IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.3814/MUM/2025
(Assessment Year: 2011-12)

Deputy Commissioner of Income Tax
(International Taxation) - 4(1)(2)
Room No.625, 6th Floor,
Kautilya Bhavan, BKC, ... Appellant
Mumbai - 400051

v/s

Arun Madhavachari Rangachari
201, C/o Dar Media Pvt. Ltd., Centre Point,
Andheri Kurla Road, Andheri (East),
Mumbai – 400059 ..... Respondent
PAN : AMDPR8746F

Assessee by : Shri Gaurav Kabra
Revenue by : Shri Ajay Chandra, CIT-DR

Date of Hearing – 11/12/2025	Date of Order - 26/02/2026

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The Revenue has filed the present appeal against the impugned order dated 04/04/2025, passed under section 250 r.w. section 254 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-58, Mumbai, ["*learned CIT(A)*"], for the assessment year 2011-12.

2. In the appeal, the Revenue has raised the following grounds: -

"1) "Whether on the facts and circumstances of the case, the Id. CIT(A) erred in following the decision of Hon'ble ITAT for AY 2009-10 wherein the addition made by the AO was deleted, without appreciating the fact that assessee failed to prove the requisite details for the determination of the year of taxability?"

2) "Whether on the facts and circumstances of the case, the Id. CIT(A) erred in following the decision of Hon'ble ITAT for AY 2009-10 wherein the ITAT has applied the provisions of India-UAE DTAA without examining whether the assessee is a resident under Article 4 of that DAA and without appreciating the fact that the assessee had not provided Tax Residency Certificate from UAE Tax Authority?"

3) "Without prejudice to the above, even if it is found that the India-UAE DTAA is applicable, whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in following the decision of Hon'ble TAT for AY 2009-10 wherein the ITAT held that the assessee was not having Permanent Establishment in India without taking into account that the assessee was present in India for 121 days in FY 2010-11 relevant to AY 2011-12 and he had business premises at his disposal which is sufficient for creating such a PE in light of decision of the Hon'ble Supreme Court in the case of Formula One World Championship Limited [2017] TS-161-SC-2017?"

4) "Without prejudice to the above, even if it is found that the India- UAE DTAA is applicable, whether on the facts and circumstances of the case, the Id. CIT(A) has erred in following the decision of Hon'ble ITAT for AY 2009-10 wherein the Hon'ble ITAT held that the provisions of Article 14 of the DA pertaining to Independent Personal Services are not applicable as the assessee does not fall in the category of "professional" as defined in Article 14(3) of the DTAA and was not having fixed bar in India?"

5) "Whether on the facts and circumstances of the case, the ld. CIT(A) erred in following the decision of Hon'ble ITAT for AY 2009-10 wherein the ITAT has held that the amount received by DAR Capital Ltd., and Thurles International Ltd from Gulf Finance House of UAE is not taxable as Fee for Technical Services u/s 9(1)(vii) of the IT Act without appreciating that the services have been utilized in India and in absence of Tax Residency Certificate, the benefit of India UAE DTAA cannot be extended to the assessee?"

6) "Whether on the facts and circumstance of the case, the Id. CIT(A) erred in following the decision of Hon'ble ITAT for AY 2009-10 wherein the ITAT held that the investment of Rs 69,12,21,808/- by DAR Group of companies in Indian companies of the Valuable Group, cannot be taxed in the hands of the assessee on the ground that the investments were made by the foreign companies in their own capacities, without appreciating that the companies of DAR group were conduit companies in which the assessee was the sole/principal shareholder and through them had crossholding in Indian companies of the Valuable Group?"

7) "Whether on the facts and circumstance of the case, the Id. CIT(A) erred in following the decision of Hon'ble ITAT for AY 2009-10 wherein the ITAT held that the investment of Rs 69,12,21,808/- by DAR Group of companies in Indian companies of the Valuable Group cannot be taxed in the hands of assessee without considering the decision of Hon'ble Bombay High Court in the case of Soignee R Kothari vs DCIT IN WP(L) No. 3172 of 2015 where it was held that in the normal course of human conduct, if a person has nothing to hide and serious question are being raised about the funds, a person would put to rest all questions which seem to arise in the minds of the authority, and the

assessee had failed to provide even basic documentary proof such as bank statements of DAR Group of companies w.r.t. investments in Indian companies of the Valuable Group?"

3. Grounds no.1-5, raised in Revenue's appeal, pertain to the taxability of INR 465 crores in the hands of the assessee.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: Pursuant to the information received from the Investigation Wing, Thane, regarding the search operation carried out under section 132 of the Act in the case of Valuable Group and the assessee and his companies, wherein, inter-alia, it was found that the assessee, who claims to be resident of UAE, has rendered consultancy services to two non-resident entities, i.e. Gulf Finance House ("*GFH*") and Khaleej Bank of Commerce ("*KBHC*"), and GFH has, over the years, for certain of its projects in India paid amount of USD 51.15 million to DAR Capital Ltd., Mauritius, and USD 41.5 million to Thurles International Ltd., British Virgin Islands, in which the assessee is a Director and owned 100% shareholding in both entities, notice under section 148 of the Act was issued to the assessee and proceedings under section 147 of the Act were initiated. During the search proceedings, the assessee claimed to have rendered consultancy services to GFH and KBHC, including the identification of land, local partners in India, and allied activities for projects, namely Energy City Panvel and Logistics Park Pen in India, and also claimed to have acted as a liaison between GFH and KBHC and their local partners. As in the email from GFH, it was claimed that DAR Capital Ltd. and Thurles International Ltd. were paid the amount equivalent to INR 465 crores over the years, in the absence of year-wise details been provided by the assessee,

the entire receipt of INR 465 crores was taxed in the hands of the assessee on a substantive basis in the assessment year 2009-10. Accordingly, in view of the aforesaid facts and circumstances, vide reasons recorded for reopening the assessment it was alleged that the amount of INR 465 crore needs to be taxed in the hands of the assessee in each year separately, subsequent to the assessment year 2009-10, on a protective basis up to the date of email, i.e. 06/06/2013, in order to protect the interest of the Revenue. In his objections to the reopening of assessment, the assessee, inter alia, submitted that in the evidence found during the course of search, there is no mention that any money was received by the assessee in the period under consideration. The assessee submitted that the money was received by DAR Capital Ltd. and Thurles International Ltd., which have separate legal identities and do not have any Permanent Establishment in India. The objections filed by the assessee were disposed of vide order dated 03/10/2018, and the reopening of the assessment in order to tax the amount of INR 465 crore in the hands of the assessee was upheld for the year under consideration on a protective basis. During the reassessment proceedings, the assessee was asked to give the details of the amount of INR 465 crore received from GFH, and if he fails to do so, the entire amount will be taxed in his hands on a protective basis.

5. The Assessing Officer ("*AO*"), vide order dated 26/12/2019 passed under section 147 r.w. section 143(3) of the Act, held as follows: –

(a) The assessee, through DAR Capital Ltd. and Thurles International Ltd., has received fees for consultancy services on account of services provided to GFH and KBHC.

(b) The consultancy work has been rendered by the assessee for the business operations carried out in India.

(c) Accordingly, the fees received by the assessee for consultancy services for projects undertaken in India by GFH and KBHC with Valuable Group are deemed to accrue or arise in India on account of provisions of section 9(1)(vii) of the Act.

(d) Rejecting the contention of the assessee that it has not been established that the consultancy fees were accrued/received in the year under consideration, the AO held that the documentary evidence establishes beyond doubt that the said services (partly or wholly) were provided during the year under consideration.

(e) The burden of proof was on the assessee to establish the quantum of services that were to be chargeable to tax in the year under consideration, and he failed to file any details.

(f) Rejecting the contention of the assessee that the amount was received by his group companies which were incorporated outside India and not by him, the AO held that the assessee has not submitted any details of the said companies and has also not furnished the copy of the agreements, invoices, details of other company employees involved in the project, despite specific query. Accordingly, the AO held that the above-mentioned companies are 100% owned by the assessee and the assessee was involved in the project in his personal capacity.

Accordingly, the AO held that INR 465 crore received by the assessee for consultancy services provided to GFH and KBHC for the project work undertaken with the Valuable Group in India is chargeable to tax as per the provisions of section 9 of the Act.

(g) Further, the AO observed that the assessee has not furnished a copy of the Tax Residency Certificate from the UAE Tax Authority to claim the benefits of the India-UAE Double Taxation Avoidance Agreement ("*DTAA*").

(h) Notwithstanding the above findings, the AO held that the income earned by the assessee is taxable in India as business income as per the India-UAE DTAA.

(i) In support of the aforesaid findings, the AO took into consideration the presence of the assessee at the office of M/s Dar Media Pvt. Ltd., in which the assessee was a Director. Accordingly, the AO held that the assessee has been rendering his consultancy and other business activities from the said business premises, and therefore, the income earned by making use of the said business premises, which is Permanent Establishment, is liable to be taxed in India under Article 7(1) of the India-UAE DTAA.

(j) In support of the aforesaid findings, the AO also took into consideration the fact that the assessee stayed in India for 121 days. Accordingly, the AO held that the assessee was using the business premises in Mumbai as his Permanent Establishment to carry out his

business and also to carry on the business for his wholly owned business concern. Thus, the AO held that the assessee has business income in India, which is taxable under section 9(1) of the Act.

(k) In addition to the above findings, on a without prejudice basis, the AO held that the assessee's case is also covered under Article 14 of the India-UAE DTAA, which deals with "*Independent Personal Services*", as the assessee has been in India for 121 days, during the year under consideration, and used the business premises at Mumbai as a fixed base, which was regularly available to him for the purpose of his business.

(l) Rejecting the submissions of the assessee that the amount received from GFH is the income of DAR Capital Ltd. and Thurles International Ltd., the AO held that the assessee is a 100% shareholder of these two companies and in the absence of information sought, the only conclusion which can be drawn is that all the activities have been carried out by the assessee himself. Thus, the AO held that both, i.e., DAR Capital Ltd. and Thurles International Ltd., are shell companies existing only on paper, based in tax havens to avoid taxation in India. Accordingly, the AO held that INR 465 crore received by DAR Capital Ltd. and Thurles International Ltd. is actually for the consultancy services rendered by the assessee to GFH in India.

(m) Without prejudice to the aforesaid findings, in para-12 of the assessment order, the AO held that if the assessee is working for DAR

Capital Ltd. and Thurles International Ltd. and giving consultancy services to GFH and KBHC for the project work in India, the money received by these two companies would be taxable as fees for technical services and would be liable to tax in India.

6. Accordingly, treating the entire sum of INR 465 crore as taxable in India, the AO made an addition of INR 325,50,00,000 in the hands of the assessee after allowing a deduction of 30% as business expenditure.

7. The learned CIT(A), vide impugned order, following the decision of the Tribunal in assessee's own case for the assessment year 2009-10, in ITA No. 4393/Mum/2019, wherein similar addition in the hands of the assessee on account of the money received from GFH was deleted, allowed the grounds of appeal raised by the assessee on this issue, and quashed the addition amounting to INR 325.5 crore made by the AO. Being aggrieved, the Revenue is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee is an individual and is a non-resident Indian. As per the assessee, he is settled in the UAE. In the present case, it is undisputed that the assessee rendered consultancy services to GFH and KBHC, i.e. two non-resident companies, in respect of their project in India in association with Valuable Group, India. As per the assessee, the consultancy services provided by him include identification of land, local partners in India, and allied activities at project sites in India, as well as liaison between GFH, KBHC, and the Valuable Group. During the post-search

proceedings, an email dated 06/06/2013 from the GFH addressed to the assessee was produced before the Investigation Wing, which stated, "*Please note that GFH, over the years, has for its certain projects made payments amounting to USD 15.5 m to DAR Capital Ltd. and USD 14.5 m to Thurles International Ltd.*" Since the assessee was a Director of these two entities, i.e. DAR Capital Ltd. and Thurles International Ltd., and also owned 100% shares in these entities, the AO initiated reassessment proceedings under section 147 of the Act in the case of the assessee, alleging that the entire receipt equivalent to INR 465 crore is taxable in the hands of the assessee. On the other hand, the primary contention of the assessee is that none of the evidence relied upon by the Revenue mentions that any money was received by the assessee, and therefore, the sum is not taxable in the hands of the assessee. Thus, as per the assessee, the money was received by DAR Capital Ltd. and Thurles International Ltd., which have legal identities separate from the assessee. It is evident from the record that since the email confirming the payment was dated 06/06/2013, the AO, on the basis that there is a possibility that a part of the entire amount may have been received during any earlier years up to the date of the email, issued reassessment notice under section 148 of the Act on a substantive basis for the assessment year 2009-10, while in the year under consideration the said notice was issued on protective basis.

9. The findings of the AO vide assessment order dated 28/12/2017 passed under section 147 r.w. section 143(3) of the Act, for the assessment year 2009-10, wherein the assessment was reopened on the basis of the very same information received from the Investigation Wing, Thane, on a substantive

basis, as noted on pages 2-5 of the assessment order for this year, are summarised as follows: –

(i) The money was received by DAR Capital Ltd. and Thurles International Ltd. in view of the consultancy services rendered by the assessee to GFH and KBHC from the fixed place of business in India for the project work in India.

(ii) Due to the consultancy services rendered by the assessee in India, his two foreign-based companies received an amount equivalent to INR 465 crore.

(iii) The contention of the assessee that since he is an NRI based at UAE and his two companies are foreign companies, the income cannot be taxed in India was rejected, as the assessee failed to furnish the proof of receipt of the money outside India in the form of copies of the agreement for the work, the invoices raised for the work, details of payment received, bank account statement showing these transactions.

(iv) As the assessee did not furnish the Tax Residency Certificate, the benefit of the India-UAE DTAA cannot be allowed to the assessee or his companies, and the income is chargeable to tax under the Act.

(v) Notwithstanding the above findings, it was held that the income earned by the assessee is taxable in India as business income as the assessee has a Permanent Establishment in India in the form of the office at the business premises at M/s Dar Media Pvt. Ltd. in Mumbai, wherein the assessee was a Director. Therefore, from this premise, the

assessee was rendering his consultancy and other business activities. Accordingly, the business premise of M/s Dar Media Pvt. Ltd. was the fixed base available at the disposal of the assessee for management of his activities in India and the income earned by him by making use of the said business premises was held to be taxable under Article 7(1) as he has a Permanent Establishment.

(vi) Since the assessee was in India for a period of 110 days during the financial year 2008-09, it was held that he spent a substantial period in India due to his business interest and the income earned from his business in India is taxable under section 9(1) of the Act.

(vii) Without prejudice, the assessee's income was held to be taxable as fees for Independent Personal Services under Article 14(1)(a) of the India-UAE DTAA.

(viii) As the assessee failed to provide the necessary information which was sought, the two non-resident companies, i.e. DAR Capital Ltd. and Thurles International Ltd., were held to be shell companies of the assessee in India, as he was the 100% shareholder of these two companies. Accordingly, the entire sum of INR 465 crore was held to be actually received by the assessee for the consultancy services rendered to GFH in India.

(ix) Without prejudice to all the findings, it was held that if the assessee is working for DAR Capital Ltd. and Thurles International Ltd. and giving consultancy services to GFH and KBHC for the project work

in India, the money received by these two companies would be taxable as fees for technical services and would be liable to tax as such.

(x) Accordingly, the entire receipt of INR 465 crore was held to be taxable in the hands of the assessee on a substantive basis of the assessment year 2009-10.

10. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the substantive addition made in the hands of the assessee in the assessment year 2009-10 has been deleted by the Tribunal in assessee's own case. The learned AR submitted that all the grounds raised by the Revenue, in the present appeal, have already been adjudicated in favour of the assessee by the Tribunal in assessee's own case for the assessment year 2009-10, and thus the said decision squarely covers the issues involved.

11. On the contrary, the learned Departmental Representative ("*learned DR*"), by vehemently relying upon the findings of the AO, submitted that the assessee has not furnished any evidence to prove that he was a tax resident of the UAE in the year under consideration, and therefore, the provisions of the India-UAE DTAA are not applicable. The learned DR submitted that the assessee has stayed in India for 121 days and has been found to have been rendering his consultancy and other business activities from his office in India. Thus, the learned DR submitted that the amount received by the assessee is taxable under section 9(1)(i) of the Act. The learned DR submitted that the statement recorded under section 132(4) of the Act shows enough evidence that brings the amount received by the assessee within the ambit of section

9(1)(i) of the Act. As regards the decision of the Tribunal in the assessee's own case for the assessment year 2009-10, the learned DR submitted that in the said decision, Grounds no.2-5, as raised by the Revenue in the present appeal, were not adjudicated, and therefore, the said decision is not applicable to the present case. Further, the learned DR submitted that there are no findings in the said decision regarding the taxability of the amount as fees for technical services under section 9(1)(vii), and therefore, the addition made under section 9(1)(vii) of the Act is not covered by the decision of the Tribunal in the earlier year. Without prejudice to his submission that the applicability of the provisions of the India-UAE DTAA has not been established by the assessee, the learned DR submitted that the definition of the term "*professional services*" is an inclusive definition, and includes within its ambit the consultancy services provided by the assessee. Therefore, it was submitted that, in any case, the amount received by the assessee is taxable under Article 14 of the India-UAE DTAA.

12. Since as per the AO's own findings the addition in the hands of the assessee for the year under consideration has been made on protective basis, while on substantive basis the addition was made in the assessment year 2009-10, we deem it appropriate to note the findings of the Coordinate Bench of the Tribunal rendered in assessee's own case for the assessment year 2009-10, before analysing the grounds raised in present appeal vis-à-vis the findings of the lower authorities. We find that the Coordinate Bench of the Tribunal in JCIT v/s Arun Rangachari, in ITA No. 2393/Mum/2019, for the

assessment year 2009-10, while deciding this issue in favour of the assessee vide its order dated 30/04/2024, observed as follows: –

" *Decision*

22. We have considered the submissions filed by both the parties as well as oral submissions made during the course of hearing as well as findings recorded by the ld. AO and ld. CIT (A). The brief facts and background are that assessee is an individual who is a non-resident Indian and settled in UAE. He is also director and shareholder in M/s. Dar Media Pvt. Ltd. which is mainly into business of advertisements, media, films, etc. The assessee is also director and shareholder of two companies, M/s. Dar Capital Limited incorporated in Mauritius; and M/s. M/s. Thurles Investments which is incorporated in British Virgin Islands. The assessee has rendered consultancy services to Gulf Finance House (GFH), UAE & Khaleej Bank of Commerce (KBHC), UAE who were executing certain projects in India in association with Valuable group in India. The consultancy services include identification of land, local partners in India and Energy City Panvel and Logistics Park, Pen etc. The assessee was doing liaison work for these two banking entities in UAE for which they pay consultancy fees to M/s. Dar Capital Ltd., and M/s. Thurles Investments, two companies' resident outside India. Thus, the payment was made by a non-resident entity to a non-resident company and none of the amount has been credited in any bank account in India either of the assessee or it is also not the case that these two companies had any bank account in India. The entire case of the ld. AO and ld. DR was that the assessee was substantial shareholder in the Dar group of companies and office of the Dar group of companies, especially Dar Media Ltd., had office in Mumbai and therefore, the office premises was at the disposal of the assessee and therefore, such office premises constitutes a PE / fixed place of the assessee in India, in his individual capacity and for the foreign companies based in Mauritius and UAE considering the fact that assessee holds 100% of the shareholders in his companies. Thus, on these grounds ld. AO has concluded that assessee had rendered the services to GFH & KBHC from PE or fixed place in India and the billing / payments were made to foreign companies i.e. Dar Capital Ltd and Thurles International Ltd to evade tax payment in India. The ld. DR also pointed out that there are no financial activities of these companies and financial accounts do not show any business activity during the year and therefore, these were nothing but a shell companies and the funds were utilized for making investment in Indian companies as well as purchase of immovable property in India.

23. From the perusal of the assessment order, we find that there is no direct or indirect evidence that assessee had rendered any services from alleged business premises of Dar Media Pvt. Ltd. One of the main reasons given by the ld. AO that assessee had failed to provide the copies of agreement for this liaison work, invoices, etc., between GFH and KBHC and M/s. Dar Capital Ltd and M/s. Thurles International Ltd. Thus, AO has assumed that assessee had earned from the projects undertaken in India by using the business premises in India. Even in the entire search, there was no such document or evidence found that assessee was rendering any consultancy services from India, barring one e-mail from GFH addressed to the assessee which stated that, "Please note that GFH over the years, has for certain of its projects made

payments amounting to USD $1.5 m to DAR Capital Limited and USD 41.5 m to Thurles International Limited". This content in e-mail is some kind of confirmation of payment in connection of projects and does not prove in any manner the activity was carried out from India or to treat it as a part of evidence to establish that assessee had any PE or the office premise of Dar Media were at the disposal of the assessee for carrying out the consultancy work for GFH and KBHC. It only states that it has made payments to Dar Capital Ltd and Thurles International Ltd for its projects. Nowhere, it has been brought on record or any enquiry has been done, whether assessee had used the premises of Dar Media Pvt. Ltd. for rendering consultancy services to two foreign entities. To establish that assessee had a PE in India, the onus is heavily on the department, because the allegation that assessee has a PE in India is by the AO, so he has to bring on record that assessee was carrying out consultancy from the premises of Dar Media in India. AO has to conduct some enquiry or bring some evidence or material to prove that assessee had been carrying out his activity from India through PE or any premise was at his disposal for rendering services to the foreign entities so as to constitute business connection or PE in India. AO's presumption is that, since assessee was one of the Directors in Dar Media Pvt. Ltd. which is based in Mumbai, therefore, he must be doing his consultancy services on behalf of the two foreign companies from these premises. The assessee is a non-resident, rendering consultancy services to two UAE based banks and the payment has been made on account of consultancy services to two foreign entities of assessee. Now to tax the consultancy fees in the hands of the assessee in his individual capacity and not in the hands of DAR Capital Ltd. or Thurles Investments Ltd., that to be as business income in India, then, something should be brought on record by the AO that these services have been rendered from India by the assessee and not based on some conjecture and premise. Even in the statement of the assessee this fact has been clarified by him during the course of the search and has specified the nature of liasoning and consultancy work done on behalf of GFH and KBHC from Dubai.

24. The premise drawn by the ld. AO that the payment received by Dar Capital Ltd and Thurles Investments Ltd is in the nature of payment to the assessee, because, firstly, these two are shell companies with no substantial activity; and secondly, assessee is 100% shareholder in these companies. If that is the case, then AO should have called for the information through proper channel about these two companies and then adverse inference should have been drawn for taxing this income in the hands of these two companies. In fact, if at all, this payment could have be taxed in the hands of these two companies if they have any business connection in India or source of income has accrued and arisen in India; and here in this year in the hands of M/s. Thurles International Ltd., a British Virgin Island entity It has been brought on record that in assessment order dated 14/02/2018 u/s.144C r.w.s 147/144 has been filed in the case of M/s. Thurles Interational Ltd., the copy of which has also been placed before us by the ld. Counsel that this amount has been taxed on protective basis in the A.Y.2009-10. There the ld. AO had asked for information from foreign authorities through FT & TR about these companies, however, till the passing of the order, no such information has been received. The relevant observation of the AO in the case of M/s. Thurles International Ltd wherein he has taxed the payment received from GFH not only as business income but also as fee for technical services u/s.9(1)(vii). For the sake of ready reference,

the relevant finding given in the assessment order in the case of M/s. Thurles International Ltd reads as under:-

"8. Permanent Establishment

Notwithstanding to the above, in the instant case, PE in India is also being established on the basis of following findings

8.1 At the time of search action ws. 132 of the Income tax Act on 10/04/2013 at the premises of Mix Dar Media Pvt Ltd at 201, Centre Point, Andheri Kurla Road, J.B. Nagar, Andheri, Mumbai, which is owned 100% by Shri Anın Rangachari, he was present at the said business premised and his statement was recorded Us. 132(4) of the Act.

8.2 Hence, it is clear that Sh. Arun Rangachari has been rendering his consultancy on behalf of M/s Dar Capital Ltd and M/s Thurles International Lad from the said business premises. Hence, the income earned by him by making use of the said business premises is liable to be taxed under Article 7(1) as he has a permanent establishment. In other words, the assessee is making use of the business premises of Dar Media Pvt. Ltd in India as a fixed base and is available at the disposal of assessee for management of his activities in India.

8.3 In the case of Sh. Arun Rangachari, he is engaged in the business activity by way of providing consultancy services on behalf of M/s Thorles International Ltd and he also uses the business premises located at Mumbai us a place of management. It is evident from the fact that at the time of search on 10/04/2013, Mr Arun Rangachari was present in this office premises. He has himself admitted to the fact that he has been giving consultancy services to GFH and KBHC Hence, it is clear that M/s Thurles International Ltd is having PE in India.

8.4 From the passport of Sh. Arun Rangachari, it is seen that he has been in India for 110 days during FY 2009-10 as per details given below-

Arrival in India	*Departure from India 13 April 2008*	*Stay in days*
31st March 2008	*13th April 2008*	*13*
03 May 2008	*11th May 2008*	*9*
14th May 2008	*19th May 2008*	*6*
22 May 2008	*25th May 2008*	*4*
4th June 2008	*12th June 2008*	*9*
17th June 2008	*29th June 2008*	*13*
4th July 2008	*06th July 2008*	*3*
9th July 2008	*21st July 2008*	*13*
31st July 2008	*01st Aug 2008*	*2*
19th Aug 2008	*21st Aug 2008*	*3*
4th Sept 2008	*07th Sept 2008*	*4*
13th Sept 2008	*18th Sept 2008*	*6*
2nd Oct 2008	*4th Oct 2008*	*3*
15th Oct 2008	*17th Oct 2008*	*3*
22nd Oct 2008	*25th Oct 2008*	*4*
2nd Nov2008	*8th Nov 2008*	*7*
20th Nov 2008	*25th Nov 2008*	*6*
13th Jan 2008	*14th Jan 2009*	*2*
	Total	*110*

8.5 From the above it is amply clear that Sh. Arun Ramgachari spends substantial period in India due to his business interest. This fact once again proves that he has been using the business premises at Mumbai as a Permanent Establishment to carry out his business and also carrying out the business for his wholly owned business concern.

8.6 In view of the above, M/s Thurles International Ltd owned 100% by Sh. Arun Rangachari and the consultancy work supposedly in the name of the assesses company is carried out from the fixed place at Mumbai and accordingly, the said business place is held to be a PE of Ms Thurles International.

8.7 Thus it has been established that the assessee company's case that it has business income in India and it is taxable here u/s 9(1) of the IT Act.

9. Income earned through the business activity of India:-

9.1 It is established that the services have been provided by the assessee company, M/s Thurles International Ltd which is based at British Virgin Islands through Mr. Arun Rangachari, who is a 100% share holder of the assessee company. During the course of post search proceedings, summons was issued to Shri Arun Rangachari asking to appear on 03/09/2013, 19/09/2013, 04/10/2013 and 17/10/2013 in the Investigation Wing. Thane and provide the names of employees, date of visits by the employees who have actually provided the services for acquisition of land. Further, he was asked to submit copies of invoices raised by him and the company on GFH and KHCB. These information were called for by the notices issued from this office also. However. Arun Rangachari has neither appeared nor submitted any details called for in the instant case of M/s Thurles International Ltd. Thus the submission of the assessee is nothing but Ipse Dixit. The only conclusion which can be drawn from this is that all the activities have been carried out by Arun tangachari himself on behalf of M/s Thurles International Lid

9.2 Here it is pointed out that Sh. Arun Rangachari is 100% shareholder of Thurles International Lid and as such he is in a position to control it totally. They were asked to give details of the names and addresses of the persons who work for Thurles International Ltd and other information about the assessee company but no such information has been provided. Thus, the money amounting to USD 41.5 million received by M/s Thurles International Ltd is money actually received for the consultancy work given by Sh. Arun Rangachari to GFH in India on behalf of M's Thurles International Ltd.

9.3 Sh. Arun Rangachari has received payments amounting to USD 41.5 million in the name M's Thurles International based at British Virgin Islands. This company is mere shell company existing only on paper. The assessee company was formed for the sole purpose of receiving abroad the income earned by Sh. Arun Rangachari in India.

9.4 Sh. Arun Rangachari and M/s Thurles International Lid were asked several times to produce copies of agreement for consultancy work, the invoices raised, payment received. Had these documents been provided, the nature of consultancy work and nature of payment in lieu thereof would have become clear. But these were not provided either in the case of the assessee company or in the case of Sh. Arun Rangachari. No project wise break up of money received of the exact purpose for which the money was received from GFH and KBHC was also not given. Thus the assessee has made unsubstantiated assertions which are Ipse Dixit.

9.5 If we put the facts of the case together, we come to only one conclusion. GFH and KBHC wanted to invest in some real estate project India. For this Sh. Arun Rangachari gave them consultancy services on behalf of M/s Thurles International

Lad and he arranged for their meetings with some prospective parties for this purpose in India. GFH and KBHC selected Valuable Group for this work. They started the two projects namely, Energy City at Panvel and Logistics Park at Pen, both in Maharashtra, Near Mumbai. These projects materialised because of active liasoning and consultancy service given by Sh. Arun Rangachari to GFH and KBHC. He brought GFH and KBHC and Valuable Group together. As a result, above two projects were started. Due to his services, Sh. Arun Rangachari was to receive payment on behalf of M/s Dar Capital Ltd and M/s Thurles International Ltd. For tax management purpose, Arun Rangachari decided to route these payments through his foreign based company. For this purpose he received USD 41.5 million in the name of M/s Thurles International Lad, British Virgin Islands from GFH. Thus the consultancy service was given to GFH and KBHC for operations in India but payment was received by M/s Thurles International Ltd, a foreign company based outside India, in tax haven. This was done purely to save tax in India.

10. In view of the above facts and circumstances of the case, the income of the assessee is taxable as business income under the provisions of the IT Act of India u/s 9(1) of the Income tax Act.

11 Without prejudice, it is observed that if Sh. Arun Rangachari is working for M/s Thurles International Ltd and giving consultancy services to GFH and KBHC for the project work in India. Hence, the money received by M/s Thurles International Ltd would become taxable as Fees for Technical Services and would be liable to tax as such as per the provisions of section 9(1)(vii) of the Income tax Act.

12. The total amount received by M/s Thurles International Ltd from GFH is 207,50,00,000/- Taking a genuine stand 30% of it is allowed as business expenditure and an amount of Rs.145,25,00,000/- is taken us net income from this work. The amount of Rs.145,25,00,000/- is added in the hands of the assessee company M/s Thurles International Ltd on protective basis. (Penalty proceedings u/s 271(1)(c) of the 1 T Act, 1961 tins been initiated for furnishing inaccurate particulars of income.)

13. It is notable that reassessment proceedings u's 147 of the Income tax Act in the case of Sh. Arun Rangachari has been initiated and in the said proceedings, the above stated Income has been added in the hands of Sh. Arun Rangachari on substantive basis.

14 The notice u/s 148 of the IT Act was issued on 30/03/2016. But the case was referred to foreign authority through FT & TR for obtaining information in the case of Sh. Arun Rangachari. M/s Dar Capital Ltd and Mis Thurles International Ltd. The requested information has not been received till now. Accordingly, the time burring date is 31/12/2017. The quantum of the additions will be altered based on the information, if it is received from the FT &TR CBDT. Moreover, the assessee has not filed any income tax return. Therefore, the assessment order is being passed u/s 144 of the IT Act, 1961.

25. Thus, protective addition has been made pending information from FT &TR CBDT.

26. Be that as may be, in so far as assessee is concerned, we do not find any material or evidence to treat the consultancy fees received by M/s. Thurles International Ltd is taxable in the hands of the assessee on the ground that it is a business income of the assessee and as there is no PE or business connection of assessee in India for rendering these consultancy services, it cannot be taxed as business income in the hands of the assessee in India. The observation and finding of the ld. CIT (A) as incorporated above is to be upheld, because we agree with him that there is no single evidence to hold

that there is a PE for assessee in India and mere e-mail which is a sort of confirmation letter does not establish any PE in India. Further the revenue has failed to provide any evidence in relation to the claim that the services were rendered from India by the assessee and has merely presumed the same. AO is merely holding in his Assessment Order that it is a "well established fact" that Shri. Arun Rangachari has provided consultancy services to Gulf Finance House (GFH) & Khaleej Bank of Commerce (KBHC) from India at a fixed place of business premises in Mumbai. This cannot be reckoned as "well established" nor has it established by any material on record. Even in the statement recorded during the course of search proceedings u/s 132(4) clearly mentions the services have been rendered from Middle East (UAE). For sake of ready reference, the same has been reproduced as follows:

> *"Q. 17 Please explain the source of investments by the M/s Dar Ventures Mauritius, in the shares of M/s Nisarga Building Art & Technologies Pvt Ltd. alongwith supporting documents.*
>
> *Ans: These funds are proprietary funds that have been earned by me providing investment advisory services in the Middle East. I have also taken unsecured loans from associates to assist in my funding requirements for DAR Media. The supporting documents explaining the source for transfer of funds will be provided on or before 19th April, 2013."*
>
> *"Q.28 Since when are you associated with Gulf Finance House ? Kindly explain your association with and responsibility towards the Gulf Finance House.*
>
> *Ans: My association with GFH dates back to 2001. I have worked with the company and several of its subsidiaries across various geographies in Asia, Europe. I continue to work with GFH currently predominantly in Africa for which we are raising a fund for agriculture. As a consultant, I have worked with them in various capacities and roles, including networking, lobbying, identifying investment opportunities, Public Relations, etc."*
>
> *"Q. 32 Please refer to the print outs of emails and responses given by you. From the contents of the emails it is clear that you were actively involved in the acquisition of land in favour of GFH (Energy City Project) and KHCB (Global Logistic Park). Further, it is also clear that you are actively involved in the negotiations with Valuable Group and facilitating the land acquisition by way of taking legal opinions and various clearances. All the negotiations in the process of acquisition of land on behalf of both the financial institutions were done in India. Therefore, you are hereby requested to clarify why the services given by you should not be considered as the services rendered in India and the compensation received for services rendered in India not be bought to tax in India.*
>
> *Ans: I was not actively involved in land acquisition for the GFH and KHCB projects. The land acquisition process requires a complete understanding of the local laws and regulations; a vast network in the target area; and significant on-ground presence in the area to facilitate the process. I enjoy none of these attributes and am based in Dubai as I have been for the past 14 years. The land acquisition for both these projects were done solely by Valuable Group. Yes, I do not deny that there were instances in which I was called upon to step in and resolve certain liasoning issues by both GFH/ KHCB and Valuable Group, and I was only too happy to assist. Upon request, I also assisted my clients in identifying a legal firm and working with them to establish the legal standing of the land acquired for the project."*

27. Thus, it is clearly mentioned therein that the amount has been received by DAR Capital Limited and Thurles International Limited over the years. The income has been earned by the companies on account of services rendered outside of India. There is no connection whatsoever to the earning of this income with India. The revenue has not been able to bring anything on record to prove that the income was earned by the assessee in India. Alternatively, the Ld. DR submitted that tax the said income by treating the same as fees received for technical services provided u/s 9(1)(vii) of the Act as in absence of FTS clause in India - UAE DTAA, the same is taxable as FTS under the Act. However, we are unable to appreciate such a contention; because, in absence of FTS clause in Treaty, the said income can be taxed as business income only and that to be if the assessee has Permanent Establishment (PE) in India. However, as held by us in the earlier paras, the revenue has merely drawn an assumption that the assessee has PE in India without having any evidence to prove the same. Also it is a it is a well-settled law that if there is no FTS clause in the tax treaty, then the payments can be subject to tax in India only if the overseas company which has rendered the services has a permanent establishment (PE) in India and then such services may be taxed under Article 7 of India UAE Tax Treaty as business income

28. Now, coming to the applicability of Article 14 of DTAA, first of all for the sake of ready reference, the said Article is reproduced hereunder:-

"1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State, except in the following circumstances when such income may also be taxed in the other Contracting State :

(a)	*if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State ; or*
(b)	*if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant "previous year" or "year of income", as the case may be; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.*

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants."

29. Thus, first of all, income from professional services or other independent activities is taxed in the resident state, that is UAE, except when conditions mentioned clause (a) & (b) are satisfied. But before applying this article, the services should fall in the scope and definition of "professional services or other independent activities of a similar character". The term "professional fees" has been defined and includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants. Thus, the services must strictly fall in the term defined and not otherwise. First of all,

assessee do not fall in the category of "professional" as defined in Article 14(2), because this is purely a consultancy/ liaison service which does not fall in any of category of professional services as defined in Article 14. Thus at the very threshold itself, the said income cannot be taxed under Article 14, because it has to fall in the category of professional services so as to be taxed under Article 14.

30. Even otherwise, both the conditions mentioned in Article 14(1(a) are also not applicable:-

a) Condition 1:

If the assessee has a fixed base in India and the income earned can be attributable to that fixed base –

It is not in dispute that the assessee is a NRI, and does not have any fixed base in India. AO could not establish that the assessee had any such PE/ fixed base available to him in India to render services in individual capacity and treated office of M/s Dar Media Pvt. Ltd. as his fixed base where the assessee was present at the time of search. The so called office at Mumbai was leased office of M/s. Dar Media Pvt. Ltd. and the assessee was present there in his capacity as a director to carry out business activities and was not carrying out any activities in the form of a sole proprietorship/ sole enterprise. The same is clearly evident from the assessee's statement recorded u/s 132(4) of the Act, for which our attention was drawn at page 30 of the paper book, and from perusal it is seen that the company was involved in activity of Film Production and distribution whereas the income taxed in the hands of the assessee is on account of providing consultancy services on real estate affairs. Thus, there is no correlation whatsoever in between them.

31. Further, the contention of the Ld. DR stating that the assessee was found during search at the office premises of Dar Media Pvt. Ltd. in the capacity of director of this entity, and therefore the same constitutes his PE is flawed as mere presence of an enterprise at a particular location does not necessarily mean that the location is at the disposal of that enterprise. For this purpose, reference is drawn on OECD guidelines which states as under:-

"4.2 Whilst no formal legal right to use a particular place is required for that place to constitute a permanent establishment, the mere presence of an enterprise at a particular location does not necessarily mean that that location is at the disposal of that enterprise"

32. In the present case, there is no evidence to prove that the assessee was using the premises for his own enterprise. Furthermore the provisions of treaty mention that for an income to be taxed in India, it is not enough that the Assessee has a fixed place of business in India but the Assessee should carry on business in India through that fixed place of business. How this income was earned by the assessee through the so called "fixed base/ permanent establishment" in India has never been established & substantiated by the revenue or Ld. DR. Hence, the condition 1 of the Article 14 is not satisfied.

b) Condition 2:

if the assessee has stayed in India for more than 183 days on the relevant assessment years.

33. This condition is also not satisfied as the revenue has themselves assessed the income by treating the assessee as Non-resident and the same is evident from page 1 of the assessment order. Further, the AO once again on page 24 of the assessment order para 8.7 has calculated the days, the assessee was present in India. Further on page 25, the Ld. AO drew a conclusion that the assessee was present for 110 days for the instant year in India. Hence on combined conclusion, drawn by the revenue itself, it is clear that the assessee was in India for less than 183 days and hence even the condition 2 of Article 14 is also not satisfied.

34. Further as held above and reiterated again that Article 14 has described the services which will fall under the category of Independent Personal Services. On perusal of the said services it can be seen that only professional services in nature of independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants can be taxed under the said Article. In the instant case, it has been alleged by the revenue that the assessee has provided 'consultancy services' which falls under any of the category mentioned in the said article. However, provision of the article has to be read as is and no assumption can be drawn from the same. If the said approach is allowed that one can assume all the services and professions to be included and defeat the purpose of such DTAA entered between countries. On this issue, the Ld. DR stated that the Article 14(2) is inclusive definition and not an exhaustive one. But in stating so, the Ld. DR failed to substantiate the same with any evidence as to how such assumption was drawn by him.

31. Thus, we agree with the contention of the ld. Counsel and hold that consultancy services do not fall under any category mentioned in said Article and therefore, the consultancy services cannot be taxed under Article 14(2). Accordingly the order of Ld. CIT (A) is upheld."

13. Thus, the findings of the Coordinate Bench of the Tribunal in assessee's own case for the assessment year 2009-10 cited *supra*, can be summarised as follows: –

(a) There is no direct or indirect evidence that the assessee had rendered any services from the alleged business premises of M/s Dar Media Pvt. Ltd. Even in the entire search, no such document or evidence was found indicating that the assessee was rendering any consultancy services from India.

(b) The email from GFH is only a confirmation of payment in connection of projects and does not prove in any manner the activity was carried out from India or to treat it as part of evidence to establish that the assessee had any Permanent Establishment or the office premise of M/s Dar Media Pvt. Ltd. were at the disposal of the assessee for carrying out the consultancy work for GFH and KBHC.

(c) The onus is heavily on the Department to establish that the assessee had a Permanent Establishment in India, because the allegation has been made by the AO. However, nowhere has it been brought on record or any enquiry has been done, whether the assessee had used the premises of M/s Dar Media Pvt. Ltd. for rendering consultancy services to the two foreign entities.

(d) Rejecting the premise drawn by the AO treating the payment received by Dar Capital Ltd. and Thurles Investments Ltd. as the payment to the assessee, because, *firstly*, these two companies are shell companies with no substantial activity; and *secondly*, the assessee is 100% shareholder in these companies, the Coordinate Bench held that the AO should have called for the information through proper channel about these two companies and then adverse inference should have been drawn for taxing this income.

(e) It was held that, if at all, this payment could have been taxed in the hands of these two companies, if they have any business

connection in India or source of income has accrued and arisen in India.

(f) The assessment order dated 14/02/2018 passed in the case of Thurles Investments Ltd., for the assessment year 2009-10, under section 144C r.w. section 147/144, on a protective basis, was taken note of by the Coordinate Bench, whereby the payment received from GFH was taxed as fees for technical services under section 9(1)(vii) of the Act. It was also noted that the AO, in the said case, has asked for the information from the foreign authorities through FT&TR.

(g) The taxability in the hands of the assessee on the ground that it is a business income was also rejected, as there is no Permanent Establishment or a business connection of the assessee in India for rendering these consultancy services.

(h) It was held that the Revenue has not been able to bring anything on record to prove that the income was earned by the assessee in India.

(i) As regards the applicability of Article 14 of the India-UAE DTAA, it was held that the assessee does not fall in the category of "*professional*" as defined in Article 14(2), because it is a purely consultancy/liaison service, which does not fall in any of the category of professional services as defined in Article 14 of the India-UAE DTAA. Thus, it was held that the said income cannot be taxed under Article

14, because it has to fall in the category of "*professional services*" so as to be taxed under the said Article.

(j) Despite the above findings, the Coordinate Bench held that both the conditions mentioned in Article 14(1) of the India-UAE DTAA are not applicable. It was held that the assessee did not have any fixed base in India, and the AO could not establish that the assessee had any such Permanent Establishment/fixed base available to him in India to render services in an individual capacity. The contention of the learned DR that the assessee was found during the search at the office premises of M/s Dar Media Pvt. Ltd. and therefore the said premises constitutes fixed base of the assessee in India was rejected, as mere presence of the assessee at a particular location does not necessarily mean that the location is at the disposal of the assessee. Hence, it was held that Condition no.1 of Article 14(1) is not satisfied.

(k) Further, the second condition in Article 14(1) of the India-UAE DTAA, i.e. the stay in India for more than 183 days, was also held to be not satisfied, as the assessee was present in India for only 110 days during the assessment year 2009-10. Hence, it was held that Condition no.2 of Article 14(1) is not satisfied.

(l) Accordingly, all the grounds raised by the Revenue pertaining to the deletion of the addition of INR 465 crores in the hands of the assessee were dismissed.

14. In the present case also, as noted in the foregoing paragraphs, the AO merely on the basis of the assessee's presence, at the time of search action under section 132 of the Act, at the premises of M/s Dar Media Pvt Ltd. held that the assessee was rendering his consultancy and other business activities from the said premises, without bringing any material on record or conducting an enquiry, whether the assessee has used the said premises for rendering consultancy services to GFH and KBHC. Thus, it is ostensible that the mere presence of the assessee at the premises was considered equivalent to the usage of the premises by the assessee for rendering the services. It is pertinent to note that the assessee in his statement recorded under section 132(4) of the Act submitted that M/s Dar Media Pvt. Ltd. is engaged in film production and distribution. In the present case, no evidence has been brought on record to controvert the statement of the assessee, and merely due to the presence of the assessee at the premises of M/s Dar Media Pvt. Ltd., the AO held that the assessee was rendering his consultancy and other business activities from the said premises. As noted above, similar findings of the AO have already been rejected by the Coordinate Bench of the Tribunal in the assessee's own case in the preceding year, wherein the addition was made on a substantive basis. It is also pertinent to note that the statement recorded during the search was also taken into consideration by the Tribunal while rendering the findings in favour of the assessee. Therefore, respectfully following the aforesaid decision, we do not find any merit in the submissions of the learned DR that the amount received by the assessee is taxable under section 9(1)(i) of the Act, as the business connection of the assessee in India

for rendering these consultancy services has not been established by the Revenue.

15. As regards the applicability of the India-UAE DTAA, it is pertinent to note that the AO invoked the provisions of the DTAA to tax the income in the hands of the assessee in India as business income as well as under Article 14 of the DTAA. On the other hand, it is the consistent plea of the assessee that the said amount was received by his group companies, which are incorporated outside India and not by him. Further, by referring to the evidence relied upon by the Revenue, the assessee has always submitted that nowhere has it been mentioned that any money has been received by the assessee. Therefore, as per the assessee, the money is not taxable in his hands. In support of the aforesaid submission, it is evident from the record that the assessee did not rely on any provisions of the India-UAE DTAA. The assessee claimed himself to be a resident of the UAE. However, as evident from the record, he did not furnish a Tax Residency Certificate from the UAE in support of his claim. At the same time, it is undisputed that his stay in India is limited to 121 days. Therefore, in the present case, after invoking the provisions of the India-UAE DTAA to tax the income in the hands of the assessee, the Revenue itself is now raising a question on the applicability of the DTAA to the present case. Be that as it may, as noted in the foregoing paragraph, the Coordinate Bench of the Tribunal in the preceding year held that in the absence of Permanent Establishment or the business connection of the assessee in India, the income cannot be taxed in the hands of the assessee as business income. Thus, in the absence of any change in facts or in law in the year under consideration,

respectfully following the decisions cited *supra* rendered in assessee's own case, Ground no.3, raised in Revenue's appeal, is dismissed. Further, the submission by the learned DR, as well as Ground no. 2 raised in Revenue's appeal, challenging the applicability of the provisions of the India-UAE DTAA, is rendered merely academic in the facts and circumstances of the present case.

16. As regards the submissions of the learned DR that the definition of the term "*professional services*" is an inclusive definition, and includes within its ambit the consultancy services provided by the assessee, it is pertinent to note that the Coordinate Bench of the Tribunal in assessee's own case for the assessment year 2009-10 cited *supra*, recorded a categorical finding that both the conditions mentioned in Article 14(1) of the India-UAE DTAA are not applicable to the present case. Regarding the First Condition, the Coordinate Bench held that the assessee did not have any fixed base in India, and the AO could not establish that the assessee had any such Permanent Establishment/fixed base available to him in India to render services in an individual capacity. Further, as regards the Second Condition, it was held that the assessee's stay in India was less than 183 days during the year. We find that in the present case also, the AO failed to establish the availability of a fixed base to prove the existence of Permanent Establishment of the assessee in India to render services in an individual capacity. It is also undisputed that in the year under consideration, the assessee stayed in India only for a period of 121 days. Therefore, even in the year under consideration, neither of the conditions mentioned in Article 14(1) of the India-UAE DTAA is applicable.

Thus, without going into the question whether the definition of the term "*professional services*" is an inclusive definition, and therefore, includes within its ambit the consultancy services provided by the assessee, it is evident from the record that the both conditions as laid down in Article 14(1) for taxability of the income as "*Independent Personal Services*" are not fulfilled in the present case. Accordingly, we are of the considered view that the submission by the learned DR, as well as Ground no. 4 raised in Revenue's appeal, is rendered merely academic in the facts and circumstances of the present case.

17. Now, as regards the taxability of the income in the hands of the assessee as fees for technical services under section 9(1)(vii) of the Act, it is evident from the record that the AO rejected the contention of the assessee that the amount was received by his group companies, i.e. DAR Capital Ltd. and Thurles International Ltd., which were incorporated outside India and not by him, as the assessee failed to furnish the documents as sought. The AO held that the assessee is a 100% shareholder of these two companies, and in the absence of information sought, the only conclusion which can be drawn is that all the activities have been carried out by the assessee himself, and these two companies are shell companies, based in tax havens to avoid taxation in India. Accordingly, the AO held that INR 465 crore received by DAR Capital Ltd. and Thurles International Ltd. is actually for the consultancy services rendered by the assessee to GFH in India.

18. We find that a similar contention of the AO that these two companies are shell companies with no substantial activity and the assessee is a 100% shareholder in these companies, as the basis to hold that the payment

received by DAR Capital Ltd. and Thurles International Ltd. is in fact in the nature of payment to the assessee for the consultancy services rendered to GFH in India, was rejected by the Coordinate Bench of the Tribunal in assessee's own case in para-24 noted above, on the basis that if that is the case of the Revenue, then the AO should have called for the information through proper channel about these two companies. The Coordinate Bench held that if at all, this payment could have been taxed in the hands of these two companies if they have a business connection in India or if a source of income has accrued or arisen in India. In this regard, as noted above, the Coordinate Bench also took into consideration the assessment order passed in the case of Thurles International Ltd., for the assessment year 2009-10 on protective basis, wherein the money received by Thurles International Ltd. was held to be taxable as fees for technical services in its hands as per the provisions of section 9(1)(vii) of the Act and the AO has also sought information from foreign authorities through FT&TR.

19. Thus, in sum and substance, it is evident that the similar basis for rejecting the claim of the assessee that the amount is received by DAR Capital Ltd. and Thurles International Ltd. and holding that the same is income of the assessee from rendering the consultancy services in India has been found not to have merit by the Coordinate Bench of the Tribunal in assessee's own case for the assessment year 2009-10 cited *supra*. During the hearing, the learned DR, inter alia, relied on the response given by the assessee to Question No. 33 of his statement recorded under section 132(4) of the Act and submitted that the invoices were raised by the assessee to both GFH and KBHC for the

services rendered. In this regard, it is pertinent to note that there is no dispute that the assessee is a Director of DAR Capital Ltd. and Thurles International Ltd. Further, a person in a higher managerial position can only sign certain documents for the company. Thus, the mere fact that the assessee admitted to having raised the invoices cannot obliterate the fact that such invoices can be raised as a Director in the company, which can only mean invoices raised by the company, and nothing else. In the present case, the AO also failed to bring any material on record to substantiate its claim that both companies are merely shell companies. Therefore, in the absence of any change in facts or in law, respectfully following the decision of the Coordinate Bench cited *supra*, we are of the considered view that in the present case there is no basis for the Revenue to hold that the amount received by the assessee's group companies is the income of the assessee under the head fees for technical services under section 9(1)(vii) of the Act. As a result, Ground no. 5, raised in Revenue's appeal, is dismissed.

20. In view of the aforesaid findings, Ground no. 1, raised in Revenue's appeal, is also dismissed as the income is not taxable in the hands of the assessee.

21. Grounds no. 6 and 7, raised in Revenue's appeal, pertain to the deletion of addition on account of investments made by the assessee's foreign companies.

22. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the

assessee's group companies made investments in various companies of the Valuable Group in India. As per the assessee, he has not invested in the said Indian entity through its group companies, and he has no knowledge of the said investments or their sources. The AO, on the basis that the assessee is the Chairman of Dar Capital Group and hence all the relevant information regarding the investments made by the said companies is in the knowledge of the assessee, held that all the investments were made by the assessee and the money was routed through these entities, which are mere shell companies. Accordingly, the AO made the addition of INR 69,12,21,808.60 by treating the same as the assessee's own money earned from undisclosed sources.

23. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue by following the decision of the Tribunal rendered in the assessee's own case for the assessment year 2009-10. Being aggrieved, the Revenue is in appeal before us.

24. Having considered the submissions of both sides and perused the material available on record, we find that the Coordinate Bench of the Tribunal in assessee's own case for the assessment year 2009-10 cited *supra*, while deciding the similar issue, pertaining to the addition on account of investment made by assessee's group companies in companies in India, in favour of the assessee, observed as follows: –

> *"32. Now coming to the issues raised in grounds 13 to 15 where revenue has challenged the taxing of the amount of Rs 94.44 crore as unexplained investment made in companies in India in the hands of the assessee. We have gone through the submission made by the Ld. DR and also the finding given in the order of the AO and CIT (A). On perusal of details of investment, it is*

seen that investments have been made by various companies and not by the assessee. It is trite that a shareholder is a different person than the company for the purpose of Income Tax Act, 1961 and he cannot be taxed for investments made by the company.

33. To make an addition u/s 69 of the Act, some factual information is required that the explanation offered is not satisfactory and it has to be established that assessee indeed made the investment, of which source is not proved. However, upon going through the Assessment order (paragraph 15) as well as counter comments by Ld. DR, the thrust of the argument of revenue is that the investing companies are shell companies. If that is so, then information should have been sought from these companies through proper channel to know the source of funds. If the source is not proved and if it is found that there is any routing of unaccounted funds linking with the assessee, then it needs to be examined if the funds transferred are form undisclosed sources from India. Without any information or inquiry, any investment made by a nonresident company cannot be taxed in the hands of an individual and that to be who is also nonresident. All this presumptions and perceptions as canvassed by the revenue cannot be the basis for addition of nonresident entity or individual. Merely because investment is made by a 100% owned foreign company, the same cannot be held to be taxable in the hands of the assessee, without lifting the corporate veil. Company as per law has a separate and distinct legal existence, created under legal provisions and being foreign company, under statute relevant in that foreign jurisdiction will be applicable. It is not in dispute that investments in this case are by the foreign companies in Indian companies. The case of the revenue is that the investment is by the assessee and that to be from his unaccounted income from undisclosed sources in India. All this is based on presumption and without documentary evidence or any enquiry or information. If a foreign company has made investment in an Indian Company through proper channel, then unless any adverse information is there on record that it is through unaccounted money routed through India cannot be taxed as unexplained. Moreover, there is no evidence that same is sourced from income or has accrued or arisen in India. From the reasons of reopening as reproduced above, it is clear that the investment have come directly from Dar Ventures Ltd, Dar Investment Ltd and Thurles International Ltd. directly to the India companies. Therefore, the same cannot be taxed in the hands of the assessee. We are thus inclined to agree with decision given by the CIT (A) and his order deleting the addition is confirmed and accordingly, we dismiss the grounds raised by the revenue."

25. Therefore, in the absence of any change in facts or in law, respectfully following the decision rendered in the assessee's own case cited supra, we do not find any infirmity in the findings of the learned CIT(A) on this issue, and the same are upheld. Accordingly, Grounds no. 6 and 7, raised in Revenue's appeal, are dismissed.

26. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 26/02/2026

Sd/-	**Sd/-**
VIKRAM SINGH YADAV	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 26/02/2026

Prabhat

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