional ground of appeal:

"13. "Without prejudice to ground nos. 1 to 4, the ld. Assessing officer erred in law and on facts in invoking Rule 10 of the Income-tax Rules, 1962, for the purpose of computing the appellant's income; whereas the appellant being engaged in the business of insurance, is governed by the special provisions of section 44 read with the First Schedule to the Income-tax Act, 1961 and therefore Rule 10 of the Income-tax Rules, 1962 is not applicable.

3. Brief facts of the case are that assessee filed its return of income for A.Y. 2022-23 on 25.11.2022 declaring income of Rs. 6,92,160/- and claimed refund of Rs. 99,80,050/- on account of TDS. The case was selected for scrutiny. During assessment, the assessing officer noted that assessee is US based and part of GRC Berkshire Hathaway Group and engaged in providing reinsurance and retrocession services to insurers and reinsurers Globally in respect of non-life business. For the purpose of taxation, assessee is a tax resident of United States of America. During the assessment, the assessing

officer recorded that has entered into a Quota Share (property and casualty) retrocession agreement with effect from 01.04.2019 within India Branch. The retrocession is a transaction in which a reinsurer transfers risks which has insured to another reinsurer. The entity transferring the risk is called Retrocedent and entity accepting risk is called Retrocessionaire. As per the agreement, 50% of the reinsurance business obtained by assessee branch and 50% premium is collected by assessee branch. On going through the contents of aggrement, the assessing officer was of the view that in the agreement, no clause is seen where the assessee will be doing due diligence/risk/premium calculation itself. India Branch performs all the activities relating to insurance contract. The India branch is performing risk assessment, actuarial and underwriting services, business information collection in the insurance field and co-ordination with cedants for re-insurance business. On the basis of such observation, the assessing officer was of the view that core business process of re-insurance business specifically performed in India and not much critical functions remained to be performed outside India. The assessing officer was further of the view that India branch exercises the authority to significantly influence the decisions leading to signing of the contract without any further substantial input outside India. On the basis of such observation, the assessing officer issued show cause notice dated 19.03.2024. The contents of show cause notice are reproduced in para 7 of draft assessment order. The assessing officer recorded that gross premium of Rs. 43.80 crore was received by assessee and 50% of which is found to be from business performed through

permanent establishment (PE) in India attributable to operation to India that is Rs. 21.90 crore. Further, 10% of profitability applied to such operation, profit of Rs. 2.19 crore is arrived. The assessing officer in his show cause notice mentioned as to why Rs. 2.19 crore should not be treated as income of assessee for the year under consideration. The assessee filed its reply dated 25.03.2024. The assessing officer has not recorded the contents of reply furnished by assessee. However, in para 8.3 of assessment order, the assessing officer recorded that assessee India branch does not enter into contract with its customer on behalf of its AE. The assessing officer by referring section 9(1)(i) of the Act held that assessee is earning from India on regular basis and have business connection in India. There is no clause in the agreement whether the assessee will be due diligence risk/premium calculation on itself. No active role is being played by parent company and there is a complete chain of insurance claim being ceded by India branch. The assessing officer thereby held that assessee has business connection in India estimated 10% profit and thereby added Rs. 2.19 crore by referring Rule 10(1) of Income-tax Rules. The assessing officer passed draft assessment order dated 28.03.2024. The copy of draft assessment order was served upon the assessee.

4. On service of draft assessment order, the assessee exercised its option to filed objection before DRP. The DRP upheld the action of assessing officer in its direction dated 18.12.2022. On receipt of direction of DRP dated 18.12.2022, the assessing officer passed the final assessment order, addition in which is challenged before Tribunal.

5. We have heard the submissions of learned Authorised Representative (ld. AR) of the assessee and the learned Senior Departmental Representative (ld. Sr. DR) for the Revenue and have gone through the orders of lower authorities carefully. Ground no. 1 relates to format of notice under section 143(2). The ld. AR of the assessee submits that he is not pressing this ground of appeal. Considering the submissions of ld. AR of the assessee, ground no. 1 of appeal is dismissed as not pressed.

6. Ground no. 1 to 9 relates to estimation of profit in treating Indian entity / Indian AE of assessee as dependent agent of assessee and estimation of income. The ld. AR of the assessee submits that assessee company is tax resident of USA. The assessee is engaged in providing reinsurance and retrocession services globally in respect of non-life business. The assessee obtained necessary approval from Indian Authority that is Insurance Regulatory and Development Authority of India (IRDAI) for establishing a foreign reinsurance branch in India that is General Reinsurance India Branch that is GRAG Indian AE. Indian AE commences its operation on 01.08.2017. India Branch is providing reinsurance services to both life and non-life to Indian Insurance Companies. The AO wrongly treated Indian AE as India assesses India Branch. The assessee entered into Quota Share (property and casualty) reinsurance agreement effective from 01.04.2019 with its Indian AE. Copy of such agreement was filed before lower authorities. While explaining concept of retrocession, the ld. AR of the assessee submits that 'retrocession' is reinsurance of a reinsurer's risk, i.e. a transaction in which a reinsurer agrees to pass on a portion of the risks it has reinsured, to another

reinsurer/insurer. The entity so commercially transferring the risk is called the 'Retrocedent' i.e., the Indian AE in the instant case, and the entity accepting such risk is called the 'Retrocessionaire' (i.e. the assessee-company). In other words, what a reinsurer is to an insurer, a Retrocessionaire is to a reinsurer. The ld. AR submits that there are two independent transactions involved in case of retrocession including a Quata share, both on principal-to-principal basis. Like in transaction no. 1, assumption of risk under reinsurance contract between the insurance company and the reinsurer acting on its own account and in transaction no. 2 ceding a portion of the risk under specified reinsurance contract by reinsurer (i.e. Retrocedent) to Retrocessionaire under the Retrocession Agreement. Under the Retrocession Agreement, India Branch has reinsured broadly 50% of the risk assumed by it under all its property and Casualty Reinsurance Agreement/ treaties on or after 01.04.2019 with the assessee subject to certain condition specified in main agreement. In consideration for the risks assumed by assessee, Indian AE pays retrocession premium to assessee. Such retrocession premium is computed as 50% of that proportion of the reinsurance premium receivable by Indian AE for the risks reinsured by it under all its underlying property and casualty reinsurance agreements with Indian cedants assumed on or after 1st April 2019, as reduced by proportionate share of all reasonable costs including management expenses and an applicable allowance of such premium ceded. Further, to the extent there are any claims incurred by Indian AE under the underlying property and casualty reinsurance agreements, it will report such claims to assessee and assessee will settle the

claims to the Indian AE in respect of the part of the risk (50%) reinsured by it, subject to the exceptions / conditions / limits specified as per the terms of the Retrocession Agreement. The process of settlement of claim including survey, evaluation negotiation and dispute resolution is exclusively between Indian cedants and Indian AE without involvement of assessee. The retrocession by Indian AE to assessee is limited to 50% of the reinsurance business under the property and casualty line of business and does not constitute 50% of the entire reinsurance income recorded by Indian AE. The assessee being tax resident of USA and eligible for benefit of India US DTAA. Thus, the provision of Income Tax Act will apply to the extent they are more beneficial to the provisions of India US-DTAA. The income earned by assessee from India Branch is business profit as provided in Article 7 of US India DTAA and will be taxable under Article 7 of India US- DTAA only if it has PE in India as defined in Article 5 of Treaty and its carries on business in India through that PE and the profit sought to be considered attributable to such PE or to other business activities carried in India or the same or similar kind as those effected through such PE. The assessing officer disregarded the reply dated 25.03.2024 furnished before him and various clauses of agreement and business model of assessee with its Indian entity and held that income of assessee is being earned from India is regular and continuous basis. It was erroneously held that assessee has business connection in India and taxable in term of section 9(1)(i) of Income Tax Act and if income received or deemed to be received in India accrues or arise or is deemed to accrue or arise in India and treating the India entity as dependent agent and

taxed the 10% attributable to such PE. The ld. AR of the assessee submits that during assessment the assessee furnished transfer pricing study report in respect of its transaction with its AE and substantiated that transaction of assessee with its AE is at arm's length and thus, no further attribution is warranted. On similar set of facts, the assessing officer in AY 2020-21 accepted similar transaction with its AE at arm's length and no addition was made in the assessment order passed under section 143(3) dated 16/09/2022, copy of such assessment order is placed on record, thus, on the basis of principle of consistency no addition is sustainable in the year under consideration on the ground alone. To support his various submissions, the ld AR of the assessee relied on the following decisions;

- DIT Vs Morgan Stainley & Co. (2007) 162 Taxman165 (SC),
- ADIT Vs E-Funds IT Solution Inc (2017) 86 taxmann.com 240 (SC),
- Formula One Word Championship Vs CIT (2017) 80 taxmann.com 347 (SC),
- Bharti Cellular Ltd Vs ACIT (2024) 160 taxmann.com 12 (SC).

7. On the other hand, the ld SR DR for the revenue supported the order of AO/ DRP. The ld Sr DR for the revenue submits that assessing officer while passing the draft assessment order in para 8.2 has clearly recorded the finding that the assessee earned income on regular and continuous basis from business connection in India. There is clear business connection of assessee in India in term of section 9(1)(i) of Income Tax Act. The stand of the assessee that they have no business operation in India is not correct as the business of the assessee is to provide re-insurance services to the clients/ cedants in India and the claim of assessee that agreements are executed outside of India has no substance. The AO correctly worked out / estimated

revenue from Indian operation attributable to India. The ld Sr DR for the revenue prayed for dismissal of appeal.

8. We have considered the rival submissions of both the parties and also gone through the orders of lower authorities. We have also deliberated on various case laws relied by ld. AR of the assessee. There is no dispute that during the assessment, the assessee has furnished its transfer pricing its study report to show the transaction with its AE at arm's length. Admittedly, arm's length price has not been examined or doubted by the assessing officer. We find that in a series of decision, the various bench of Tribunal held that where the assessee has a dependent agency, permanent establishment and its Indian agent had been paid / remunerated at arm's length price, nothing further could be taxed in the hands of assessee. We also find that Hon'ble Apex Court in Honda Motors Co. Ltd. vs ADIT (supra) while quashing the notice under section 147 held that where notice to the assessee for reassessment was based only on the allegation that it had permanent establishment in India, said notice could not be sustained once arm's length price procedure has been followed. We also find that the Hon'ble Apex Court in leading decision in DIT vs Morgan Stanley & Co. (supra) has held that as long as Morgan Stanley Advantage Services Ltd., being PE in India is remunerated for its arm's length basis taking into account risk taking functions of foreign enterprises, no profit would be attributable to PE. Therefore, on the basis of aforesaid mentioned settled legal position, we have no hesitation to conclude that once Indian entity (Indian AE) has been remunerated at arm's length prices, no further profit would be attributable to

PE in India. We also find that on similar seat of facts no addition was made by revenue in earlier assessment year i.e. in AY 2021-22 in assessment order dated 16/09/2022 passed under section 143(3), no such additions were made as made in the year under consideration. The ld Sr DR for the revenue failed to distinguish the facts of assessment year under consideration with the facts of preceding year. Hence, the assessee is also liable to be succeeded on the ground as well.

9. So far as other ground other ground taken by assessing officer that the Indian entity i.e. Indian AE is dependent agent or the assessee has business connection in India, the assessing officer has not brought any evidence on record to strength his view except taking inference. We find that Article-5 of DTAA between India and USA lays down as to what would constitute a PE and Article -7 of treaty lays down conditions for taxing the business income of an enterprise of Contracting State. To appreciate the facts of the case in hand, Article 5 & 7 of India USA DTAA are extracted below;

ARTICLE- 5
PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially :

(*a*) a place of management ;
(*b*) a branch ;
(*c*) an office ;
(*d*) a factory ;
(*e*) a workshop ;
(*f*) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources ;

(*g*) a warehouse, in relation to a person providing storage facilities for others ;

(*h*) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on ;

(*i*) a store or premises used as a sales outlet ;

(*j*) an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than 120 days in any twelve-month period ;

(*k*) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than 120 days in any twelve-month period ;

(*l*) the furnishing of services, other than included services as defined in Article 12 (Royalties and Fees for Included Services), within a Contracting State by an enterprise through employees or other personnel, but only if:

(*i*) activities of that nature continue within that State for a period or periods aggregating more than 90 days within any twelve-month period ; or

(*ii*) the services are performed within that State for a related enterprise [within the meaning of paragraph 1 of Article 9 (Associated Enterprises)].

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include any one or more of the following:

(*a*) the use of facilities solely for the purpose of storage, display, or occasional delivery of goods or merchandise belonging to the enterprise ;

(*b*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or occasional delivery ;

(*c*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise ;

(*d*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise ;

(*e*) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for other activities which have a preparatory or auxiliary character, for the enterprise.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 5 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-

mentioned State, if :

(*a*) he has and habitually exercises in the first-mentioned State an authority to conclude on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph ;

(*b*) he has no such authority but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, and some additional activities conducted in the State on behalf of the enterprise have contributed to the sale of the goods or merchandise ; or

(*c*) he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and the transactions between the agent and the enterprise are not made under arm's length conditions, he shall not be considered an agent of independent status within the meaning of this paragraph.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

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ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (*a*) that

permanent establishment; (*b*) sales in the other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (*c*) other business activities carried on in the other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly at arm's length with the enterprise of which it is a permanent establishment and other enterprises controlling, controlled by or subject to the same common control as that enterprise. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis. The estimate adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprises, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than toward reimbursement of actual expenses), by the permanent establishment to

the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of this Convention, the profits to be attributed to the permanent establishment as provided in paragraph 1(*a*) of this Article shall include only the profits derived from the assets and activities of the permanent establishment and shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. For the purposes of the Convention, the term "business profits" means income derived from any trade or business including income from the furnishing of services other than included services as defined in Article 12 (Royalties and Fees for Included Services) and including income from the rental of tangible personal property other than property described in paragraph 3(*b*) of Article 12 (Royalties and Fees for Included Services).

10. We further find that Hon'ble Apex Court in Formula One World Championship Vs CIT(supra) while considering various Articles of India UK DTAA, held that principal test, in order to ascertain as to whether an establishment has a fixed place of business or not, is that such physically located premises have to be *'at the disposal'* of the enterprise. For this purpose, it is not necessary that the premises are owned or even rented by the enterprise. It will be sufficient if the premises are put at the disposal of the enterprise. However, merely giving access to such a place to the enterprise for the purposes of the project would not suffice. The place would be treated as *'at the disposal'* of the enterprise when the enterprise has right to use the said place and has

control thereupon. (para-27). We find that as per Article -7 of India USA-DTAA, the business income earned by the assessee is not taxable in India, unless it carries on business in India through a PE.

11. We further find that the assessee in its reply dated 25.03.2024 categorically stated that the assessee has no presence in India in the form of its office, branch, place of business or management, agency or employee in India. Further, no portion of its PE in India was at its disposal. The Retrocession agreement was negotiated, finalised and executed outside India. Capital or investment asset used for underwriting, the asset assumed by assessee under the retrocession agreement are held by assessee outside India. No employee of assessee visited India for post execution of agreement. Negotiation with Indian entity/AE and settlement of claim was undertaken directly from outside India. Copies and e-mails evidencing the facts that settlement of premium / claims with Indian AE was undertaken from outside India. We find that all such facts were not countered by the assessing officer, except assuming that the assessee is earning from India on regular basis and have business connection in India and / or there is no clause in the agreement whether the assessee will be due diligence risk/premium calculation on itself. No active role is being played by parent company and there is a complete chain of insurance claim being ceded by India branch. Thus, in view of the factual and legal discussions, we do not find any justification for attribution of income by treating AE of assessee as its PE and dependent agent. In the result, the Ground No. 2 to 9 are allowed. Considering the facts that we have allowed full relief to the assessee on

ground No. 2 to 9, therefore, all remaining grounds of appeals which are raised on alternate basis have become academic.

12. In the result, the appeal of the assessee is allowed.

Order was pronounced in the open Court on 07/01/2026.

Sd/-	**Sd/-**
GIRISH AGRAWAL **ACCOUNTANT MEMBER**	**PAWAN SINGH** **JUDICIAL MEMBER**

MUMBAI, Dated: 07/01/2025
Biswajit

Copy of the order forwarded to:
(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai