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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
MS PADMAVATHY S, AM

I.T.A. No. 7072/Mum/2019
(Assessment Year: 2011-12)

I.T.A. No. 7117/Mum/2019
(Assessment Year: 2016-17)

International Air Transport Association (Canada), Ernst & Young LLP, 6th Floor, The Ruby, 29, Senapati Bapat Marg, Dadar (West), Mumbai-400028. **PAN : AACCI4659N**	Vs.	**Assistant Commissioner of Income Tax (International Taxation), Circle-2(2)(1),** Room No. 1722, 17th Floor, Air India Building, Nariman Point, Mumbai-400021.
Appellant)	:	**Respondent)**

I.T.A. No. 7416/Mum/2017
(Assessment Year: 2014-15)

International Air Transport Association (Canada), SRBC & Associates LLP, 6th Floor, The Ruby, 29, Senapati Bapat Marg, Dadar (West), Mumbai-400028. **PAN : AACCI4659N**	Vs.	**Dy. Commissioner of Income Tax (International Taxation), Circle-2(1)(2),** Room No. 1612, 16th Floor, Air India Building, Nariman Point, Mumbai-400021.
Appellant)	:	**Respondent)**

Appellant /Assessee by	:	Shri Porus Kaka, Shri Divesh Chawla / Ms. Rima Unadkat, AR
Revenue / Respondent by	:	Shri Krishna Kumar, Sr. DR
Date of Hearing	:	19.12.2024
Date of Pronouncement	:	08.01.2025

O R D E R

Per Padmavathy S, AM:

These appeals by the assessee are against the separate final orders of assessment passed by the Deputy Commissioner of Income Tax (International Tax) Circle 2(2)(1), Mumbai, under section 143(3) r.w.s. 144C(13) of the Income Tax Act (the Act) dated 25.09.2019 for Assessment Year (AY) 2016-17, dated 22.09.2017 for AY 2014-15 and dated 03.07.2019 for AY 2011-12. The issues contended by the assessee in all these appeals are tabulated below –

Issues	AY 2016-17	AY 2011-12	AY 2014-15
General	Ground No.1	Ground No.1	Ground No.1
Initiation of reassessment proceedings		Ground No.2	
Provision of distance learning courses	Ground No.2	Ground No.3	Ground No.2
Sale of physical publications	Ground No.3	Ground No.4	Ground No.6
Provision of advertising space	Ground No.4	Ground No.5	Ground No.3
Data base access facility	Ground No.5	Ground No.6	Ground No.5
Survey charges	Ground No.6		Ground No.4
Joining & annual fees collected towards IATA clearing house facility and data processing charges	Ground No.7	Ground No.7	Ground No.7
Non-grant of credit for self assessment tax			Ground No.8
Short grant of TDS credit			Ground No.9
Interest under section 234A	Ground No.8	Ground No.8	Ground No.10
Initiation of penalty	Ground No.9	Ground No.9	Ground No.11

2. The assessee is a corporation incorporated under the Special Act of Parliament of Canada and is a tax resident of Canada. The assessee holds a valid tax residency certificate. It is stated that it is a non-profit organization carrying out its activity for the benefit of all stakeholders of the World's Commercial Aviation Industry. Assessee has a branch office in India approved by the Reserve Bank of India. Since the issues contended in all these appeals are common, these appeals

were heard together and disposed off through this common order. For the purpose of adjudication, we will consider the appeal filed for AY 2016-17 as the lead case. Facts pertaining to the said assessment year are that the assessee filed the return of income for AY 2016-17, on 31.03.2017 declaring a total income of Rs.11,64,77,541 the breakup which is as given under –

Nature of Income	Amount – Rs.
Provision of passenger Intelligence services	8,57,33,838
Provision of classroom training course	95,35,130
Royalty from Authorised Training Centres (ATCs)	1,69,89,693
Income from provision of consultancy services	42,18,880
Total	**11,64,77,542**

The case was selected for scrutiny and the statutory notices were duly served on the assessee. The AO passed the draft assessment order dated 26.12.2018 assessing the income of the assessee at Rs.49,08,18,300/-. Aggrieved the assessee filed its objections before the DRP. The DRP gave partial relief to the assessee and the AO passed the final assessment order as the directions of the DRP assessing the income at Rs.36,34,65,110/- by making the following additions –

Particulars	Rate of tax	Amount – Rs.
Income not admitted by relying on the treaty		
a) Provision of distance learning courses	40%	6,52,10,595
b) Sale of physical publications	10%	2,75,28,795
c) Provision of advertising space	10%	4,92,752
d) Data base access facility	10%	1,11,67,607
e) Survey charges	40%	70,95,705
Revenue arising from India		
a) Joining & annual fees	40%	10,02,46,967
b) Provision of data processing charges	40%	2,72,76,072
c) Provision of IATA clearing house facility	40%	79,75,077

The assessee is in appeal against the final assessment order passed by the AO.

Provision of distance learning courses – Ground No.2

3. Facts pertaining to the issue are that the assessee allows students to avail of various distance learning courses such as IATA Proprietary Training Programs, the International Aviation Training n Program, the International Cargo Agent Training Program, the International Travel and Tourism Training Program, etc. These courses are available to students who aspire to have a career in the aviation industry. The students who are interested in undertaking any of the distance learning courses can register/ enrol directly with the assessee or with an authorized Training Centre ('ATC'). For the provision of the distance learning courses, Assessee receives enrolment fees from students/ATCs. Such fees have been paid for course material/ training kit fees, shipping fees, exam fees which is conducted by a third party in India, fees for issuance of certificates on successful completion of the courses. The AO / DRP held that the ATCs are agents of the assessee and therefore the amount received by the assessee towards distance learning courses are taxable in India as per the provisions of Article 5(4) and 5(5) of India – Canada DTAA.

4. The ld AR submitted that the Authorised Training Centres (ATC) have been wrongly considered as agents of the assessee without appreciating the fact that the activities of the ATCs i.e. registration and training of students was carried out by them in their ordinary course of business in an independent capacity. It was further submitted by the ld. A.R that the relationship between the assessee viz. IATA, Canada and the ATCs was on principal to principal basis and there was no element of agency between them. The ld AR further submitted that the ATCs are independent entities, which in the ordinary course of their business are providing the courses designed by the assessee to the students in India. The ld AR also submitted that the ATCs are providing course not only of the assessee but other

courses also and therefore there activities are not that of wholly devoted as an agent of the assessee. The ld AR argued that the ATCs could not be held as Dependant Agent Permanent Establishment (DAPE) of the assessee as per Article 5(5) of the India-Canada tax treaty. The ld AR further argued that conditions as per Article 5(4) are not satisfied for treating the ATCs as the DAPE of the assessee. The ld AR took us through the relevant clauses of the Treaty in this regard. Accordingly the ld AR submitted that the revenue is not correct in treating 40% of the revenue generated from sale of distance learning material as the business income attributable to such DAPE, liable to tax in the hands of the assessee in India. The ld AR submitted that similar additions were made in assessee's case for AY 2012-13 and that the coordinate bench while considering the issue has held the same to be not taxable in India.

5. The ld DR on the other hand relied on the order of the AO and the directions of the DRP.

6. We heard the parties and perused the material on record. We notice that the coordinate bench in assessee's own case for AY 2012-13 has considered a similar issue and held that –

> *"9. We have heard at length the authorised representatives for both the parties in context of the issue pertaining to treating of the ATC"s as the DAPE of the assessee, and attribution of 40% of the revenue generated from sale of the distance learning courses as the business income of the assessee liable to be taxed in India as per Article 7 of the India-Canada tax treaty. Also, we have perused the orders of the lower authorities as well as the material available on record, and also the judicial pronouncements pressed into service by the respective parties. Before proceeding any further, we may herein observe, that though the A.O vide his draft assessment order passed u/s 143(3) r.w.s 144C(1), dated 27.03.2015 had attributed the entire revenue of USD 2,390,825/- i.e Rs.12,12,38,736/- from provision of distance learning courses as the income of the ATC"s, but the DRP had scaled down the attribution of such*

income to 40% of the revenue so generated. For a fair appreciation of the issue under consideration we shall briefly cull out the fact pattern as regards the provision of the distance education courses of the assessee by the ATC"s in India. As is discernible from the records, we find that the assessee viz. IATA, Canada allowed students to avail various distance learning courses pertaining to aviation sector, viz. IATA Proprietary Training Programs, International Aviation Training Program, International Cargo Agent Training Program, International Travel and Tourism Training Program etc., for which the interested students could either directly register/enrol on the website of the assessee or approach an ATC. The assessee during the year under consideration had 59 ATC"s in India. On a perusal of the records, we find that the ATC"s for carrying out training and being able to provide the assesse"s courses in their syllabus had to register themselves with the assessee and pay one-time ATC fees viz. ATC network access fee, ATC annual authorization fee, and branch fee. Insofar such ATC fees is concerned, the same had undisputedly been offered to tax by the assessee as „royalty". For the provision of the distance learning courses the assessee would receive enrolment fees from the students/ATC"s, which would be paid for the course material/training kit fees, shipping fees, exam fees (conducted by a third party in India), and fees for issuance of certificates on successful completion of the courses. In a case where the student would approach the ATC for the distance learning courses of the assessee, the concerned ATC would procure the study material for the said course from the assessee and provide the same to the student who would thereafter make the payment for the same to the ATC. The aforesaid transaction between the ATC"s and the students was on an independent basis and the assessee was not a privy to the said arrangement. Also, we find that the ATC would procure the course material as per the number of the students registered with them, and hence, did not maintain a stock of the course material on behalf of the assessee at any time.

10. We have perused the records to which our attention was drawn by the ld. A.R in the course of the hearing of the appeal, and find, that the ATC"s were independent third party organisations that provided training of their various self-designed courses, courses designed by other third parties, and also the courses designed by the assessee viz. Assessee to its students. In fact, the ld. A.R in order to drive home his claim that the ATC"s were not exclusively into providing of courses designed by the assessee and were providing a host of other self-designed/third party courses, had taken us through Page 65-67 of the APB, which revealed the multiple educational programs offered by one of the ATC viz. Srinivassa Sinai Dempo College of Commerce and Economics. On a perusal of the aforesaid sample screenshots, we find that Srinivassa Sinai Dempo College of Commerce and Economics was providing multiple courses, viz. Bachelor of Commerce, Bachelor of Business Administration, Master of

Commerce, M.A (Tourism and Heritage) Management, PGDBA-Event Management, Accounting for Small Businesses, Certificate Course in Tour Management, IATA Course etc. Similar is the position in the case of another ATC, viz. Kuoni Academy, which as can be gathered from the screen shots, Page 69-70 of „APB", was also providing multiple courses, viz. International Master in Business Administration & Tourism Management, Kuoni Certified Advanced Course in Travel Management, Kuoni Certified Advanced Course in Travel & Tourism Management, Kuoni Certified Abacus Operator-Level-1, Kuoni Certified Program in Tour Guiding Skills, IATA Foundation, Kuoni Certified Program in Travel Agency Operations-IOTAA, IATA Consultant, Kuoni Certified Galileo Operator-Level-1, Kuoni Certified Galileo Specialist-Level 1 & 2, Kuoni Certified Abacus SpecialistLevel 1 & 2, Kuoni Certified Tour Manager Program, Kuoni Certified Air Ticketing Specialist, Kuoni Certified Program in Airport Customer Services, Kuoni Certified Program in Visa Facilitation etc. Also, our attention was drawn towards the financial statements of another ATC viz. Thomas Cook India Pvt. Ltd, as available in the public domain. On a perusal of the financial statements of Thomas Cook India Pvt. Ltd., we find that the primary source of revenue of the said party was by way of commission received from traveller"s cheque, margin on foreign exchange, and net commission earned on travel management. Insofar the revenue generation from conducting training programs is concerned, we find that the same was a miniscule amount of Rs. 0.39 crores as against the total revenue of Rs. 377.12 crores generated by the said entity during the year under consideration. Insofar the courses provided by Thomas Cook are concerned, we find that the same as per the screen shot, Page 68 of APB were classified under three heads i.e (i). Under Graduate Courses, viz. Certificate Course in Domestic Tour Management; (ii). Post Graduate Courses, viz. MBA Tourism (Pondichery University), Travel Professional Program – A Post Graduation Diploma in Travel & Tourism Management with MBA– Tourism (Pondichery University), Travel Professional Program – A Post Graduate Diploma in Travel & Tourism Management, Certificate Course in World Tour Management, PGDM in International Tourism Business–equivalent to MBA (IITTM); and (iii). IATA Courses, viz. IATA Foundation Course, IATA Consultant Course, Corporate Training, and Tourism Board Training. Accordingly, in the backdrop of our aforesaid observations it can safely be concluded that the aforesaid ATC"s could not be held to be exclusively into providing of courses designed by the assessee, but were also providing a host of other self-designed/third party courses. On being confronted with the aforesaid factual matrix the ld. D.R failed to dislodge the claim of the counsel for the assessee that the ATC"s were independent third party organisations providing training of their various self designed courses, courses designed by other third parties, and also the courses designed by the assessee viz. Assessee, and were not exclusively into providing of courses designed by the assessee viz. IATA,

Canada. In fact, no observation to the said effect is also discernible from the orders of the lower authorities. On the contrary, the DRP at Page 53 – Para 5.3.2(i), had observed, that the ATC"s were independent organizations doing their business of providing training to the students to enable them to work in aviation, travel and tourism industry. But then, after so observing, the DRP was of the view that as the ATC"s for rendering the training courses were entirely dependant on the various manuals and study material provided by the assessee, and the distance learning courses of the assessee constituted the backbone of such training and the overall operations of the ATC"s, they were thus rightly held by the A.O as DAPE of the assessee. Apart from that, the DRP in order to fortify his aforesaid conviction had drawn support from the fact that the ATC"s were recognised and approved by the assessee, and for providing training to the students were mandatorily required to be registered with the assessee. Also, it was observed by the DRP that the training could be provided by the ATC"s to the students only after they had purchased the necessary study material from the assessee, i.e either directly by online payment or indirectly through sales by ATC"s. In the backdrop of its aforesaid observations, the DRP was of the view that the projection of the relationship of the assessee and the ATC"s as that of principal to principal basis was a farce. For so concluding, the DRP was of the view that though the students enrolled by the ATC"s were apparently the customers of the ATC"s on their own account and for their own benefit, but the moment the student enrolled for the training, the subscription of the assessee for the training material was secured and the charges were ensured. As such, the DRP was of the view that the payment of charges by the ATC"s (as an agent) to the assessee was disguised in the form of sale of materials. On a perusal of the observations of the DRP, we find, that except for its generalised observation that the distance learning courses of the assessee constituted the backbone of such training and the overall operations of the ATC"s, there is no whisper or reference to any such material or facts which could irrefutably prove that the activities of the ATC"s were devoted wholly or almost wholly on behalf of the assessee viz. IATA, Canada. Rather, the facts brought to our notice as regards the multiple educational programs offered by the ATC"s viz. Srinivassa Sinai Dempo College of Commerce and Economics, Kuoni Academy and Thomas Cook, gives a clear picture that the said ATC"s were not exclusively into providing of courses designed by the assessee, but were providing a host of other self-designed/third party courses. Further, the factum as regards the miniscule revenue generated by the aforesaid ATC viz. Thomas Cook India Pvt. Ltd. from conducting training programs, as in comparison to its other streams of revenue generation clearly militates against the observation of the DRP that the distance learning courses of the assessee constituted the backbone of the overall operations of the ATC"s.

11. It is in the backdrop of our aforesaid observations that we shall now deliberate on the aspect as to whether or not the ATC"s could be held to be the DAPE of the assessee viz. IATA, Canada. At the outset, we may herein observe that in order to treat the ATC"s as a DAPE of the assessee the provisions of Article 5(5) of the IndiaCanada tax treaty needs to be satisfied prior to evaluating the provisions of Article 5(4) of the said treaty. As per Article 5(5) of the India-Canada tax treaty, an enterprise of a contracting state shall not be deemed to have a PE in the other Contracting state merely because it carries on business in that other state through a broker, general commission agent, or any other agent of an independent status, subject to the condition that such person is acting in the ordinary course of its business. But then, as per the rider provided in Article 5(5) of the tax treaty, the agent would be divested of its independent status, if it cumulatively satisfied the dual conditions therein provided viz. (i). its activities are devoted wholly or almost wholly on behalf of that enterprise; AND (ii). the transactions inter se the agent and the enterprise are not made under arm"s length conditions. For the sake of clarity, we herein reproduce Article 5(5) of the India-Canada tax treat, which reads as under:

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

As such, an enterprise carrying on business in the other contracting state through a broker, general commission agent or any other agent of an independent status, or merely maintaining in that other State a stock of goods with an agent of an independent status from which deliveries are made by that agent, shall not be deemed to have a PE in the other Contracting state, subject to the condition that such agent of an independent status is acting in the ordinary course of its business. But then, if the activities of such agent are devoted wholly or almost wholly on behalf of that enterprise, AND the transactions between the agent and the enterprise are not made under arm"s length conditions, it shall not be considered an agent of an independent status within the meaning of Article 5(5) of the India-Canada tax treaty. Now, in the case before us, as observed at length hereinabove, the activities of the ATC"s in India cannot be held to be devoted wholly or almost wholly on behalf of the assessee viz. IATA, Canada. Independent of that, it is not even the case of the revenue that the transactions between the assessee viz. IATA, Canada and

ATC"s are not made under arm"s length conditions. As observed by us hereinabove, as per Article 5(5) of the India-Canada tax treaty an enterprise carrying on business in the other contracting state through a broker, general commission agent or any other agent of an independent status, or merely maintaining in that other State a stock of goods with an agent of an independent status from which deliveries are made by that agent, shall not be deemed to have a PE in the other Contracting state, subject to the condition that such agent of an independent status is acting in the ordinary course of its business. As regards the rider therein provided in Article 5(5) of the India-Canada tax treaty, the same as observed by us hereinabove would require cumulative satisfaction of two conditions for the purpose of divesting the agent of its status as that of being an independent agent viz. (i). the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise; AND (ii). the transactions between the agent and the enterprise are not made under arm"s length conditions. In the case before us the DRP itself had observed that ATC"s are independent organisations doing their business of providing training to the students to enable them to work in aviation, travel and tourism industry. As such, the fact that the ATC"s are independent agents, acting in the ordinary course of their business had been admitted by the DRP, and the said observation has not been assailed by the revenue before us. Without prejudice to the fact that the activities of the ATC"s were not devoted wholly or almost wholly on behalf of the assessee, viz. IATA, Canada, in the absence of any observation by the lower authorities that the transactions between the assessee and the ATC"s were not made under arm"s length conditions, would therein result to an absence of a cumulative satisfaction of the aforesaid two fold conditions prescribed in Article 5(5) of the tax treaty for divesting the ATC"s of their status as that of an independent agent. In sum and substance, as the assessee viz. IATA, Canada, was carrying on its business in India through ATC"s which were independent organizations doing their business of providing training to students to enable them to work in aviation, travel and tourism industry, therefore, the assessee de hors any such observation recorded by the lower authorities that the transactions between the assessee and the ATC"s were not made under arm"s length conditions, cannot be held to have a PE in India within the meaning of Article 5(5) of the India-Canada tax treaty. Our aforesaid view that in the absence of any observation that the transactions between the assessee i.e IATA, Canada and the ATC"s were not made under arm"s length conditions, the ATC"s which are independent organizations acting in the ordinary course of its business cannot be divested of their status as that of an independent agent under Article 5(5) of the India-Canada tax treaty is supported by the order of the ITAT, Mumbai in the case of Delmas France S.A Vs. ACIT (International taxation) (2013) 141 ITD 67 (Mum). In the said case the Tribunal on the basis of a conjoint reading of Article 5(5) and Article 5(6) of India-France tax treaty, had observed as under:

" 9. Let us now deal with the scope of dependent agent permanent establishment (DAPE) as set out in Article 5(5) and Article 5(6) of the Indo French DTAA. Article 5(5) provides the situations in which business being carried on through a dependent agent results in creation of PE in the source state. The provisions of Article 5(6) are, however, slightly at variance with standard tax treaty provisions, and need to be analysed in some detail. The significant feature of Article 5(6) of Indo French DTAA, which is somewhat unique in the sense that this provision is in clear deviation from the standard UN and OECD Model conventions, is that even when an agent is wholly or almost wholly dependent on the foreign enterprise, he will still be treated as an independent agent unless additional condition of the transactions being not an arm"s length conditions is fulfilled. It is so for the reason that Article 5(6) provides that even when an agent is wholly or almost wholly dependent on the principal, i.e. foreign enterprise, "he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under at arms length conditions" (emphasis by underlining supplied by us). In other words, as long as it is not shown that the transactions between the agent and the principal are not made under arm"s length conditions, the agent is treated to be an independent agent. The implication of the agent being treated as an independent agent is that the provisions of dependent agent PE, as set out in Article 5(5), can never come into play in the cases in which the business is carried out by the foreign enterprise through an independent agent, because Article 5(5), which overrides the provisions of Article 5(1) and 5(2), specifically provides that "where a person other than an agent of an independent status to whom paragraph 6 applies (emphasis by underlining supplied by us) is acting in one of the Contracting States on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State" subject to fulfillment of certain other conditions which are admittedly fulfilled in the present case. Therefore, as long as the agent is of independent status, the provisions of Article 5(5) cannot be invoked. It is also important to bear in mind that since provisions of Article 5(5) override the provisions of Article 5(1) and 5(2), no permanent establishment under article 5(1) and (2) can be said to come into existence, so far agency situations are concerned, until the conditions of Article 5(5) are also satisfied. Learned Departmental Representative fairly does not dispute, and rightly so, that the permanent establishment in the present case will be governed by Article 5(5) read with Article 5(6). Learned Departmental Representative"s only objection is that since an important aspect, i.e. aspect relating to the transactions having been done in arm"s

length conditions, has not been examined by the Assessing Officer, the matter should be restored to the file of the Assessing Officer for specific adjudication on the transactions between principal and agent having been done in arm"s length conditions. We are unable to see any merits in this plea. As held by a coordinate bench of this Tribunal, in the case of Airlines Rotables Ltd Vs DDIT8, "It is a settled position of law, as noted by the Special Bench of this Tribunal in the case of Motorola Inc. , that the onus is on the Revenue to demonstrate that a PE of the foreign enterprise exists in India". In the present case, i.e. in the case of DAPE in accordance with provisions of Indo French DTAA, the onus is even greater inasmuch the very foundation of DAPE rests on a negative finding with respect to the wholly dependent or almost wholly dependent agent i.e. "if it is shown that the transactions between the agent and the enterprise were not made under at arm"s length conditions". Unless this negative finding is on record, it cannot be inferred that the agent is not of an independent status. No such finding was given by the Assessing Officer, or even by the Dispute Resolution Panel. Even in the proceedings before us, no material has been brought on record which at least prima facie demonstrates, or even indicates, that the transactions between the principal and agent are not under arm"s length conditions. Once this onus is not discharged by the revenue authorities at any of these stages, and in accordance with the law laid down by Special Bench decision in the case of Motorola Inc, we have to hold that the assessee did not have any PE in India. We are not inclined to grant a fresh inning to the Assessing Officer for making roving and fishing enquiries on the aspect of transactions not having been done in arm"s length conditions - particularly as there is nothing on record to even remotely suggest a prima facie case in this regard. A negative finding in this regard is a sine qua non for making out a case for existence of DAPE in the context of Indo French DTAA, and this finding being absent, we have to hold that the stand of the Assessing Officer, with regard to existence of PE, is not sustainable in law. As regards reference to Hon"ble Visakhapatnam Port Trust"s case, the observations made therein do not apply in this context as it was not dealing with Dependent Agency Permanent Establishment (DAPE) which is now the case before us. As we have seen earlier, the provisions of DAPE override the provisions regarding fixed place PE, and, therefore, any observations made in the context of fixed place PE do not apply to the DAPE situations. As regards the reference to the OECD Model Convention commentaries or other standard literature in the context of DAPE, it cannot be of any help in interpretation of DAPE provisions in Indo French DTAA because of a somewhat peculiar provision in Article 5(5) read with Article 5(6), which is not part of OECD or UN Model Convention, and which provides that "However, when the activities of such an agent are devoted wholly or

almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under at arm"s length conditions.". We have also noted that the DRP has held that there is a PE on the short ground that assessee"s claim for applicability of Article 9 presupposes existence of a PE, but it is difficult to comprehend as to how existence of a PE can be inferred merely because the assessee has made a particular claim, which is rejected anyway. The onus of establishing that there is a PE, as we have noted earlier in the discussions, is on the revenue authorities and there is no room for inferences being drawn up in this respect merely because the assessee has made a particular claim. Similarly, reference to agent"s authority to conclude contracts, as has been made by the DRP, is not decisive test either because even when agent has the authority to conclude contracts, it is still to be established that the agent is not an independent agent. That exercise is not even conducted in this case. The Assessing Officer"s reliance on OECD Commentary, therefore, is of no avail either. In view of these discussions, as also bearing in mind entirety of the case, we set aside and vacate the Assessing Officer"s findings with regard to existence of assessee"s PE in India. We may, at the cost of repetition, clarify that these conclusions are arrived at in the light of the factual position that there are no findings by the Assessing Officer, or the Dispute Resolution Panel, to the effect that the transactions between the agent and the assessee are not at an arm"s length price, and that, in view of the provisions of Article 5(6) of Indo French DTAA, such a finding by the revenue is a sine qua non for existence of DAPE. To this extent, our decision is confined to the facts of this case for the particular assessment year before us".

10. In the absence of any distinguishing feature brought on record by the Revenue, we respectfully following the order of the Tribunal in assessee"s own case (supra) hold that the assessee has no PE in India and, hence, not liable to tax and accordingly the grounds taken by the assessee are allowed."

On further appeal by the revenue, the Hon'ble High Court of Bombay in its order passed in the case of DIT(International Taxation) Vs. Delmas France (2015) 232 Taxman 401 (Bom) had affirmed the order of the Tribunal and dismissed the appeal of the revenue, observing as under:

"9) There is substance in the contention of Mr. Irani that the departmental representative appeared before the Tribunal and fairly stated that the matter should be examined in the light of applicability of Article 5(5) read with Article

5(6). The combined effect of this fair suggestion and concession is that firstly notwithstanding anything contained in Article 5(1) and (2) whether a person other than the agent of Indian State to whom paragraph 6 of Article 5 applies is acting in one of the Contracting States on behalf of an enterprise of other Contracting State, that enterprise shall deemed to have been a permanent establishment in the first mentioned Contracting State. That is also provided he exercises habitually an authority to conclude contracts on behalf of the enterprise and his activities are not relevant to purchase of goods or merchandise for the enterprise. He may also be having no such authority, but if he maintains habitually in the first mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, then, the business of an enterprise is wholly or partly carried out within the meaning of Article 5(5) and the said enterprise has a permanent establishment in India. Insofar as Article 5(5) and para 6 is concerned, there is a deeming fiction, and by virtue of that, the enterprise of one of the Contracting States is deemed not to have permanent establishment in other Contracting State merely because it carries on business in that other Contracting State through broker, general commission agent or any other agent of an independent status, provided that such persons are acting in ordinary course of their business. Then comes the provision, whether activities of an agent who may be an agent of independent status but devoted wholly or almost wholly to that enterprise, but he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under at arm's length conditions.

10) In the present case, what was essentially brought to the notice of the Tribunal was that this is an important aspect relating to the transactions, but they have not been examined in the manner indicated by us above by the Assessing Officer, therefore the matter should be restored to file of the Assessing Officer for specific adjudication of the transactions between the Assessee and the agent. The Tribunal did not accept this. Not because of any broad legal principle, but there being no finding of this nature on record at all. If the Assessing Officer or the DRP failed to render the finding and which would indicate the applicability of the Article and as pressed by the departmental representative, then, to our mind, the Tribunal was under no obligation to remand the matter back to the Assessing Officer. The Tribunal has rightly observed that even during the course of the proceedings before it, no material was placed on record, which would prima facie demonstrate or even indicate that the transactions between the principal namely the Assessee and the agent are not under at arm's length

conditions. Once this onus is not discharged by the Revenue and the Tribunal has confined its observations and conclusions to the facts and circumstances peculiar to the Assessee's case and for the particular assessment year, then, we agree with Mr. Irani that this Appeal does not raise any substantial question of law. However, we do not find any basis for the submission made by Mr. Singh that the Tribunal should have examined the matter in the light of applicability of Article 5(1)(2) of the DTAA. The departmental representative has given up that because there was no finding rendered by the Assessing Officer. The Tribunal as rightly held was not obliged to go into the same. Even on this ground the Tribunal's order cannot be faulted."

At this stage, we may herein observe that as in the present case before us, in the case of Delmas France (supra) also there was no finding of the lower authorities that the transactions between the principal and agent were done in arm"s length conditions. Under such circumstances, the Tribunal relying on the order of the „Special bench" of the Tribunal in the case of Motorola Inc. Vs. Dy. CIT(2005) 95 ITD 269 (Del)(SB), had held, that the onus was on the Revenue to demonstrate that a PE of the foreign enterprise exists in India. In its aforesaid order it was observed by the Tribunal, that in the case before them, the onus was even greater inasmuch the very foundation of DAPE did rest on a negative finding with respect to the wholly dependent or almost wholly dependent agent i.e. "if it is shown that the transactions between the agent and the enterprise were not made under arm"s length conditions". As such, in the absence of any such negative finding being available on record, it was observed by the Tribunal that it could not be inferred that the agent was not of an independent status. Further, noticing that neither any such finding was given by the A.O or by the Dispute Resolution Panel, nor in the course of the proceedings before the Tribunal any material was brought on record which could at least prima facie demonstrate, or even indicate, that the transactions between the principal and agent were not under arm"s length conditions, the Tribunal concluded that it was to be held that the assessee did not have any PE in India. We may herein observe, that the Tribunal taking cognizance of the fact that there was nothing on record to even remotely suggest a prima facie case that the transactions between the foreign enterprise and the agent were not at arm"s length, had thus, declined to remand the matter and allow a fresh inning to the A.O for making roving and fishing enquiries on the aspect of transactions not having been done in arm"s length conditions. On further appeal, the Hon"ble High Court approved the view taken by the Tribunal. In the case before us also neither the lower authorities had established that the transactions between the assessee viz. IATA, Canada and the ATC"s were not done under arm"s length condition, nor any material was placed on our record by the ld. D.R to demonstrate any such fact. Accordingly, in the absence of any

finding by the lower authorities that the transactions between the assessee and the ATC"s were not at arm"s length, we thus on a similar footing conclude that as per a conjoint reading of Article 5(4) and Article 5(5) of the India-Canada tax treaty, the ATC"s being an independent agent within the meaning of Article 5(5) of the India-Canada tax treaty could not have been held to be the DAPE of the assessee in India.

12. As we have concluded hereinabove that the ATC"s are the agent"s of an independent status of the assessee viz. IATA, Canada, within the meaning of Article 5(5) of the India-Canada tax treaty, therefore, there remains no occasion for us to deal with the contentions advanced by the ld. A.R that the ATC"s do not satisfy the conditions laid down for dependant agent PE under Article 5(4) of the tax treaty, which aspect is thus left open.

13. In the backdrop of our aforesaid observations, we herein conclude that the ATC"s are the agents of independent status of the assessee viz. IATA, Canada, within the meaning of Article 5(5) of the India-Canada tax treaty. Accordingly, without adverting to the other contentions advanced by the ld. A.R in order to impress upon us that the ATC"s cannot be held to be the DAPE of the assessee viz. IATA, Canada, we vacate the view taken by the A.O/DRP holding to the contrary. As we have held that the ATC"s are not the DAPE of the assessee, therefore, the addition of Rs. 4,84,95,494/- i.e 40% of the revenue generated from sale of distance learning material, attributed to them in their status as that of DAPE of the assessee corporation, viz. IATA, Canada, and assessed as the business income of the assessee in India under Article 7 of the India-Canada tax treaty cannot be sustained and is therefore vacated.

14. We shall now deal with the claim of the assessee that the DRP had erred in concluding that the income received by the assessee on sale of distance learning courses is alternatively taxable as royalty, both under the Act and the India-Canada tax treaty. On a perusal of the DRP order, we find, that it was therein observed that as the assessee by providing training material to the students was providing knowledge, information and training about the aviation and travel and tourism industry in general, which was in nature of proprietary commercial knowledge, information and skill acquired from experience provided to the students on enrolment in ATC"s, the receipts were thus taxable as royalty both under the Act and the India-Canada tax treaty. We have deliberated at length on the issue under consideration and are unable to persuade ourselves to subscribe to the view taken by the DRP. Before proceeding any further, it would be relevant to cull out the definition of royalty as contemplated in Article 12(3) of the India-Canada tax treaty, which reads as under:

"12(3). The term "royalties" as used in this Article means:

(a) payment of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film paper or other means or reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and

(b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 or Article 8 from activities described in paragraph 3(c) or 4 of Article 8."

As observed by us hereinabove, the assessee pursuant to the request from the student"s/ATC"s despatches the course material i.e the learning kit in the form of books or CD"s directly to the students or ATC"s. Although, the course material providing knowledge, information and training about the aviation and travel and tourism industry in general is sold to the students/ATC"s, but no „use" or „right to use" any copyright in relation to such study material is granted to them. In fact, the student"s/ATC"s do not have any right to reproduce/sell the contents of the study material in any form or media. As the course material providing knowledge, information and training about the aviation and tourism industry in general is merely a sale of book/CD, which does not involve transfer of intellectual property, and also does not contain any undivulged technical information which is not available in the public domain and/or knowhow, therefore, it falls outside the scope of the term „information concerning technical, industrial, commercial or scientific experience" under Article 12(3) of the India-Canada tax treaty. In sum and substance, as the consideration received by the assessee is towards a simplicitor sale of training material/books, thus, the same cannot be brought within the definition of „royalty" under Article 12(3) of the India-Canada tax treaty. Our aforesaid view that the consideration received for providing the study material to the students in distance learning courses cannot be held as „royalty" is fortified by the order of the ITAT, Delhi in the case of Hughes Escort Communication Ltd. Vs. Dy. CIT (2012) 31 CCH 128 (Del), wherein it was observed as under:

"8.12.On a careful perusal of the above it is seen that the nature ofpayment made to eCornell is not 'royalty' as the payment is not for theuse or the right to use any copy right or literary work. The fact that it is not for artistic, scientific work, work on film, tape, radio, television, broadcasting etc. does not arise. It is also not for use or right to use patent, trade mark, design, plan, secret formula or process etc. It is purely and simply a case of

pooling of resources by way of an Affiliate Agreement wherein the respective roles and responsibilities have been assigned and the arrangement being of the nature of pooling of resources where fee sharing of the two parties have been set out this is not a case where any payment is being made to eCornell by the assessee for any kind of service as it is purely a case of apportioning of fees attributable to eCornell as per the Affiliate Agreement being remitted to eCornell and the portion of the fees collected for providing enrollment infrastructure in order to access the study material by the students is retained by the assessee as its share. As such on facts the present case does not partake the nature of royalty as contemplated under Clause 3(a) of Article 12 of the Indo-US DTAA."

Accordingly, not finding favour with the alternative observation of the DRP that the consideration received by the assessee for providing course material to the students/ATC"s was liable to be assessed as royalty, we vacate the same. The Ground of appeal No. 2 raised by the assessee is allowed in terms of our aforesaid observations. As we have held that the ATC"s are not the DAPE of the assesse, therefore, the Ground of appeal No. 1 raised by the revenue, wherein it had challenged the scaling down of the quantum of revenue attributed by the A.O pursuant to the directions of the DRP is dismissed as having been rendered as infructuous."

7. The facts for the year under consideration being identical, we are of the considered view that the impugned issue is covered by the above decision of coordinate bench. Respectfully following the same we hold that addition made towards provision of distance learning courses by treating the ATCs as DAPE of the assessee is not sustainable and the AO is directed to delete the addition made in this regard.

Sale of physical publications – Ground No.3

8. Facts pertaining to the issue are that the assessee has developed annual physical publications/manuals for e.g. 'Dangerous Goods Regulations' ('DGR') publications/manuals that provide information inter-alia pertaining to handling of shipment of dangerous goods. These publications/ manuals could be purchased online by the airlines or any other customer who is involved in the business of

transportation of cargo. The DGR publications/manuals published by Assessee is based on the Instruction on Dangerous good developed by International Civil Aviation Organization (ICAO'), a United Nations agency for international air transport. The DGR publications/ manuals deal with the transportation of dangerous goods by air, provided comprehensively to assist customers in handling and transportation of dangerous goods. Thus, the DGR publications/ manuals are essentially a user-friendly reference publication/ manual in relation to shipping and transport of the dangerous goods around the world by air, based on the Instruction developed by the ICAO. The customers place the order for purchase of the DGR publications/ manuals on the website of IATA. These publications/ manuals are then dispatched directly to customers, and the ownership of such publications passes to the customers outside India. The AO/DRP held the revenue from sale of publications as Royalty in the hands of the assessee.

9. The ld AR submitted that the DGR manuals published by the assessee were a compilation of the Instructions on Dangerous Goods developed by ICAO, which in a comprehensive manner provided a user friendly compilation of instructions for safe transport of goods as laid down by ICAO. The ld AR further submitted that DGR manual does not involve any transfer of intellectual property and that manual does not contain any such un-divulged technical information that was not available in the public domain. The ld AR also submitted that the sale of DGR manual is only a sale of a copyrighted item and not the sale of copyright itself and therefore the same cannot be treated as royalty as has been held by the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Pvt. Ltd. vs. CIT (2021) 125 taxmann.com 42 (SC). The ld AR also submitted that the impugned issue is considered by the coordinate bench in assessee's own case for AY 2012-13 and that the Tribunal has held the issue in favour of the assessee.

10. We heard the parties and perused the material on record. We notice that the coordinate bench in assessee's case for AY 2012-13, has held as under while considering a similar issue –

> *"16. Aggrieved, the assessee has assailed the treating of the sale consideration of DGR manuals/publications as "royalty" by the A.O/DRP. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As observed by us hereinabove, the DGR manuals published by the assessee were a compilation of the Instructions on Dangerous Goods developed by ICAO, which in a comprehensive manner provided a user friendly compilation of instructions for safe transport of goods as laid down by ICAO. In the backdrop of the aforesaid facts, we find substance in the claim of the ld. A.R that the sale of DGR manuals was a simplicitor sale of a manual/book and did not involve any transfer of intellectual property. As the DGR manuals were a comprehensive and a user friendly compilation of instructions for safe transport of dangerous goods as laid down by ICAO, which did not contain any such undivulged technical information that was not available in the public domain, and/or know-how, therefore, the same in our considered view cannot be stamped as "information concerning technical, industrial, commercial or scientific experience" as provided in Article 12(3) of the India-Canada tax treaty. Our aforesaid view is fortified on a perusal of the contents of the DGR manual in the backdrop of the "Technical Instructions for the Safe Transport of Dangerous Goods by Air" published by ICAO. On a perusal of the definition of „royalty" as provided in Article 12(3) of the India-Canada tax treaty, we find that the same comprises of consideration received for the „use" or the „right to use" the following:*
>
> - *plan, secret formula or process; or*
> - *Information concerning industrial, commercial or scientific experience; or*
> - *Any industrial, commercial, or scientific equipment.*
>
> *We find substance in the claim of the assessee that the consideration received on sale of DGR manuals could not be characterised as „royalty" within the meaning of Article 12(3) of the India-Canada tax treaty, for the following reasons:*

• The publications were outright sales to the customers, and no „use" or „right to use" any copyright in relation to the publication was granted to the customer;

• The customers did not get vested with any right to reproduce/sell the content of the publication in any form or media;

• The customers also did not get any right to use the patent, trademark, design or model, plan, secret formula or process of Assessee on supply of such physical publications;

• The information provided in the publications was merely a user-friendly and comprehensive compilation of data available in the public domain and hence, the same cannot tantamount to imparting of any information concerning the technical, industrial, commercial or scientific experience;

• The assessee by compiling the instructions for safe transport of dangerous goods as laid down by ICAO did not share its experience, techniques or methodology employed in developing the publication with the subscribers nor did it impart any information relating to the formation of the publication;

• The information or data transmitted through the publication was already available in the public domain and it was not something which was exclusively available with the assessee. In fact, the assessee merely compiled and presented information in a proper form by applying its own methodology;

• Further, the information concerning any industrial,• commercial or scientific experience (i.e., know-how) generally implies undivulged technical information in the areas of industry, commerce or science, which however, was not so insofar the information published in the DGR manuals was concerned.

Accordingly, on the basis of our aforesaid observations, we are of a strong conviction that the consideration received by the assessee on sale of DGR manuals cannot be brought within the realm of the definition of „royalty" as provided in Article 12(3) of the IndiaCanada tax treaty. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Madhya Pradesh in the case of CIT Vs. HEG Ltd. (2003) 263 ITR 230 (MP). In the said case, it was observed by the Hon"ble High Court that it is not any information concerning the industrial or commercial venture that could earn the status as that of

royalty, as some expertise or skill in providing of such information would be required. In this regard, it was observed by the High Court, as under:

> *"That apart we have already indicated that every information would not have in the status of royalty. There are various kinds of categories of information. Solely because an entry of the commercial nature would not make it a royalty. That cannot be the exclusive base or foundation. Some sort of expertise of skill is required. The aforesaid factor would be the requisite one. We are not inclined to accept the submission of Mr. Arya that every information if it concerns the industries or commercial venture would be a royalty. That would tantamount to state the law quite broadly. That does not seem to be the purpose of the statute or that of the treaty."*

Also, as the sale of the DGR manuals tantamount to a simplicitor sale of a copyrighted article with no vesting of any copyright of the same with the customer, the consideration therein received by the assessee cannot be attributed to the „use" or the „right to use" the copyright itself, and thus, on the said count also cannot be brought within the realm of the definition of „royalty" as provided in Article 12(3) of the India-Canada tax treaty. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Delhi in the case of DIT Vs. Infrasoft Ltd. (2014) 220 Taxman 273 (Del). In the backdrop of our aforesaid observations we vacate the view taken by the lower authorities that the consideration received by the assessee from sale of DGR manuals was to be treated as „royalty" and brought to tax in its hands. The Ground of appeal No. 3 is allowed in terms of our aforesaid observations."

11. It is also relevant to note that the decision of the Hon'ble Delhi High Court in the case of Infrasoft Ltd (supra) which is relied on by the coordinate bench in assessee's case is upheld by the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Pvt. Ltd.(supra). Accordingly respectfully following the judicial precedence we hold that the addition made towards sale of DGR manuals / publications are to be deleted.

Provision of advertising space – Ground No.4

12. Facts pertaining to the issue are that the assessee has provided advertising space to its customers either on its website that was located outside India, or in its

publications/manuals that were published by it outside India. The customer does not get any rights in the publication or the website, it merely provides the advertisement. The provision of the advertisement space in both the website and the publications was managed by Assessee from outside India and the consideration for rendering such services was also received directly in a bank account outside India. The AO held that the source of income from providing advertising space is from India and therefore held the same to be in the nature of Royalty to be taxed in India.

13. We heard the parties and perused the material on record. During the course of hearing the ld AR submitted that the issue is covered by the decision of the coordinate bench in assessee's own case of AY 2012-13 and the ld DR did not controvert the submission of the ld AR. We notice that the coordinate bench has made the following observations while considering the identical issue in assessee's case for AY 2012-13 –

> *"18. We shall now advert to the claim of the assessee that the A.O/DRP had erred in taxing the receipts from provision of advertising space by the assessee on its website and publications as „royalty" income within the meaning of Article 12(3) of the IndiaCanada tax treaty, for the reason, that by so advertising the customers use the logo, brand and goodwill of the assessee. Briefly stated, the assessee viz. IATA, Canada provided advertising space to its customers either on its website that was located outside India, or in its publications/manuals that were published by it outside India. The provision of the advertisement space in both the website and the publications was managed by the assessee from outside India, and the consideration for rendering such services was also received directly in a bank account outside India. In order to buttress the aforesaid factual position the ld. A.R had drawn our attention to Page 12 & 13 of the additional evidence that has been filed before us. Being of the view, that by advertising on the assessee"s website and publications/manuals the customers were using the logo, brand and goodwill of the assessee, the A.O/DRP concluded that the consideration therein received was liable to be taxed as „royalty" in its hands.*

19. Assailing the aforesaid view so taken by the lower authorities, the assessee has carried the matter in appeal before us. We have heard at length the authorised representatives for both the parties in context of the issue under consideration, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them to drive home their respective contentions. In our considered view, the providing of advertising space by the assessee to its customers, either on its website or publications/manuals, did not result to vesting of any right to use, display, exploit or modification of the assessee"s brand or logo, in any manner. As such, the consideration received by the assessee from provision of advertisement space in its publications /manuals or website would not fall within the realm of the definition of „royalty" as provided in Article 12(3) of the India-Canada tax treaty. In sum and substance, as no „use" or „right to use" any copyright, patent, trademark, design or model, plan was granted to the customers by the assessee in the course of providing of advertising space to them in its publications/manuals or website, the consideration received in lieu thereof cannot be brought within the meaning of the definition of the term „royalty" as provided in Article 12(3) of the India-Canada tax treaty. Viewed from another angle, as the customers by obtaining an advertising space in the website or publications/manuals of the assessee in no way get vested with any right to commercially exploit the brand or logo of the assessee, therefore, the consideration therein received by the assessee for providing such advertising space would fall beyond the meaning of the term „royalty" as defined in Article 12(3) of the India-Canada tax treaty. Our aforesaid view that consideration received by an assessee for providing advertising space cannot be held as „royalty" in its hands is fortified by the order of the ITAT, Mumbai in the case of Yahoo India (P) Ltd. Vs. DCIT (2011) 140 TTJ 195 (Mum). In the said case, it was observed by the Tribunal that the payment made by the assessee to a foreign company for the services rendered by it for uploading and display of the banner advertisement on its portal was in the nature of business profit and not royalty. It was held by the Tribunal as under :

> *"8. As already noted by us, the payment made by assessee in the present case to Yahoo Holdings (Hong Kong) Ltd. was for services rendered for uploading and display of the banner advertisement of the Department of Tourism of India on its portal. The banner advertisement hosting services did not involve use or right to use by the assessee any industrial, commercial or scientific equipment and no such use was actually granted by Yahoo Holdings (Hong Kong) Ltd. to assessee company. Uploading and display of banner advertisement on its portal was entirely the responsibility of Yahoo Holdings (Hong Kong) Ltd. and assessee company was only required to provide the banner Ad to Yahoo Holdings (Hong Kong) Ltd. for uploading the same on its portal. Assessee thus had no right to access the*

portal of Yahoo Holdings (Hong Kong) Ltd. and there is nothing to show any positive act of utilization or employment of the portal of Yahoo Holdings (Hong Kong) Ltd. by the assessee company. Having regard to all these facts of the case and keeping in view the decision of the Authority of Advance Rulings in the case of ISRO Satellite Centre (supra) and Dell International Services India (P) Ltd. (supra), we are of the view that the payment made by assessee to Yahoo Holdings (Hong Kong) Ltd. for the services rendered for uploading and display of the banner advertisement of the Department of Tourism of India on its portal was not in the nature of royalty but the same was in the nature of business profit and in the absence of any PE of Yahoo Holdings (Hong Kong) Ltd. in India, it was not chargeable to tax in India."

As observed by us hereinabove, in the case of the present assessee before us also the consideration received by the assessee from the customers was for providing advertisement space in its publications/manuals or websites, without vesting of any right to use, display, exploit or modify the assessee"s brand or logo in any manner. As such, we are of the considered view that the consideration received by the assessee for a simplicitor providing of advertisement space to the customers in its publications/manuals or website cannot be held as „royalty". Our aforesaid view is supported by the order of the ITAT, Kolkata in the case of ITO Vs. Right Florists Pvt. Ltd. (2013) 143 ITD 445 (Kol). In the said case, it was observed by the Tribunal that payment made by assessee for online advertisement to Yahoo and Google was not in the nature of „royalty". A similar view had also been arrived at by the ITAT, Mumbai in the case of Pinstorm Technologies Pvt. Ltd. Vs. ITO (2013) 154 TTJ 0173 (Mum). In the said case, it was observed by the tribunal that the amount paid by the assessee to M/s. Google Ireland Ltd. for the services rendered for uploading and display of banner advertisement on its portal was in the nature of business profit on which no tax was deductible at source since the same was not chargeable to tax in India in the absence of any PE. Accordingly, on the basis of our aforesaid observations we are unable to persuade ourselves to subscribe to the characterisation of the consideration received by the assessee for providing advertising space to its customers, as royalty, by the A.O/DRP. As such, the view taken by the lower authorities wherein they had taxed the receipts from provision of advertising space as „royalty" income in the hands of the assessee is vacated. The Ground of appeal No. 5 is allowed in terms of our aforesaid observations."

14. The facts for the year under consideration being identical, in our view the impugned issue is covered by the above decision of the coordinate bench and

accordingly we hold that the provision of advertising space cannot be considered as royalty. The AO is directed to delete the addition made in this regard.

Data base access facility – Ground No.5

15. Facts pertaining to the issue are that the assessee provides database access facility to various customers including airlines/ strategic partners in India. These databases comprise of publicly available data for e.g.: IATA Rates of Exchange (IROE)/ passenger tariffs etc. which is collated, stored and displayed in an organized manner by Assessee. For accessing the databases, a request is placed by an Indian customer by logging on Assessee's website. Pursuant thereto, the customer is required to submit an online form and the necessary subscription fee by credit card/ bank transfer. These databases are maintained by Assessee outside India. Further, the subscription fee for accessing these databases is also received by Assessee in its bank account outside India. However the AO/DRP held that the information shared by the assessee are copyrighted information and therefore the amount received towards data base access facility should be treated as Royalty to be taxed in India.

16. The ld AR submitted that the assessee through data base access is facilitating the access to otherwise publicly available information in one place to the Airlines, customers etc. The ld AR further submitted that by providing the data access the assessee is not imparting any information concerning the technical, industrial, commercial or scientific experience or "use" or the "right to use" the copy right of literary, artistic or scientific work and therefore does not fall within the definition of Royalty as provided in Article 12(3). The ld AR also submitted that the data base as is similar to the sale DGR manual / publications and therefore

the decision of the coordinate bench with regard to sale of publications is equally applicable to the data base access also.

17. The ld DR on the other hand relied on the orders of the lower authorities.

18. We heard the parties and perused the material on record. From the perusal of facts, we notice that the data base of the assessee comprises of details like rate of exchange, passenger tariffs, airport obstacles etc., and it is submitted that the said data is compiled using algorithms owned by the assessee. We also notice these data are available otherwise in public domains, and that the assessee to facilitate availability of information in one place, is collecting these data and has given the access to the airlines, customer etc. In view of these facts, we see merit in the argument of the ld AR that the data base access is similar to the DGR manual which is again a compilation of DGR rules which is sold to the customers. Further by making these information to be accessed by the customers, the assessee allowing only the use of copyrighted information and not the copyright itself. Accordingly we are of the view that the decision of Hon'ble Supreme Court in the case of Engineering Analysis (supra) is applicable to the issue under consideration also. Accordingly following the judicial precedence we hold that the income received by the assessee towards facilitating the access to various database which are otherwise available in public domain, cannot be held as Royalty. The AO is directed to delete the addition made in this regard.

Survey charges – Ground No.6

19. Facts pertaining to the issue are that the assessee has received income from Air India for conducting passenger satisfaction survey with the assistance of a third party i.e., mind-set SA. Mind-set SA is an independent third party which is

engaged in the business of research and consulting. Mind-set SA is based in Switzerland and conducts qualitative and quantitative research studies around the world and has successfully assisted over 50 Fortune 500 companies. It does not have a place of business in India. A tri-partite contract is entered into between Assessee, Air India and mind-set SA. As per the tripartite service contract, the services are provided by Assessee and mind- set SA jointly and each party assumes responsibility for its acts and omissions and neither party has the authority to make commitments, enter into contracts on behalf of the other, bind or obligate the other in any manner whatsoever. Pursuant to the contract, the passenger satisfaction surveys are jointly conducted by Assessee and m1nd-set SA to obtain the views/ opinions of passengers travelling in business and economy class of Air India. Vide the said surveys, the passengers share their views/ opinions in relation to various services provided by Air India, inter-alia, including reservations and check-in procedures, in- flight services, baggage delivery etc. of Air India. The service of conducting the passenger satisfaction survey inter-alia includes preparing the sampling plan for the survey, distributing courtesy cards to passengers travelling by Air India's flights originating outside India which contains the website details required to participate in the survey and collating the responses provided by the passengers at a location outside India. All the said activities relating to conducting passenger satisfaction survey are provided jointly by Assessee and m1nd-set SA completely from outside India. The AO / DRP held that M1nd-set SA is to be treated as Agent PE of the assessee and since the source of income i.e. Survey of Air India customer is from the customer base in India, the Income is to be taxed as Business Profits under Article 7 of India Canada DTAA.

20. The ld AR submitted that M1nd-setSA is an independent 3rd party which is based out of Switzerland and that it does not have place of business in India. The

ld AR further submitted that M1nd-setSA provides array of services related to travel in the regular course of business and conducting passenger satisfaction survey is one of such activities. The ld AR also submitted that the contract between the assessee and M1nd-setSA is on a principle to principle basis and that there is no element of contract of agency exist between these two. The ld AR accordingly submitted that the ratio laid down by the coordinate bench in assessee's own case for AY 2012-13 while deciding the issue of provision of distance learning courses by the ATCs will be applicable to the present issue of treating M1nd-setSA as an agent of the assessee.

21. We heard the parties and perused the material on record. The assessee has entered into a tripartite agreement with Air India and M1nd-setSA to provide certain services related to customer satisfaction is to be provided jointly by the assessee and M1nd-setSA to Air India. The AO held the payment received by the assessee from Air India towards the services rendered by M1nd-setSA treating M1nd-setSA as the DAPE of the assessee. The reason for AO treating M1nd-setSA as DAPE of the assessee is that most of the Air India operations start and end in India and the majority of the customer base who participated in the survey are from India which according to the AO makes the source of Income arising out of India. It is an undisputed fact that M1nd-setSA does not have a PE in India and that the customer satisfaction survey is carried out by M1nd-setSA outside India. It is submitted by the ld AR that as per the terms of tri-partite contract the services to Air India are jointly provided by both the assessee and M1nd-setSA each being responsible for its own services to Air India. It is also submitted that M1nd-setSA is providing services to Air India as an independent entity and therefore the relationship between the assessee and M1nd-setSA is on principal to principal basis. From the perusal of the findings of the lower authorities we notice that the

only reason for holding M1nd-setSA as DAPE of the assessee is that the source of income from survey services provided to Air India is arising majorly from India and in this regard we notice that the revenue has not brought any material on record in support of such a claim. Further from the perusal of the terms of the tri-partite agreement between the assessee, M1nd-setSA and Air India we notice that the service responsibilities of M1nd-setSA has no dependency on the assessee and has to be met independently by M1nd-setSA. Therefore there is merit in the submission of the ld AR that M1nd-setSA cannot be treated as an agent of the assessee. Further it is submitted that the conditions laid down under Article 5(4) and 5(5) of the DTAA between India and Canada to hold M1nd-setSA as DAPE of the assessee are not met as in the case of ATCs. For ease of reference the said clauses are reproduced as under

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

(a)		*he has and habitually exercises in the first-mentioned State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph;*
(b)		*he has no such authority but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, and some additional activities conducted in that State on behalf of the enterprise have contributed to the sale of the goods or merchandise; or*
(c)		*he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise.*

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business

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

22. A combined perusal of the above article with the facts pertaining to the relationship between the assessee and Mind-set SA makes it clear that the Mindset SA cannot be treated as a DAPE within the meaning of the above Articles. Accordingly in our view, the decision on the issue of provision of distance learning course by ATCs is equally applicable to Mind-set SA also. In view of these discussions we hold that the addition made towards fees received from Air India for conducting passenger satisfaction survey by holding Mind-set SA as DAPE of the assessee is not tenable and liable to be deleted.

Joining & annual fees collected towards IATA clearing house facility (ICH facility) and data processing charges – Ground No.7

23. Facts pertaining to the issue is that the ICH facility enables the world's airlines and industry suppliers to settle their passenger, cargo and miscellaneous/ non-transportation billings. ICH facility provided by Assessee involves facilitation for raising of the invoices, netting-off of payables and receivables, providing transaction details report to the airlines and industry suppliers. The said ICH facility enables the airlines and SPs to settle their billings/ dues securely and efficiently, thereby, reducing their exposure to losses arising on account of foreign currency fluctuation. The Assessee receives joining and annual membership fees from various Strategic Partners who form strategic partnership with Assessee and membership fee is collected from airlines also. The assessee contended before the

lower authorities that the income arising from ICH facility and annual membership are not taxable in India for the reason that –

(i) the said services is not taxable in India since the services are provided by Assessee directly outside India and the fees in respect of the said services are also received by Assessee directly outside India.

(ii) Taxing the receipts in India by virtue of holding Indian Branches as PE of the assessee is not tenable by applying the principle of mutuality.

24. The ld. AR argued that the joining annual fee toward ICH facility is not taxable on the principle of mutualy. The ld. AR further argued that the DRP in the case of IATA Indian Branches case for AY 2014-15 has given a categorical finding that the annual membership fees is not taxable on the basis of the principle of mutuality. The ld. AR brought to our attention that MA order of the Co-ordinate Bench dated 10.07.2024 in assessee's own case for AY 2012-13, has followed the directions of the DRP to hold that

"10. Thus, now the issue is with respect to the decision in ground no.6 of the appeal to be decided afresh.

11. Before us, the assessee submitted that assessee qualifies as mutual association hence, the membership fees received from the members should not be allowable to tax having regard to the principles of mutuality under the Act. The learned Authorized Representative, after discussing the concept of mutuality held that the learned Dispute Resolution Panel for A.Y. 2014-15, in assessee's own case has accepted that assessee is a mutual concern. Therefore, the Revenue has accepted ground no.6(c). The direction of the learned Dispute panel-1, Mumbai in objection no.157, dated 22nd September 2017, was produced before us, wherein this issue was decided as per paragraph no.7 at page no.20-25 of the direction. The learned Authorized Representative has categorically argued that assessee is a mutual concern.

12. The learned Departmental Representative vehemently opposed and stated that the surplus arising in the hands of the assessee cannot be considered as not taxable in India on the principle of mutuality.

13. We have carefully considered the rival contentions and perused the orders of the lower authorities. The only dispute is whether surplus arising to the assessee is chargeable to tax in India based on the principle of mutuality or not. We find that the Dispute Resolution Panel in its direction for A.Y. 2014-15 dated 29th February 2017, in paragraph no.7 has considered all the issues and in paragraph no.7.4 has held that assessee qualifies as mutual concern having regard to the tests laid down by various courts. In view of the above finding of the learned Dispute Resolution Panel, which is not under challenge, there is no need for us to express any opinion on this aspect as revenue itself has accepted that assessee is a mutual concern."

It is also brought to our attention that the AO himself in the case of branches for AY 2012-13 has followed the findings of the DRP in AY 2014-15 and held membership fees as not taxable.

25. We heard the parties and perused the material on record. ICH facility is provided by the assessee enables the airlines to settle this billing / dues securely and efficiently thereby redirecting their exposure to Forex fluctuations. The assessee contended that the services are directly rendered outside India and therefore the charges cannot be treated as business income in the hands of the assessee since the assessee does not have a PE in India. Similarly the assessee submitted that if the Indian Branches of the assessee are treated as PE, then surplus arising from membership fees collected for the benefit of members cannot be taxed by applying the principle of mutuality. The revenue did not accept the said contentions and held both the ICH facility charge and annual membership fees as taxable in India and estimated 40% of the gross receipts as income attributable to Indian Branch. In this regard, we notice that the DRP while considering the issue of taxability ICH facility fees and membership fees in the hands of assessee's Indian branch for AY 2014-15 and held that

*"7. **Discussion and directions of the DRP regarding objection no.2:***

7.1 We have considered the facts of the case and the submissions made by the assessee. The assessee has submitted that the surplus of Rs 69,21,015 arising to it in the subject AY is not taxable based on the principle of mutuality.

7.1 In this connection it is also noted that M/s International Air Transport Association- Canada, the parent body, has in its DRP proceedings for AY 2014-15 claimed that its IATA Clearing House facility has nothing to do with its India Branch and this fact has been noted in the DRP Order of IATA-Canada as under:

> *"12.1.1 Further, the assessee has submitted that the ICH facility in respect of which Assessee has earned income is carried out independently by Assessee outside India, without any involvement of IATA India branch in carrying out such activities in India. In fact, as mentioned earlier, LATA India branch is not permitted to undertake/ provide any services apart from the billing and related services (as per the approval of the RBI)".*

7.2 There are numerous judgements passed by various Courts, including the Apex Court, which explain the principle of mutuality. As per judicial precedents, an entity would be required to fulfil the following conditions in order to qualify as a mutual concern:

***Condition 1**: There must be complete identity between the contributors and participators:*
***Condition 2**: The organisation must be set up for achieving a common objective of the members and the contribution received from the members must be for such common purpose; and*
***Condition 3:** There should be no scope of profiteering by the contributors and no element of commerciality*

7.3 After careful consideration of the detailed facts, legal submissions filed by the assessee and the year-wise statement evidencing refund of the surplus of revenues for various AYs by IATA India branch to its members submitted by the assessee, we are of the opinion that the assessee satisfies the abovementioned conditions of 'mutual concern' as laid down by various courts as under:

> ***(i) Complete identity between the contributors and the participants to the common fund***
> *The contributions (in the form of joining and annual fees, data processing charges etc) received from the airlines and agents are utilised by the*

assessee for providing the billing and settlement related services only to such airlines and agents. In case the contribution from the airlines and agents falls short of the expenses, the airlines contribute funds to make up for the shortfall. Similarly, in case the contribution is in excess of the expenses incurred by the assessee, such surplus contribution is either utilized against the cost to be incurred by the assessee in the subsequent years or is refunded back to the members.

In support of the above contention, the assessee has submitted a detailed statement evidencing the surplus which has arisen to the assessee for various AYs, the utilization and refund of such surplus in the subsequent years. The relevant extract of the statement furnished by the assessee is reproduced below:

FY	*Amount of surplus (INR)*	*Reference*	*Treatment by IATA India branch*	*AO's conduct*	*Reference in the financial statements*
2010-11	*15,42,172*	*Income and expenditure account*	*Carried forward*	*No assessment*	*Note B.2 to Schedule*
2011-12	*79,61,405*	*Income and expenditure account*	*Carried forward*	*AO has taxed the surplus of Rs. 79,61,405*	*Note 16*
2-12-13	*Nil*	*Income and expenditure account*	*The entire amount of surplus (In Rs) pertaining to* *FY 2010-11* — *15,42,172* *FY 2011-12* — *79,61,405* *FY 2012-13* — *4,53,85,486* *Has been refunded to member airlines during FY 2012-13*. Hence, there is a nil balance for the FY.*	*No assessment*	*Note 16*

2013-14	*69,21,015*	*Income and expenditure account*	*Carried forward*	*AO has taxed the surplus of Rs. 69,21,015*	*Note 20*

[It has been noted form the Income & Expenditure Statements and the Balance Sheet of the assesse that the surplus of FY 2010-11,2011-12 & 2012-13 was refunded to the airlines in FY 2013-14 only and not in 2012-13 as mentioned in the above Table above].*

However, it is evident from a perusal of the above statement, the surplus has been carried forward for utilization in the subsequent years and subsequently refunded to the members to the extent of their contributions received from such members. In fact, the assessee has submitted a statement showing the manner in which such surplus for the various AYs has been refunded to the member airlines.

Similarly, the surplus of Rs 69,21,015 for the subject AY has been carried forward by the assessee to the subsequent years for utilization against the expenses to be incurred by the assessee. This clearly demonstrates and evidences that the surplus arising to the assessee for the various AYS Including the subject year under consideration) is not in the nature of profits, In fact, if the surplus is in the nature of 'profits', the assessee would not have refunded such surplus to the members. Thus, the airlines and the agents are both the contributors and the participants to the contributions/ funds received by the assesse for providing the billing and settlement relater services.

Hence, in our opinion, we agree with the assessee that there is complete identity between the contributors and the participants (i.e. the airlines and agents) to the contributions (i.e. common fund) received by the assessee.

(ii) Instrumentality of the assessee in carrying out the mandates of its members Le. organisation must be set up for achieving a common objective of the members

As is evident from a perusal of the submissions filed by the assessee alongwith a copy of the RBI approval, the assessee has been established only for the purpose of providing billing and settlement related services to the airlines and agents on a non-commercial and not for profit basis. The relevant extract of the RBI approval is reproduced below:

"3. In view of what has been stated in your above correspondence and govt.'s letters referred to above we hereby grants you permission under Section 29(1)(a) of Foreign Exchange Regulation Act, 1973 for establishing a branch office at Bombay for the purpose of undertaking the following non-commercial activities on a no-profit basis:

i. Representing the world's scheduled Airlines, travel agents, etc.
ii. Providing services to member airlines including clearing services for remittances from travel agents to airlines and from cargo agents to airlines. ie: to launch Billing and Settlement Plan Program (BSPP);

iii. Ancillary/incidental services of non-commercial nature;

iv. To set up Electronic Data Processing Centre to collect, collate and process the reports.

4. You may please note that this permission has been granted subject to the following conditions:

i. The branch office shall not, without the prior permission of Reserve Bank expand its activities or undertake any new trading, commercial or industrial activity other than what is approved hereby;

ii. The branch shall not without the prior permission of Reserve Bank of India carry on by itself or in partnership or by otherwise associating with others any activity of a trading, commercial or industrial nature other than what is approved hereby;"

Based on the above, it is clearly evident that the assessee was incorporated only with the common objective of providing the billing and settlement related services to the airlines and agents on a non-commercial and no profit basis. Accordingly, we are of the opinion that the assessee satisfies the second condition.

(iii) No scope of 'profiteering' from the contribution and no element of 'commerciality' should be involved in the activities

As mentioned above, the RBI approval clearly mentions that the assessee can provide the billing and settlement related services only on a non-commercial and no-profit basis. In other words, the assessee is not permitted to provide the billing and settlement related activities to the airlines and agents on a commercial or profit basis.

As stated above, in case the contributions from the members fall short of the expenses incurred by the assessee, the members contribute funds to make up for the shortfall. Similarly, in case the contribution is more than the expenses, such excess contribution is utilized against the cost to be incurred by the assessee in the subsequent year for the benefit of members. Hence, it is evident that the assessee does not carry out the billing and settlement related activities on a 'commercial' basis and there is no element of profit involved in its activities. Hence, in our opinion, the third and last test is also satisfied by the assessee.

7.4 Having regard to the above, we are of the considered opinion that the assessee qualifies as a 'mutual concern' having regard to the tests laid down by various courts.

7.5 Further, having regard to the approval of the RBI which requires the assessee to undertake the BSP related activities on a non-commercial and not-for-profit basis, we are of the opinion that the provisions of Section 28(iii) of the Act would not be applicable in the instant case as the assessee does not derive any income from rendering any specific services or on a commercial basis. Also, the case laws relied upon by the AO are also distinguishable from facts of the assesse"

26. We notice that the AO while considering this issue for AY 2012-13 in the case India Branches has relied the order of DRP for AY 2014-15 and held the ICH facility fees and annual membership fees are not taxable in India. Further we notice that the Co-ordinate Bench in Assessee's own case for AY 2012-13 has consider the above directions of DRP and held that the impugned amounts are not taxable in India (refer the observations of the Co-ordinate Bench in this regard are extracted in the earlier part of this order). We also notice that for the year under consideration the AO/DRP while holding that the principle of mutuality is not applicable with regard to ICH facility fees and annual membership fees have relied their own order for AY 2012-13. Therefore we see merit in the claim that the decision of the Co-ordinate Bench in the MA order for AY 2012-13 in assessee's own case is applicable for the year under consideration also. Accordingly, we hold that the AO/DRP are not correct in attributing 40% of the gross receipts towards

ICH facility fees and membership fees as income taxable in India and attributable to Indian branch.

27. The facts pertaining to Data Processing Charges are that the assessee provides data processing services to airlines and agents using iiNET and Weblink respectively. The iiNET and Weblink facility enables the airlines and agents to enter travel related data into the system which is connected to the BSPLink system (which handles the billing and settlement between airlines and agents). A brief description of the iiNet and Weblink facility is given below:

- iiNet: This facility provides a direct communication link between the billing and settlement system of Assessee and the airline's own internal systems.

- Weblink: This facility enables the travel agents to book sales directly on the airline's website and remit the funds through the Billing and Settlement Program ('BSP') system. Thus, the Weblink facility provides the mechanism by which the ticket booking is made by the agent and allows the agent to pay on the BSP system.

Thus, these facilities act as a communicating link between the systems of the airlines, agents and the billing and settlement system which undertakes the settlement activities between airlines and agents. The assessee's argument before the AO/DRP is that the consideration in respect of such services is received directly outside India for the services rendered by the third party outside India. Therefore it is submitted that the income is not taxable in India. However the revenue treated the income as business profits by holding the Indian Branches as the PE of the assessee.

28. We heard the parties and perused the material on record. We notice that addition is made on the similar grounds that the principle of mutuality is not applicable for the charges for provision of Data Processing. We further notice that the AO/DRP have relied on their own order of AY 2012-13 in this regard. On perusal of nature of charges, we are of the view that Data Processing charges are received towards services to airlines and agents using iiNet and weblink and therefore are similar to ICH facility fees. We have already held that the ICH facility fees is not taxable in India for the reason that the principle of mutuality is applicable as has been held by the Co-ordinate Bench in assessee's own case for AY 2012-13. Therefore, applying the same ratio, we hold that the data processing charges which are similar in nature cannot also be taxed as income in India as attributable to Indian branches.

29. Ground No.1 is general. Ground No. 8 & 9 raised by the assessee pertain to levy of interest and penalty. These grounds being consequential do not warrant separate adjudication.

30. In result, the appeal of the assessee for AY 2016-17 is allowed.

ITA No. 7072/Mum/2012 – AY – 2011-12

31. We have tabulated the issues contended by the assessee through various grounds for AY 2011-12, in the earlier part of this order. From the perusal of the same it is clear that all the issues contended through ground No.3 to 7 are identical to the issues in AY 2016-17. Therefore, in our considered view, our decision on the impugned issues rendered for AY 2016-17 are mutatis mutandis applicable to AY 2011-12 also. Accordingly Ground No. 3 to 7 are allowed. Ground No.2 on the validity of initiating reassessment proceeding has become academic in view of our

decision on the grounds raised on merits. Ground No.1 is general and Ground No. 8 & 9 on levy of interest and penalty are consequential not warranting separate adjudication.

32. In result, the appeal of the assessee for AY 2011-12 is partly allowed.

ITA No. 7416/Mum/2017 – AY – 2014-15

33. From the perusal of the issues contended by the assessee for Ay 2014-15 as tabulated in the earlier part of this order, it is clear that the issues are identical to those contended in AY 2016-17. Therefore, in our considered view Ground No. 2 to 7 are covered by our decision in 2016-17 as the decision is mutatis mutandis applicable to AY 2014-15. Accordingly, ground no. 2 to 7 are allowed. Ground No. 8 & 9 pertains to short credit of self assessment tax and TDS. We in this regard direct the AO to verify the documentary evidences as submitted by the assessee and allow the credit in accordance with law. It is ordered accordingly. Ground no.1 is general and Ground No. 10 & 11 pertaining to interest and penalty are consequential not warranting separate adjudication.

34. In result, appeal for AY 2014-15 is allowed.

35. In result, appeals for **AY 2016-17 (ITA.No. 7117/Mum/2019)** and 2014-15 **(ITA.No. 7416/Mum/2019)** are allowed. The appeal for AY 2011-12 **(ITA.No. 7072/Mum/2019)** is partly allowed.

Order pronounced in the open court on 08-01-2025.

Sd/-	***Sd/-***
(SAKTIJIT DEY)	**(PADMAVATHY S)**
Vice President	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai