IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH MUMBAI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 2447/MUM/2022
Assessment Year: 2018-19

General Reinsurance AG C/O General Reinsurance AG India Branch Units 107,108,109, Meadows Sahar Plaza Complex Mathuradas Vasanji Road, Mumbai (PAN: AAECG5195K)	Vs.	Assistant Commissioner of Income-tax (International taxation), Range – 2(3)(2) Mumbai
(Appellant)		(Respondent)

Present for:
Assessee : Shri P.J. Pardiwala, Sr. Advocate and
Shri Madhur Agrawal, Advocate
Revenue : Shri Satya Pal Kumar, CIT (DR)

Date of Hearing : 03.11.2025

ITA Nos. 2448, 887 and 4691/MUM/2022
Assessment Years: 2019-20 to 2021-22

General Reinsurance AG C/O General Reinsurance AG India Branch Units 107,108,109, Meadows Sahar Plaza Complex Mathuradas Vasanji Road, Mumbai (PAN: AAECG5195K)	Vs.	Assistant Commissioner of Income-tax (International taxation), Range – 2(3)(2) Mumbai
(Appellant)		(Respondent)

Present for:
Assessee : Shri Madhur Agrawal, Advocate
Revenue : Shri Krishna Kumar, Sr. DR

Date of Hearing : 18.11.2025
Date of Pronouncement : 30.01.2026

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These four appeals filed by the assessee are against the final assessment orders passed pursuant to the directions of ld. Dispute Resolution Panel-1 (DRP), Mumbai, vide order nos.

A. ITBA/DRP/F/144C(5)/2022-23/1043668366(1), dated 29.06.2022,
B. ITBA/DRP/F/144C(5)/2022-23/1043667841(1), dated 29.06.2022,
C. ITBA/DRP/F/144C(5)/2022-23/1048375914(1), dated 30.12.2022
D. ITBA/DRP/F/144C(5)/2023-24/1056588807(1, dated 27.09.2023

u/s. 144C(5) of the Income-tax Act (hereinafter referred to as the "Act"), for Assessment Years 2018-19, 2019-20, 2020-21 and 2021-22, respectively.

2. Grounds taken by assessee are reproduced as under:

ITA NO. 2447/Mum/2022 AY 2018-19

"1. The learned AO has on the facts and circumstances of the case, and in law, and based on the directions of the learned DRP, erred in concluding that the Appellant's wholly owned subsidiary in India i.e. Gen Re Support Services Mumbai Private Limited ('GSSMPL') constitutes a business connection in India as per the provisions of section 9(1)(i) of the Act.

2. The learned AO has on the facts and circumstances of the case, and in law, and based on the directions of the learned DRP, erred in concluding that Indian Branch of the Appellant is a Dependent Agent permanent establishment ('PE') of the Appellant in India as per Article 5(5) of the India-Germany tax treaty.

3. 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 reinsurance premium earned by overseas offices of Appellant is taxable in India under Article 7 of the India-Germany tax treaty being income attributable to the operations of the Appellant carried through/ by its PE in India (i.e. the India Branch).

4. 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 that the reinsurance premium earned by overseas offices of Appellant (i.e. Direct Business) can be taxable under Article 7 of the India-Germany tax treaty only if income comprised therein can be attributable to the PE of the Applicant (i.e. the India Branch).

5. Without prejudice to Ground No. 1 to 4 above, the learned AO has on the facts and circumstances of the case, and in law, and based on the directions of the learned DRP, erred in not allowing deduction for claims and other incidental expenses while computing the taxable profits of the Appellant.

6. Without prejudice to Ground No. 1 to 5 above, the learned AO has on the facts and circumstances of the case, and in law, and based on the directions of the learned DRP, erred in disregarding the overall profitability of the Appellant for the year ended 2017 and 2018 of 7.7 per cent and 12.8 per cent respectively (based on combined ratio) and estimating 10 per cent of the gross receipts as taxable 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.

7. Without prejudice to Ground No. 1 to 4 above, the learned AO has on the facts and 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 taxable profits (as arrived by applying Rule 10) to be attributable to the Indian operations.

8. Without prejudice to Ground No. 1 to 4 above, the learned AO has on the facts and circumstances of the case, erred in applying a tax rate of 40 per cent instead of 12.5 per cent (plus applicable surcharge and cess) as applicable in case of reinsurance premium with respect to life reinsurance contracts as per section 115B of the Act while computing the tax liability of the Appellant in the income-tax computation form.

9. 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 amount of Information Technology costs and other Management Expenses allocated to and paid by the Appellant's India Branch to its Head Office are covered within the scope of fees for technical services and accordingly taxable in the hands of the Appellant.

10. Without prejudice to ground 9 above, the learned AO has on the facts and circumstances of the case and in law, and based on the directions of the learned DRP, erred in levying surcharge and cess on the tax payable on income from fees for technical services received by the Appellant which has been held to be taxable under Article 12(2) of the India-Germany tax treaty.

11. The learned AO has on the facts and circumstances of the case and in law, erred in not granting refund amounting to Rs. 5,58,32,053 as claimed by the Appellant while filing its return of income.

12. The learned AO has on the facts and circumstances of the case and in law, erred in calculating the interest under section 244A of the Act.

13. The learned AO has on the facts and circumstances of the case and in law, erred in initiating penalty proceedings under section 270A of the Act."

ITA NO. 2448/Mum/2022 AY 2019-20

"1. On the facts and circumstances of the case, and in law, the assessment order passed by the learned AO is bad in law, since the same is without jurisdiction.

2. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case, and in law, and based on the directions of the learned DRP, erred in concluding that the Appellant's wholly owned subsidiary in India ie. Gen Re Support Services Mumbai Private Limited ('GSSMPL') constitutes a business connection in India 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 circumstances of the case, and in law, and based on the directions of the learned DRP, erred in concluding that the Indian Branch of the Appellant is a Dependent Agent permanent establishment ('PE') of the Appellant in India as per Article 5(5) of the India-Germany tax treaty.

4. 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 reinsurance premium earned by the overseas offices of the Appellant is taxable in India under Article 7 of the India-Germany tax treaty being income attributable to the operations of the Appellant carried on through / by its PE in India (i.e. the India Branch).

5 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 not considering that the reinsurance premium earned by the overseas offices of the Appellant (ie. Direct Business) can be taxable under Article 7 of the India-Germany tax treaty only if income comprised therein can be attributable to the PE of the Appellant (i.e. the India Branch).

6. Without prejudice to Ground No. 1 to 5 above, the learned AO has on the facts and circumstances of the case, and in law, and based on the directions of the learned DRP, erred in not allowing a deduction for claims and other incidental expenses while computing the taxable profits of the Appellant.
7. Without prejudice to Ground No. 1 to 6 above, the learned AO has on the facts and circumstances of the case, and in law, and based on the directions of the learned DRP, erred in estimating 10 per cent of the gross receipts as taxable 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

8 Without prejudice to Ground No. 1 to 5 above, the learned AO has on the facts and 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 taxable profits (as arrived by applying Rule 10 of the Rules) as being attributable to the Indian operations.

9 Without prejudice to Ground No. 1 to 5 above, the learned AO has on the facts and circumstances of the case, erred in applying a tax rate of 40 per cent instead

of 12.5 per cent (plus applicable surcharge and health and education cess) as applicable in case of reinsurance premium with respect to life reinsurance contracts as per section 1158 of the Act while computing the tax liability of the Appellant in the income-tax computation form.

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, and based on the directions of the learned DRP, erred in holding that the amount of Information Technology ('TT') costs and other Management Expenses allocated to and paid by the Appellant's India Branch to its Head Office are covered within the scope of fees for technical services and accordingly taxable in the hands of the Appellant.

11. Without prejudice to Ground No. 1 and 10 above, the learned AO has on the facts and circumstances of the case and in law, and based on the directions of the learned DRP, erred in levying surcharge and health and education cess on the tax payable on income from fees for technical services received by the Appellant which has been held to be taxable under Article 12(2) of the India-Germany tax treaty.

12. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case, and in law, erred in applying the provisions of section 115.JB of the Act to the Appellant being a foreign company.

13. Without prejudice to Ground No. 1 and 12 above, the learned AO has on the facts and circumstances of the case, and in law, erred in making additions on account of attribution of income from reinsurance premium with respect to the Appellant's Direct Business to the Appellant's India operations, and IT costs and other Management Expenses allocated to and paid by the Appellant's India Branch to its Head Office as fees for technical services, to the deemed total income of the Appellant determined in accordance with the provisions of section 115JB of the Act.

14. Without prejudice to Ground No.1, 12 and 13 above, the learned AO has on the facts and circumstances of the case, and in law, erred in applying the provisions of section 115JB of the Act on the amount of reinsurance premium with respect to life reinsurance contracts covered under section 115B of the Act.

15. Without prejudice to Ground No. 1, 12, 13 and 14 above, the learned AO has on the facts and circumstances of the case, erred in levying tax at the rate of 40 per cent on profits computed in accordance with the provisions of section 115.JB of the Act.

16. Without prejudice to Ground No. 1, 12, 13, 14 and 15 above, the learned AO has on the facts and circumstances of the case, and in law, erred in not allowing carry forward of losses amounting to Rs. 6,48,51,847 under the head 'Profits and gains of business or profession'.

17. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case, and in law, erred in not setting off losses incurred under the head "Profits and gains of business or profession' while calculating the total income and tax liability of the Appellant.

18. Without prejudice to Ground No. 1, the learned AO has on the facts and circumstances of the case, and in law, erred in computing the total income of the Appellant and the taxes thereon, in accordance with the provisions of the Act.

19. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case, and in law, erred in granting credit for taxes deducted at source amounting to only Rs. 17.04,89,657 instead of Rs. 17,74,20,046 thereby resulting in short credit of taxes deducted at source amounting to Rs. 69.30,389.

20: Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case and in law, erred in calculating interest under section 244A of the Act.

21. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case, and in and in law, erred in levying interest under section 234D of the Act.

22. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case, and in law, erred in initiating penalty proceedings under section 270A of the Act."

ITA NO. 887/Mum/2023 AY 2020-21

"1. On the facts and circumstances of the case, and in law, the assessment order passed by the learned AO is bad in law, since the same is without jurisdiction.

2. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case, and in law, and based on the directions of the learned DRP, erred in concluding that the Appellant's wholly owned subsidiary in India i.e. Gen Re Support Services Mumbai Private Limited ('GSSMPL') constitutes a business connection in India as per the provisions of section 9(1)(i) of the Act.

3. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case, and in law, and based on the directions of the learned DRP, erred in concluding that the Indian Branch of the Appellant is a Dependent Agent permanent establishment ('PE') of the Appellant in India as per Article 5(5) of the India-Germany tax treaty.

4. 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 reinsurance premium earned by the overseas offices of the Appellant is taxable in India under Article 7 of the India-Germany tax treaty being income attributable to the operations of the Appellant carried on through/ by its PE in India (ie. the India Branch).

5. 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 not considering that the reinsurance premium earned by the overseas offices of the Appellant (i.e. Direct Business) can be taxable under Article 7 of the India-Germany tax treaty only if income comprised therein can be attributable to the PE of the Appellant (ie. the India Branch).

6. Without prejudice to Ground No. 1 and 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 considering the reinsurance premium earned by the overseas offices of the

7. Without prejudice to Ground No. 1 to 6 above, the learned AO has on the facts and circumstances of the case and in law, and based on the directions of the learned DRP, erred in not allowing a deduction for claims and other incidental expenses while computing the taxable profit of the Appellant.

8. Without prejudice to Ground No. 1 to 7 above, the learned AO has on the facts and circumstances of the case, and in law, and based on the directions of the learned DRP, erred in disregarding the overall profitability of the Appellant for the year ended 2019 and 2020 of 16.2% as taxable profits by applying Rule 10 of the Income-tax Rules, 1962 ('the Rules), while and cable respectively (based on combined ratio) and estimating to per cent of the gross receipts attributing profits to the alleged PE of the Appellant in India.

9. Without prejudice to Ground No. 1 to 6 above, the learned AO has on the facts and 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 taxable profits (as arrived by applying Rule 10 of the Rules) as being attributable to the Indian operations.

10. Without prejudice to Ground No. 1 to 6 above, the learned AO has on the facts and circumstances of the case, erred in not applying a tax rate of 12.5 per cent (plus applicable surcharge and health and education cess) as applicable in case of reinsurance premium with respect to life reinsurance contracts as per section 115B of the Act while computing the tax liability of the Appellant in the income-tax computation form.

11. 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 amount of Information Technology ('IT') costs and other Management Expenses allocated to and paid by the Appellant's India Branch to its Head Office are covered within the scope of fees for technical services and accordingly taxable in the hands of the Appellant.

12. Without prejudice to Ground No. 1 and 11 above, the learned AO has on the facts and circumstances of the case and in law, and based on the directions of the learned DRP, erred in levying surcharge and health and education cess on the tax payable on income from fees for technical services received by the Appellant which has been held to be taxable under Article 12(2) of the India-Germany tax treaty.

13. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case and in law, erred in levying surcharge and health and education cess on the tax payable on interest income earned from income-tax refund by the Appellant which has been held to be taxable under Article 11 of the India-Germany tax treaty.

14. Without prejudice to Ground No. 1 above, the learned AO has, on the facts and 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 Rs. 27,95.65.710.

15. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case and in law, erred in calculating interest under section 244A of the Act.

16. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case and in law, erred in not mentioning the interest under section 244A of the Act granted to the Appellant while computing the tax payable by the Appellant in the income-tax computation sheet.

17. Without prejudice to Ground No. 1 above, the learned AO has on the facts and circumstances of the case, and i and in law, erred in initiating penalty proceedings under section 270A of the Act."

ITA NO. 4691/Mum/2023 AY 2021-22

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 27 June 2022, by the Assistant/Deputy Commissioner of Income-tax, 1(1)(1), Delhi, to initiate assessment proceedings for AY 2021-22, 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 the assessment order passed by the learned AO is bad in law, since the same is without jurisdiction.

2. Without prejudice to ground no. 1 above, on the facts and in the circumstances of the case, and in law, the final assessment order dated 23 October 2023, passed by the learned AO under section 143(3) read with section 1440(13) of the Act, having been passed beyond the period of limitation provided in terms of section 153 of the Act, is illegal, being barred by limitation and is therefore, void ab initio and liable to be quashed.

3. Without prejudice to ground nos. 1 and 2 above, on the facts and in the circumstances of the case, and in law, the directions issued by the learned DRP under section 144C(5) of the Act, dated 27 September 2023, are not in conformity with circular no. 19/2019 dated 14 August 2019, issued by the Central Board of Direct Taxes and thus, the said directions and the consequential final assessment order deserve to be held as invalid, bad in law and be deemed to have never been issued.

4. Without prejudice to ground nos. 1 to 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 Appellant's wholly owned subsidiary in India, i.e., Gen Re Support Services Mumbai Private Limited (GSSMPL) constitutes a business connection in India as per the provisions of section 9(1)(1) of the Act.

5. Without prejudice to ground nos. 1 to 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 Indian Branch of the Appellant is a Dependent Agent permanent establishment ('PE') of the Appellant in India as per Article 5(5) of the India-Germany tax treaty.

6. Without prejudice to ground nos. 1 to 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 reinsurance premium earned by the overseas offices of the Appellant is taxable in India under Article 7 of the India India-Germany tax treaty being income attributable to the operations of the Appellant carried on through/ by its PE in India (Le., the India Branch).

7. Without prejudice to ground nos. 1 to 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 DRF, erred in not considering that the reinsurance premium earned by the overseas offices of the Appellant can be taxable under Article 7 of the India-Germany tax treaty only if income comprised therein can be attributable to the PE of the Appellant (Le., the India Branch).

8. Without prejudice to ground nos. 1 to 7 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 estimating to per cent of the gross reinsurance receipts of the overseas offices of the Appellant as taxable profits by applying Rule 10 of the Income-tax Rules, 1962 ('the Rules'), while attributing profits to the alleged PR of the Appellant in India.

9. Without prejudice to ground nos. 1 to 7 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 taxable profits (as arrived by applying Rule 10 of the Rules) as being attributable to the Indian operations.

10. Without prejudice to ground nos. 1 to 3 above, the learned AO has on the facts and in the circumstances of the ease, and in law, and based on the directions of the learned DRP, erred in holding that the amount of Information Technology (IT") costs and other Management Expenses allocated to and paid by the Appellant's India Branch to its Head Office are covered within the scope of fees for technical services and accordingly taxable in the hands of the Appellant.

11. Without prejudice to ground nos. 1 to 3, and ground no. 10 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 levying surcharge and health and education cess on the tax payable on income from fees for technical services received by the Appellant taxable under Article 12(2) of the India-Germany tax treaty.

12. Without prejudice to ground nos. 1 to 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 not allowing carry forward of losses amounting to INR 12,68,81,654 under the head 'Profits and gains of business of profession' as claimed by the Appellant in its return of income.

13. Without prejudice to ground nos. 1 to 7, ground no. 10 and 12 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 setting off the alleged income of INR 6,27,42,133 as computed by the learned AO against the alleged business loss of INR 8,67,06,990 as computed by the learned AO himself.

14. Without prejudice to ground nos. 1 to 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 assessing the total income of the Appellant at INR 6,27,42,130 and computing the tax liability of the Appellant at INR 66,55,685.

15. Without prejudice to ground nos. 1 to 3 above, the learned AO has on the facts and in the circumstances of the case, and in law, erred in not granting refund amounting to INR 14,39,40,890 as claimed by the Appellant in its return of income.

16. Without prejudice to ground nos. 1 to 3 above, the learned AO has on the facts and in the circumstances of the case, and in law, erred in computing interest at INR 1,30,42,094 under section 244A of the Act till the time of issuance of the intimation under section 143(1) of the Act, as against till the time of grant of the refund cheque.

17. Without prejudice to ground nos. 1 to 3 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."

2.1. Assessee has raised two sets of additional grounds, one vide application dated 20.04.2023 which are reproduced as under:

"14. On the facts and in the circumstances of the case, and in law, the directions issued by the Hon'ble Dispute Resolution Panel(DRP') under section 144C(5) of the Income-tax Act, 1961 ('the Act'), are not in accordance with the provisions of the Act and, hence, invalid and bad in law.

15. The learned AO has on the facts and in the circumstances of the case, and in law, erred in granting credit for taxes deducted at source amounting to only Rs. 5.35.32.370 instead of Rs. 6,71,87,055 claimed by the Appellant, thereby resulting in short credit of taxes deducted at source amounting to Rs. 1,36,54,685.

2.2. In the second set of additional grounds vide application dated 10.10.2023, it is contested that final assessment order passed by the ld. Assessing Officer is beyond the limitation provided u/s. 153 and hence liable to be quashed. The relevant additional ground is re-produced as under:

16. On the facts and in the circumstances of the case and in law, the final assessment order dated 30 July 2022, passed by the Assessing Officer('AO') under section 143(3) read with section 144C(13) of the Act, having been passed beyond the limitation provided in terms of section 153 of the Act, is illegal, being barred by limitation and is therefore, void ab initio and liable to be quashed"

2.3. We have perused the applications placed on record for the admission of the above stated additional grounds which were confronted to the ld. CIT DR. There being no objection on their admission, the same are admitted.

3. In the appeal by the assessee there are as many as 31 grounds raised, covering all the four appeals for four different assessment years captioned above. In this respect, a tabulation is furnished by the assessee giving summary of the grounds so raised in each of the assessment year and mapping them to their commonality since their numbering differs. The tabulation furnished by the assessee along with its remarks is extracted below for ready reference:

Sr. No.	Grounds	Respective ground numbers in appeal for:				Appellant's Remark
		AY 2018-19	AY 2019-20	AY 2020-21	AY 2021-22	
1	The learned Assessing Officer C'AO') concluded that the Appellant's wholly owned subsidiary in India i.e. Gen Re Support Services Mumbai Private Limited ('GSSMPL') constitutes a business connection in India as per the provisions of section 9(i)(i) of the Income-tax Act, 1961 ('the Act').	1	2	2	4	
2	The learned AO concluded that Indian Branch of the Appellant is a Dependent Agent permanent establishment ('P-E') of the Appellant in India as per Article 5(5) of the India-Germany tax treaty.	2	3	3	5	
3	The learned AO concluded that the reinsurance premium earned by overseas offices of Appellant is taxable in India under 'Article 7 of the India-Germany tax treaty being income attributable to the operations of the Appellant carried through/ by its PE in India (i.e. the India Branch).	3	4	4	6	
4	The learned AO erred in concluding that the reinsurance premium earned by overseas offices of Appellant (i.e.'Direct Business) can be taxable under Article" 7 of the India-Germany tax treaty only if income comprised therein can be attributable to the PE of the Applicant (i.e. the India Branch).	4	*S*	5	7	
5	The learned AO has erred in not allowing deduction for claims and other incidental expenses while computing the taxable profits of the Appellant.	5	*6*	7	X	These grounds are consequential to the main grounds mentioned at serial numbers 1 to 4 above. In event the Appellant succeeds on the main grounds, these grounds will become academic.

6	The learned AO has erred in disregarding the overall profitability of the Appellant for the year (based on .combined ratio) and estimating 10 per cent of the gross receipts as taxable 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	7	8	8	
7	The learned AO has erred in not using any scientific method in determining 50 per cent of taxable profits (as arrived by applying Rule 10) as attributable to the Indian operations.	7	8	9	9	
8	The learned AO has erred in applying a tax rate of 40 per cent instead of 12.5 per cent (plus applicable surcharge and cess) in case of reinsurance premium with respect to life reinsurance contracts as per section 1156 of the Act while computing the tax liability of the Appellant in the income-tax computation form.	8	9	10	X	
9	The learned AO has erred in holding that the amount of information technology costs and other management expenses allocated to and paid by the Appellant's India Branch to its Head Office are covered within the scope of fees for technical services and accordingly taxable in the hands of the Appellant.	9	10	11	10	
10	The learned AO has erred in levying surcharge and cess on the tax payable on income from fees for technical services received by the Appellant which has been held to be taxable under Article 12(2) of the India-Germany tax treat}'.	10	11	12	11	The ground is consequential to the main ground mentioned at serial number 9 above. In event the Appellant succeeds on the main ground, this ground will become academic.
11	The learned AO has erred in not granting refund as claimed by the Appellant while filing its return of income.	11	X	X	15	The ground is consequential to the main grounds mentioned at serial number i to 4 and 9 above. In event the Appellant succeeds on the main grounds, tin's ground will become academic.
12	The learned AO has erred in calculating the interest under section 244A of the Act.	12	20	15	16	We request that directions may be given to the learned AO to calculate interest as per the provisions of the Act.
13	The learned AO has erred in initiating penalty proceedings under section 2yoA of the Act.	13	22	17	17	This ground related to penalty is consequential to the main grounds at serial numbers i to 4 and 9 above. In the event the Appellant succeeds on those grounds, penalty proceedings should be dropped.
14	The directions issued by the Hon'ble Dispute Resolution Panel('DRP') under section 1440(5) of the Act are not in accordance with the provisions of the Act and hence are invalid and bad in law.	14	23	18	X	This ground is on account of the fact that the DRP Directions have been signed by just one member.
15	The learned AO has erred in granting credit for taxes deducted at source claimed by the Appellant and thereby resulting in short credit of taxes deducted at source.	15	19	19	X	We request that directions may be given to the learned AO to grant eligible TDS credit.
16	The final assessment order passed by the learned AO under section 143(3) read with section 1440(13) of the Act, having been passed beyond the limitation provided in terms of section 153 of the Act, is illegal, being barred by limitation and is therefore, void ab initio and liable to be quashed.	16	24	20	2	This ground should be kept open.
17	The learned AO has erred in applying the provisions of section 115 JB of the Act to the Appellant being a foreign company.	X	12	X	X	All these grounds (serial numbers 17 to 20) are with respect to incorrect computation of the business income by the learned AO. While computing the business income under the normal

18	The learned AO has erred in making additions on account of attribution of income from reinsurance premium with respect to the Appellant's Direct Business to the Appellant's India operations, and IT costs and other Management Expenses allocated to and paid by the Appellant's India Branch to its Head Office as fees for technical services, to the deemed total income of the Appellant determined in accordance with the provisions of section 115 JB of the Act.	X	13	X	X	provisions of the Act, the learned AO has erroneously started with the adjusted book profits of INR 3,70,37,415 as per the MAT provisions instead of retuned business loss of INR 6,48,51,847. The Appellant's arguments on these grounds are restricted to only this aspect of the matter. Other aspects like applicability of MAT provisions are not pressed.
19	The learned AO has erred in applying the provisions of section 115JB of the Act on the amount of reinsurance premium with respect to life reinsurance contracts covered under section 1156 of the Act.	X	14	X	X	
20	The learned AO has erred in levying tax at the rate of 40 per cent on profits computed in accordance with the provisions of section 115JB of the Act.	X	15	X	X	
21	The learned AO has erred in not allowing carry forward of losses under the head Profits and gains of business or profession ('PGBP')	X	16	X	12	These grounds are consequential to the main grounds mentioned at serial number i to 4 and 9 above. In event the Appellant succeeds on the main grounds, these grounds will become academic.
22	The learned AO has erred in not setting off losses incurred under the head PGBP while calculating the total income and tax liability of the Appellant.	X	17	X	X	
23	The learned AO has erred in computing the total income of the Appellant and the taxes thereon in accordance with the provisions of the Act.	X	18	X	14	This ground in general in nature.
24	The learned AO has erred in levying interest under section 2340 of the Act.	X	21	X	X	This ground is consequential in nature. In the event the Appellant succeeds on main grounds mentioned at serial numbers i to 4 and 9 above, this ground will become academic. Directions should be given to the Learned AO to compute interest as per the provisions of the Act.
25	The assessment order passed by the AO is bad in law since the same is without jurisdiction.	X	1	1	1	The Appellant does not wish to press this ground.
?	The learned AO has erred in levying surcharge and health and education cess on the tax payable on interest income earned from income-tax refund by the Appellant which has been held to be taxable under Article 11 of the India-Germany tax treaty.	X	X	13	X	The Appellant has offered the interest on income-tax refund attributable to its foreign branches to tax at the rate prescribed under Article n of the India-Germany tax treaty. However, AO has levied surcharge and education cess on the said income taxable at the treaty rates.
27	The learned AO has erred in assessing the total income of the Appellant at INR 27,95,65,710.	X	X	14	X	This ground is general in nature.
28	The learned AO has erred in not mentioning the interest under section 244A of the Act granted to the Appellant while computing the tax payable by the Appellant in the income-tax computation sheet.	X	X	16	X	We request that directions may be given to the learned AO to consider the interest as per the provisions of the Act.
29	The learned AO has erred in considering the reinsurance premium earned by the overseas offices of the Appellant (i.e. Direct Business) at Rs. 82,11,66,722 instead of Rs. 78,20,41,873.	X	X	6	X	This ground is consequential to the main grounds at serial numbers i to 4 above. In event the Appellant succeeds on those grounds, this ground will become academic.
30	The directions issued by the learned DRP under section 144C(s) of the Act dated 27 September 2023 are not in conformity with circular no. 19/2019 dated 14 August 2019, issued by the Central Board of Direct Taxes and thus, the said directions and the consequential final assessment order deserve to be held as invalid, bad in law and be deemed to have never been issued	X	X	X	3	The ground should be left open in case the Appellant succeeds on merits.

31	The learned AO erred in not setting off alleged income which has been taxed as income of the HO as FTS against the alleged business loss as computed by him	X	X	X	13	This ground is consequential to the main ground mentioned at serial number 9 above. In the event the Appellant succeeds on those grounds, this ground will become academic.

3.1 It was pointed out that the core issues to be addressed in all these four appeals pertains to ground no.1 to 4, one relating to reinsurance premium earned by the assessee and brought to tax in India by holding it as being attributable to the operations of the assessee having carried through or by its Permanent Establishment (PE) in India; second issue which needs adjudication by the Bench is vide ground no.9 in respect of information technology cost (IT cost) and other management expenses allocated to India Branch and paid by it to the Head Office, i.e., assessee, being held as fees for technical services (FTS) and thus, holding it as taxable in the hands of the assessee. In the above tabulation, assessee has given its remarks for all the grounds except for grounds relating to these two core issues which needs to be adjudicated by the Bench. The remarks state that all the other grounds are either consequential in nature to these two core issues or they are general and hence need not be adjudicated separately. Assessee also states in certain grounds, seeking direction to the ld. Assessing Officer or to be left open in case it succeeds on merits. Each of the remarks mentioned by the assessee in the above table have been perused and analysed as to their effect dependent upon the outcome of adjudication of the two core issues which shall be elaborated in the subsequent paragraphs.

4. Before we delve into the two core issues as enumerated above, we outline the brief facts to describe and understand the set up and *modus operandi* of the business undertaken by the assessee. Assessee is a company incorporated under the laws of Germany and is part of Berkshire Hathaway Group. Assessee is thus, a tax resident of Germany under the India-Germany Double Tax Avoidance Agreement

(India-Germany DTAA) and also qualifies as a non-resident of India u/s.6 of the Act. It is engaged in providing reinsurance services globally to various life and non-life insurance and reinsurance companies. Assessee had a wholly owned subsidiary in India with the name Gen Re Support Services Mumbai Private Limited (GSSMPL) which was involved in the business of providing market intelligence and administrative support services to the assessee. It is explained that the activities carried out by GSSMPL are limited to rendering of support functions, i.e., obtaining market intelligence and administrative support services to the assessee in respect of reinsurance business with Indian insurance companies. GSSMPL discontinued its business from August 2017 and has been in liquidation since 29.09.2017. Assessee does not have any other subsidiary in India during the year under consideration other than GSSMPL. In the meanwhile, assessee obtained an approval dated 09.05.2017 from Insurance Regulatory Development Authority of India (IRDAI) under the IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations, 2015 (the "Reinsurance Branch Regulations") vide registration No. FRB/008 for establishing its India Branch. Thus, India Branch of the assessee was set up which commenced its operation w.e.f. 01.08.2017, subjected to regulations of IRDAI. In the assessment year 2018-19, for the part of the year, assessee had its wholly owned subsidiary GSSMPL i.e. from 01.04.2017 to 31.07.2017. For the remaining part of the year, i.e. from 01.08.2017 to 31.03.2018, assessee had its India Branch. For all the subsequent three assessment years which are also in appeal before us, assessee had only India Branch for the reinsurance business.

5. Issue raised vide ground no.1 to 4 in appeal for Assessment Year 2018-19 had come up before the Coordinate Bench of ITAT, Mumbai in assessee's own case for Assessment Year 2015-16 in ITA

No.7433/Mum/2018, dated 14.06.2019 as well as for Assessment Year 2017-18 in ITA No.1164/Mum/2021, dated 29.10.2021. The appellate order for Assessment Year 2017-18 followed the order for Assessment Year 2015-16. In Assessment Year 2015-16, assessee had its wholly owned subsidiary, i.e., GSSMPL for which the Revenue had set up its case that premiums earned by the assessee from various reinsurance contracts with Indian insurance companies is taxable in India on three premise-

i. because assessee had a "business connection" in India within the meaning of section 9(1)(i) of the Act
ii. because assessee had a PE in India in terms of Article 5(1) of the India-Germany DTAA; and
iii. because assessee had a Dependent Agent PE (DAPE) in terms of Article 5(5) of the India-Germany DTAA.

5.1. All the three aspects were dealt by the Coordinate Bench extensively vis-à-vis provisions of the Act and the India-Germany DTAA by considering the factual position corroborated by Master Service Agreement as well as reinsurance arrangement with SBI Group Life entered into by assessee and the Indian insurance company which was referred to as an illustrative agreement. Coordinate Bench examined and considered the services obtained by the assessee from its Indian subsidiary, i.e. GSSMPL which was crucial to decide the controversy. It drew factual conclusion that GSSMPL is only providing support services which cannot be equated to carrying on of a reinsurance business. It was also noted that GSSMPL did not have requisite regulatory approval from IRDAI to carry out reinsurance function, an aspect crucial to hold that GSSMPL existed as PE of the assessee for the conduct of its reinsurance business. On the first aspect raised by the Revenue as to assessee having a 'business connection' within the meaning of section

9(1)(i) of the Act and on the second aspect of GSSMPL constituting a PE of assessee in India under Article 5(1) under the India-Germany DTAA, the Coordinate Bench noted that GSSMPL is not authorised to execute any contract or settle any claim on behalf of the assessee. In fact, it noted that there is no factual support to the ld. Assessing Officer as there was nothing either under the service agreement or any material to establish that this Indian subsidiary had provided actuarial or underwriting services which are core activities for the conduct of reinsurance business. For the purpose of provisions contained in Article 5(1) of India-Germany DTAA, Coordinate Bench observed that factually or legally, the place of business of Indian subsidiary *per se* can in no way be equated to mean the fixed place of business of the assessee in India, by taking a clue from the decision of Hon'ble Supreme Court in the case of E Funds IT Solution Inc vs. ADIT [2017] 86 taxmann.com 240 (SC). On the third aspect of DAPE of assessee in India, Coordinate Bench examined the case of Revenue and concluded that Income-tax authorities did not refer to any particular arrangement or agreement or any other piece of evidence to demonstrate that GSSMPL could enter into contracts or was authorised to enter into any business in India on behalf of the assessee. It thus, held that the burden casted on Revenue was not discharged by it and thus negating this aspect to hold that Indian subsidiary did not constitute a DAPE of assessee in India. This decision of the Coordinate Bench squarely covers the case of the assessee for the part of the year under consideration relating to Assessment Year 2018-19, i.e., 01.04.2017 to 31.07.2017 when GSSMPL existed as wholly owned subsidiary of the assessee. For the remaining part of the Assessment Year 2018-19, GSSMPL did not exist but was replaced by India Branch, details of which are already narrated above.

5.2. The important conclusion which emerges from the above referred decision in assessee's own case for Assessment Year 2015-16 is that for the reinsurance company earning reinsurance premium from the Indian concerns was not liable to tax in India, since there did not exist a "business connection" in India u/s. 19(1)(i) of the Act nor there exist a PE in India within the meaning of Article 5(1) and/or Article 5(5) of India-Germany DTAA.

5.3. Post setting up of India Branch, i.e., w.e.f. 01.08.2017, all new reinsurance contracts negotiated and finalised have been executed between the Indian insurance companies (also referred to as Cedants) and assessee's India Branch. Also, where all the reinsurance contracts negotiated and finalised prior to 01.08.2017 but where the risk sought to be underwritten, commenced on or after 01.08.2017, India Branch is responsible for reinsuring such risks. Thus, post setting up of India Branch, Indian Cedants pay reinsurance premia to the Indian Branch for reinsuring part of their risks. India Branch services the reinsurance contracts with Indian Cedants and settles the claims of the risks reinsured by it on the happening of adverse insurable event. These facts are not in dispute.

5.4. Keeping in perspective, this backdrop of factual positon, we take up appeal for Assessment Year 2018-19 having a broken period for the conduct of reinsurance business by the assessee, part of which was executed when its wholly owned subsidiary existed, i.e., GSSMPL and part of it when the India Branch came into existence. As already stated, for the remaining three years, it was only India Branch which existed in respect of the reinsurance business of the assessee with Indian Cedants.

6. We first deal with the income earned by the assessee which is referred to as its 'direct business'. In respect of direct business of the assessee, it is stated that assessee had negotiated and finalised reinsurance contracts with Indian Cedants outside India, prior to the commencement of India Branch on 01.08.2017. Assessee earned/received reinsurance premium on all these contracts which were entered into during the period year 2001 to July 2017, referred to as 'direct business'. Under the IRDAI Regulation, assessee for its direct business is permitted to continue servicing the risk assumed under the existing reinsurance contracts directly, where such risk commenced prior to the operation of India Branch. This servicing of the risk can continue even after the operationalisation of India Branch under the IRDAI Regulations. Such servicing which includes settlement of claims is executed directly from outside India despite having India Branch. For all these direct business reinsurance contracts with Indian Cedants, assessee directly negotiates and settles the claims on the risks reinsured on happening of any adverse insurable event. India Branch does not service reinsurance contracts or assist in negotiation or settlement of any claim in respect of direct business of the assessee. Further, Indian Cedants pay the premium in respect of the aforesaid direct business to the assessee directly in bank account outside India without any involvement of India Branch. Thus, assessee had two streams of incomes, one arising out of direct business as detailed above and the other arising out of conduct of business by the India Branch attributable to the India operations. Assessment Year wise details of direct business and India Branch business after the set-up of India Branch in Assessment Year 2018-19 is tabulated below:

Assessment Year wise details of direct business and India branch business (Amt in Rs)

Sr No	AY	Direct Business		India Branch Business		Total
1	AY 2018-19	1,52,28,61,747	69%	67,34,42,000	31%	2,19,63,03,747
2	AY 2019-20	75,22,16,093	28%	1,94,06,20,000	72%	2,69,28,36,093
3	AY 2020-21	82,11,66,722	17%	3,93,85,24,000	83%	4,75,96,90,722
4	AY 2021-22	80,34,93,278	16%	4,15,71,86,000	84%	4,96,06,79,278
5	AY 2022-23	99,63,25,066	16%	5,21,09,73,000	84%	6,20,72,98,066
6	AY 2023-24	83,15,58,068	9%	8,70,54,59,000	91%	9,53,70,17,068
7	AY 2024-25	83,92,54,128	8%	10,12,65,26,000	92%	10,96,57,80,128
8	AY 2025-26	88,04,50,547	8%	10,01,98,00,000	92%	10,90,02,50,547

6.1. From the above table, it is noted that in respect of India Branch business, the same has been offered to tax in India and is not in dispute. Income of India Branch has been considered as being fully attributable to the operations of India Branch which has been fully offered to tax in the respective Assessment Years, fact of which is not in dispute.

7. The issue is in respect of the direct business income earned by the assessee for which ld. Assessing Officer has held that there is a real and intimate connection between the direct business of the assessee and the activity done in India by GSSMPL. Ld. DRP while giving its directions on this has held GSSMPL to be DAPE of assessee in India. Further, on the fact of GSSMPL ceasing to exist from Assessment Year 2018-19, ld. DRP observed that what matters is that the income is attributable to a PE that existed when the source was created and thus, held that reinsurance premium received by the assessee was taxable even though GSSMPL was not in existence in the year under consideration. For the direct business of the assessee, authorities below alleged that India Branch is the PE of the assessee, exercising indirect authority to negotiate and enter into contract on behalf of the assessee, involved in both, inspection of books of accounts of the Cedants and in arbitration proceedings and is also habitually securing orders for or on behalf of the assessee qua direct business. Ld. Assessing Officer concluded that

India Branch is a DAPE of the assessee and therefore, reinsurance premium earned by the assessee is taxable in India being attributable to its PE in India. Ld. DRP has observed and directed that what matters is that income is attributable to a PE which existed when the source was created.

7.1. As already noted above, for the period when GSSMPL existed in the Assessment Year 2018-19, the issue is already settled and squarely covered by the decision of Coordinate Bench in assessee's own case for Assessment Year 2015-16 (supra) and therefore, findings arrived at by the authorities below including that of ld. DRP and ld. Assessing Officer do not hold good for the addition so made. It is observed that though the authorities have referred to the said decision of Assessment Year 2015-16, but have proceeded to make the addition merely to keep the issue alive, as no appeal can be filed by the Department against the order passed by the ld. DRP. Specific observations made by ld. DRP in this regard in para-11.3 is extracted below for ready reference:

> *"The facts of the assessee's case for the year under consideration is similar to the facts of A.Y. 2015-16. Also, though the assessee has claimed that it has received a favourable decision of the ITAT for that year, the Ld. A.O. has pointed out that the Department has not accepted the decision of the ITAT and preferred an appeal in the Bombay High Court against the said decision. As such, to keep the issue alive, and especially considering the fact that the Department has no right to challenge the order of DRP, the panel confirms the stand taken by the Ld. A.O., and rejects Objection no. 1 to 4 of the assessee."*

7.2. For the above, it is a fact on record that the issue is settled in favour of the assessee by the decision of Coordinate Bench in assessee's own case for Assessment Year 2015-16 as well as Assessment Year 2017-18 (supra) whereby it has been held that arrangement of assessee with GSSMPL cannot be construed to be a business connection u/s. 9(1)(i) of the Act nor would it constitute a PE under Article 5 of India-Germany DTAA. Relevant paragraph of the order in assessee's own case for Assessment Year 2015-16 is extracted below for ready reference:

> *"22. All these decisions as well as our discussion aforesaid enables us to come to a conclusion that the income-tax authorities have erred in holding that there exists a business connection' in India under Section 9(1)(1) of the Act and also that there exists a PE in India within the meaning of Article 5(1) and/or 5(4) of the India-Germany Tax Treaty. In view of the aforesaid discussion, we hereby set-aside the order of Assessing Officer and uphold the stand of the assessee. As a consequence, so far as Ground of appeal nos. 1 to 4 are concerned, the same are treated as allowed."*

7.3. In view of the above, it is held that no portion of income, if any, comprised in the reinsurance premium earned by the assessee is taxable in India on the basis of view taken by ld. Assessing Officer and ld. DRP that GSSMPL constituted a business connection/PE of the assessee in India for its direct business.

8. We now take up the segment relating to the period when India Branch came into existence and assessee earned reinsurance premium on its direct business. The business conducted by India Branch with the Indian Cedants is not in dispute and has already been offered to tax by the assessee as India income attributable to its India Branch. The *modus operandi* of conduct of direct business by the assessee even after the set-up of India Branch is already discussed in the above paragraphs whereby India Branch has no role to play therein. To summarily reiterate for the purpose of clarity, Indian Cedants are serviced directly from outside in respect of the direct business, claims are negotiated and settled directly on the risk reinsured by the assessee for any adverse insurable event.

8.1. It is also important to note the factual position in respect of direct business that the reinsurance contracts which are being referred to on which assessee has received reinsurance premium during the year under consideration were negotiated and finalised prior to 01.08.2017, i.e., before the operationalisation of India Branch. All the risks

underwritten under these contracts had originally commenced prior to 01.08.2017 and having serviced by the assessee directly as and when the adverse insurable event arose. Since India Branch did not exist during the time when reinsurance contracts under the direct business segment were negotiated and finalised, there could not have been possibility of any occasion where India Branch could be said to be involved in securing such contracts for the assessee. India Branch cannot be held to be a source for attributing income of the overseas assessee by treating it as PE in India for the direct business.

8.2. It is also important to note that India Branch is a part and parcel of assessee and not a separate legal person. Therefore, question of India Branch being an agent of assessee does not arise. The India Branch of assessee is itself a PE of the assesse, income attributable to the operations of India Branch have been fully offered to tax, details of which are already tabulated above. However, India Branch is not at all involved in the direct business segment of the assessee and therefore, no income from the direct business of the assessee is attributable to the India Branch. Also, treating India Branch of the assessee as DAPE under Article 5(5) of India-Germany DTAA does not hold good as reinsurance contracts relating to period prior to 01.08.2017 were negotiated and finalized not by the India Branch. All these reinsurance contracts relating to direct business were executed by the assessee outside India, fact of which have already been considered by the Coordinate Bench in its decision for Assessment Year 2015-16 (supra).

8.3. Considering the overall factual matrix as discussed above in detail along with judicial precedents in assessee's own case, it is concluded that there exists no business connection in India u/s.9(1)(i) of the Act nor there exists a PE in India within the meaning of Article 5(1) and 5(5)

of India-Germany DTAA to bring to charge, income attributable to India Branch in respect of direct business of the assessee. Further, in respect of income attributable to the period during which GSSMPL was in existence in the year under consideration, we have already held in favor of the assessee by having recourse to the decision of the Coordinate Bench in assessee's own case for Assessment Year 2015-16 (supra). As a consequence, ground nos.1 to 4 raised by the assessee are allowed.

9. We now take up second issue relating to IT cost and other management expenses held by the Revenue falling within the scope of FTS for bringing it to tax in India. In this regard, it is noted during the year under consideration the India Branch made payments to its Head Office (assessee) towards allocation of IT cost and other management expenses. According to the ld. Assessing Officer, such sums received by the head office (assessee) were not offered to tax by it. He held that these are taxable in India in the hands of the assessee as FTS. While doing so, ld. Assessing Officer treated the India Branch of assessee as a resident in India in order to hold that payments made by India Branch to the HO (assesse) is a payment made by resident to non-resident and is thus, covered within the scope of FTS u/s. 9(1)(vii)(b) of the Act.

9.1. On this view of ld. Assessing Officer, claim of the assessee is that provisions of section 91(1)(vii)(b) do not apply on the issue in hand since HO (assessee) and the India Branch are part of the same legal entity and are a single person for the purpose of the Act. Under the Act, HO and the Branch office are not treated as separate entity for tax purposes. Explanation (a) to section 9(1)(vi) of the Act expressly deems HO and Branch of the bank to be separate and independent entities for limited purpose of taxing interest paid by Branch to its HO. No such similar deeming provision exists for bringing to tax FTS u/s. 9(1)(vii) of the Act.

Reference is made to the decision of Hon'ble Special Bench of ITAT, Mumbai in the case of Sumitomo Mitsui Banking Corporation vs. DDIT [2012] 136 ITD 66 (Mum SB) wherein it was held that branch office and head office are to be treated as one and the same entity for the purposes of domestic tax law in India. The said decision confirms that payments made by branch to its head office cannot be brought to tax in India, in the hands of the head office. Assessee thus, claims that IT cost and other management expenses of its head office (assesse) is payment to self and therefore, not taxable under the Act.

9.2. Further, under the treaty provisions of India-Germany DTAA, reference is made to Article 12(5) whereby it is mentioned that the provisions of Article 12(2) shall not apply if the beneficial owner of FTS is a resident of Germany and has a PE in India and the said FTS is connected to that PE. In such a case, income would be taxed either under Article 7 as "business profits" or Article 14 as "independent personal services". Relevant extract of Article 12 of India-Germany DTAA are reproduced as under:

> *"ARTICLE 12-ROYALTIES AND FEES FOR TECHNICAL SERVICES*
>
> *2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or the fees for technical services*
>
> *5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries or business in the other Contracting State in which the royalties on fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or ford base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply."*

9.3. From above, for Article 7(1), profits of a German enterprise can be taxable in India only to the extent they are attributable to its PE in India.

Also, as per Article 7(2) where a German enterprise carries on business in India through a PE, there shall be attribution to that PE, of the profits which it might be expected to make, if it were a distinct and separate enterprise engaged in the same or similar activities under same or similar conditions and dealing wholly independently with the enterprise of which it is a PE.

9.4. In the present factual matrix, the above provisions of Article 7 would not apply in the case of assessee being head office, for the sums received by it from its India Branch.

9.5. It is also important to take note of the protocol to India-Germany DTAA whereby as per point No.1(b) income derived by a resident of Germany from *inter alia*, income from technical services exercised in Germany in connection with a PE situated in India shall not be attributed to that PE. According to the protocol, such an income is not taxable under the treaty. Relevant extracts of the protocol of India-Germany DTAA are reproduced below:

> *"PROTOCOL- The Republic of India and the Federal Republic of Germany have agreed at the signing at Born on 19th June. 1995 of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income and capital upon the following provisions which shall form an integral part of the said Agreement.*
>
> *With reference to Article 7*
>
> *1.*
> *....*
> *(b) Income derived by a resident of a Contracting State from planning, project, construction or research activities as well as income from technical services exercised in that State in connection with a permanent establishment situated in the other Contracting State, shall not be attributed to that permanent establishment.*
> *.....*
>
> *(emphasis supplied)"*

9.6. Also, provisions of Article 14 on "Independent Personal Services" are not applicable in the present case of assessee, it being a company.

10. We also take note of certain inconsistencies in the observations of ld. Assessing Officer and the directions issued by ld. DRP on this issue, whereby ld. Assessing Officer treated the India Branch as resident in India and held that payment made by India Branch to head office (assesse) is a payment made by resident to non-resident, covering it within the scope of FTS u/s. 9(1)(vii)(b) of the Act. However, ld. DRP issued its directions to bring to tax IT cost and other management expenses allocated to India Branch and paid by it to its head office (assessee) under Article 7 as FTS thereby, changing the whole color of the transaction. Having discussed both the relevant provisions of the Act and that of the India-Germany DTAA in the above paragraphs, it is held that the payment of IT cost and other management expenses by the India Branch to its head office (assessee) towards allocation of the same, is neither taxable within the provisions of the Act nor under the provisions of India-Germany DTAA. Accordingly, ground no.9 is allowed.

10. Having adjudicated upon the two core issues vide ground no.1 to 4 and ground no.9 for AY 2018-19 in above paragraphs, all other grounds in all the four appeals are dealt with as enumerated in the table in paragraph-3 owing to their commonality. Thus, by making specific reference to grounds for Assessment Year 2018-19, we observe as under:

a) Ground nos. 5,6,7,8,10,11 and 13 are consequential to the two core issues and are therefore rendered academic and needs no separate adjudication.

b) For ground nos. 12 and 15, ld. Assessing Officer is directed to verify the records and details and re-compute/grant the credit as claimed by the assessee.
c) For ground nos.14 and 16, since the issues have already been dealt on merits of the case holding in favor of the assessee, the same are left open and not adjudicated upon.

11. Specific to Assessment Year 2019-20, relevant grounds will have similar outcome as those dealt in Assessment Year 2018-19 except for difference in their numbering. However, there are certain grounds, which needs separate adjudication.

11.1. For ground nos. 12,13,14 and 15, it is noted that while computing business income under the normal provisions of the Act, ld. Assessing Officer has erroneously started with the adjusted book profits of Rs.3,70,37,415/- under the provisions of section 115JB (MAT provisions) instead of returned business loss of Rs.6,48,51,847/-. Ld. Assessing Officer is thus, directed to rectify this anomaly in computation and accordingly re-compute the same.

11.2. Ground nos. 16, 17 and 21 are consequential to the two core issues which have already been dealt with in the above paragraphs vide ground nos. 1 to 4 and 9 of Assessment Year 2018-19, hence rendered academic. However, ld. Assessing Officer is directed to re-compute the interest u/s.234D vis-à-vis ground no.21.

11.3. Ground no.1 is not pressed by the assessee and is therefore, dismissed as not pressed.

11.4. Ground No.18 is general in nature and hence not adjudicated separately.

12. Now coming to specific grounds relating to Assessment Year 2020-21 which are otherwise than those dealt for Assessment Year 2018-19 and 2019-20.

12.1. Ground no.14 is general in nature and therefore not adjudicated separately.

12.2. Ground no.6 is consequential to the core issue as aforesaid and therefore rendered academic.

12.3. For ground no.16 relating to interest u/s.244A, ld. Assessing Officer is directed to reconsider the same for its re-computation.

12.4. Ground no.13 relates to levying of surcharge and Health and Education Cess on tax payable on interest income earned from income tax refund by the assessee. The issue raised in this ground is covered by the decision of Coordinate Benches in several cases whereby it is held that the rate provided in Article 11(2) of India-Germany DTAA ought to be construed to be inclusive of surcharge and cess as Article 11(2) provides that the tax rate on interest income cannot exceed 10%. Thus, no further surcharge or cess can be applied on the tax rate of 10% as provided by Article 11(2) of the India-Germany DTAA. The decisions relied upon in this respect are as given below:

a. Sunil V. Motiani v. ITO IT [2013] 33 taxmann.com 252 (Mum)
b. DIC Asia Pacific Pte. Ltd. v. ACIT IT Kolkata [2012] 22 taxmann.com 310 (Kol)
c. DDIT V. BOC Group Ltd [2015] 64 taxmann.com 386 (Kol)
d. DCIT IT' V. Marubeni Corporation [2022] 139 taxmann.com 458 (Mum)

12.4.1. Fact of the matter is that in the year under consideration, a refund pertaining to Assessment Year 2016-17 was granted by the

Income-tax Department to the assessee which included interest component of Rs.15,67,835/- u/s.244A. Since this interest pertained to Financial Year 2015-16, relevant to Assessment Year 2017-18 when India Branch was not in existence, assessee offered this interest component as per Article 11 of India-Germany DTAA at the rate of 10%. However, ld. Assessing Officer while computing the tax liability against the final assessment order, applied surcharge and cess on the tax liability computed by applying rate of 10% under Article 11.

12.4.2. In this regard, assessee contended that section 90(2) of the Act entitles the assessee to apply more beneficial provisions between the Act and the relevant DTAA. Accordingly, assessee submitted that in respect of this interest income, Article 11(2) of India-Germany DTAA provides that interest arriving in India which is received by a resident of Germany can be taxed in India at a rate not exceeding 10%, given the recipient is a beneficial owner of such interest. The expression "*tax*" is defined in Article 2(3) of the India-Germany DTAA to include "income tax" and is stated to include '*surcharge*' thereon, so far as India is concerned. Article 2(4) further extends the scope of the '*tax*' by laying down that it shall also cover "*any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes*". Hence, assessee claims that while surcharge is specifically covered under '*tax*', cess also gets covered under '*tax*' by virtue of Article 2(4) of the India-Germany DTAA as it was introduced in 2004 by Finance Act 2004 i.e. pursuant to the signing of India-Germany DTAA in 1996.

12.6. In the given set of facts and supported by plethora of decisions of Coordinate Benches listed above as well as taking into consideration the provisions of the Act and that of the relevant DTAA, we direct the ld.

Assessing Officer to restrict the taxability of this interest earned by the assessee to 10% as envisaged under Article 11(2) of India-Germany DTAA. Accordingly, anything in excess of this by way of surcharge and cess is to be deleted. Ground no.13 is thus, allowed.

13. Now coming to specific grounds relating to AY 2021-22.

13.1. Ground No.13 is consequential to the core issue dealt in ground no.9 in appeal for Assessment Year 2018-19, hence rendered academic.

13.2. Ground no.3 deals with the legal issue. Since we have already adjudicated on the merits of the case dealing in favor of the assessee, the same is left open and not adjudicated upon.

14. In the result, all the four appeals of the assessee are partly allowed.

Order is pronounced in the open court on 30 January, 2026

Sd/-	Sd/-
(Amit Shukla)	(Girish Agrawal)
Judicial Member	Accountant Member

Dated: 30 January, 2026

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai