IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCE)

ITA No.2374/Del./2018
(ASSESSMENT YEAR : 2012-13)

ITA No.2375/Del./2018
(ASSESSMENT YEAR : 2013-14)

M/s. Boeing India Pvt. Ltd., (erstwhile known as Boeing International Corp. India Pvt. Ltd.), 3rd Floor, DLF Centre, Sansad Marg, New Delhi – 110 001.	vs.	ACIT, Circle 5 (1), New Delhi.

(PAN : AAHCB1218P)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Arvind Datar, Sr. Advocate
Shri Sachit Jolly, Advocate
Ms. Anuradha Dutt, Advocate
Shri Tushar Jarwal, Advocate
REVENUE BY : Shri Surender Pal, CIT DR

Date of Hearing : 05.11.2020
Date of Order : 27.11.2020

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, M/s. Boeing India Pvt. Ltd. (hereinafter referred to as 'the taxpayer') by filing the present appeal sought to set aside the impugned order both dated 26.12.2017 passed by the Commissioner of Income-tax (Appeals)-44, New Delhi in the appeals challenging the orders passed by the ld. TPO/Assessing Officer qua the assessment years 2012-13 & 2013-14 on the identical grounds, except the difference in amount, inter alia that :-

> **"1. On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in upholding corporate tax disallowance (Rs.22,16,37,000 & Rs.30,84,53,598 for AYs 2012-13 & 2013-14) made by Ld. AO under section 40(a)(i) of the Income Tax Act, 1961 ('the Act') for not withholding' taxes at source, by erroneously treating the reimbursement of salaries and other expenses as fees for technical services ('ITS') under section 9(1)(vii) of the Act and Fees for Included Services ('FIS')/Royalty under relevant Articles of Indo-USA and Indo-Australia Tax Treaties.**
>
> **2. In doing so, the Ld. AO as well as the Ld. CIT(A) failed to appreciate that:**
>
> **2.1 the aforesaid payments were not chargeable to tax in India since they pertained to seconded employees of Associated Enterprises ('AEs') working for the Appellant and, were under its control and supervision.**
>
> **2.2 taxes were duly withheld under section 192 of the Act on salaries paid to the seconded employees of the AEs of the Appellant. .**
>
> **3. On the facts, in the circumstances of the case & in law, the Ld. Transfer Pricing Officer ('TPO')/ CIT(A) erred in enhancing the income of the Appellant on account of outstanding receivables from AEs and failed to appreciate that the outstanding receivables and payables of the Appellant were in accordance with the arm's length standard.**
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> **4. On the facts, in the circumstances of the case & in law, the Ld. TPO/ CIT(A) erred in not appreciating that interest on receivables is not a separate international transaction as the**

interest proposed to be charged is already built in the price charged for services rendered.

5. On the facts, in the circumstances of the case & in law, the Ld. CIT(A) erred in not appreciating that since the Appellant did not charge interest on outstanding receivables from third party customer, no adjustment is warranted on account of outstanding receivables from AEs.

6. On the facts, in the circumstances of the case & in law, the Ld. TPO/ CIT(A) erred in enhancing the income of the Appellant by applying inappropriate interest rate.

7. On the facts, in the circumstances of the case & in law, the Ld. TPO/CIT(A) erred in enhancing the income of the Appellant by not adjusting the total receivables from AEs, instead incorrectly adjusting the receivables and payables from the same AEs.

8. On the facts, in the circumstances of the case & in law, the Ld. TPO/CIT(A) erred in enhancing the income of the Appellant by disregarding the principle of consistency and not following the approach adopted by the Ld. TPO in AY 2011-12 of not making an adjustment on account of outstanding receivables.

9. On the facts, in the circumstances of the case and in law, the order passed by the Ld. CIT(A) is bad in law and void ab-initio."

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Boeing India Pvt. Ltd., the taxpayer (erstwhile known as Boeing International Corporation India Pvt. Ltd.) was incorporated in India under the Companies Act, 1956 on December 8, 2003 and was accorded approval from Government of India, Ministry of Finance, Department of Economic Affairs and FIPB unit on October 16, 2003. The taxpayer is engaged in the business of providing business development, advisory and other support services to its Associated Enterprises (AEs) for which the

taxpayer required employees having requisite skills, knowledge and experience. For carrying out its services, the taxpayer employed some local employees and also identified certain expatriate employees from its AEs. The aforesaid expatriate employees employed by the AEs have been released and taken into employment by the taxpayer.

4. During the year under assessment, the taxpayer taken into employment the expatriate employees from US and Australia on the salary to be paid by the taxpayer in India which was accounted for as expense under "Salaries & Wages" in the books of account of the taxpayer and appropriate taxes on such salaries & wages were deducted and deposited by the taxpayer under section 192 of the Income-tax Act, 1961 (for short 'the Act').

5. The Assessing Officer (AO) observed that the taxpayer has entered into international transactions pertaining to reimbursement of expenses paid to its AEs to the tune of Rs.40,97,62,682/-. On submitting the details, the taxpayer was called upon to explain why the disallowance be not made u/s 40(a)(i) as no TDS (Tax deducted at source) has been deducted on payments which are actually in the nature of 'Fee for technical services (FTS)'. The taxpayer explained that since the expatriate employees were under its control without any relation/connection with the AEs and salary

expenses have been borne by the taxpayer on which tax has been deducted u/s 192 of the Act, the same cannot be disallowed being 'fee for technical services'. Declining the contentions raised by the taxpayer, the AO after referring to the Secondment Agreement and by relying upon the decision rendered by Hon'ble Delhi High Court in case of **Centrica India Offshore P. Ltd. vs. CIT (2014) 364 ITR 336 (Delhi)** proceeded to invoke the provisions contained u/s 40(a)(i) of the Act by holding that the taxpayer has failed to deduct the tax at source on salary & other allowances amounting to Rs.32,47,18,234/- & Rs.40,97,62,682/- and thereby made disallowance of Rs.22,16,37,000/- & Rs.30,84,53,598/- for AYs 2012-13 & 2013-14 respectively in terms of Article 12 (4) of the Indo US Double Tax Avoidance Agreement (Indo US DTAA).

6. Ld. TPO while determining the Arm's Length Price of the international transactions entered into between the taxpayer and its AEs u/s 92CA(3) noticed from the invoices raised by the taxpayer that it has not received the payment within the time stipulated for the service agreement with the AEs. Consequently, on outstanding amounts, delayed payments are treated in the nature of unsecured loans advanced to the AEs and thereby computed the interest @12.87% on the outstanding receivables from the AEs and made a

transfer pricing adjustment of Rs.25,64,446/- and Rs.2,55,230/- for AYs 2012-13 & 2013-14 respectively.

7. Ld. TPO accordingly assessed the income at Rs.48,58,23,790/- & Rs.62,21,78,708/- for AYs 2012-13 & 2013-14 respectively.

8. The taxpayer carried the matter before the ld. CIT (A) by way of filing the appeals who has partly allowed the same. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeals.

9. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the Revenue authorities below in the light of the facts and circumstances of the case.

GROUNDS NO.1, 2, 2.1 & 2.2 IN
ITA No.2374/Del./2018 (AY 2012-13) &
ITA No.2375/Del./2018 (AY 2013-14)

10. At the outset, ld. AR for the taxpayer challenging the impugned disallowance made by the AO/CIT(A) under section 40(a)(i) of the Act contended inter alia that both the AO as well as ld. CIT (A) have erred in making disallowance u/s 40(a)(i) of the Act as the said payments were not chargeable to tax in India being pertaining to said employees of AEs working for the taxpayer under its control and supervision; that taxes were duly deducted by

the taxpayer u/s 192 of the Act on salaries paid to the said employees of the AEs; that identical issue has already been decided in favour of the taxpayer by the coordinate Bench of the Tribunal vide **order dated 17.08.2020 passed in ITA No.9765/Del/2019 for Assessment Year 2015-16** in its own case by distinguishing the decision of Hon'ble Delhi High Court passed in case of **Centrica India Offshore P. Ltd.** (supra) and also relied upon the decisions rendered by **Hon'ble Delhi High Court in cases of CIT, Delhi II vs. Karl Storz Endoscopy India (P) Ltd. in ITA No.13 of 2008 order dated 13.09.2010 & Director of Income-tax vs. HCL Infosystems Ltd. 274 ITR 261 (Del.) and coordinate Bench of the Tribunal in the cases of HCL Infosystems Ltd. vs. DCIT in ITA Nos.4068 to 4077/Del/2020 order dated 26.02.2002, AT&T Communication Services ((India) P. Ltd. in ITA Nos.354/Del/2017 & 1653/Del/2016 order dated 31.10.2018 & Addl.DIT (International Taxation) vs. Mark and Spencer Reliance India P. Ltd. (2013) 27 ITR (Trib) 448 (Mumbai)**.

11. However, on the other hand, ld. DR for the Revenue to repel the arguments addressed by the ld. AR for the taxpayer contended inter alia that since it is a case for 'fee for technical services' (FTS), there is no escape route for the taxpayer to deduct tax u/s 192 of the Act; that coordinate Bench of the Tribunal in taxpayer's

own case for AY 2015-16 decided vide order dated 17.08.2020 has not appreciated the real facts canvassed by the Revenue and has referred to para 31 of the order (supra). However, the ld. DR for the Revenue has failed to bring on record if the facts and grounds raised in the case at hand are distinguishable from taxpayer's own case of AY 2015-16 decided in its favour by the coordinate Bench of the Tribunal and if the order passed by the Tribunal in taxpayer's own case for AY 2015-16 has been stayed by the higher court or some appeal is pending. Ld. DR has also filed written submissions which have been made part of the record by relying on **Hon'ble Supreme Court decisions in GE India Technology Cen. (P) Ltd. vs. CIT (2010) 327 ITR 456 (SC) & Transmission Corporation of A.P. Ltd. & Anr. vs. CIT (1999) 239 ITR 587 (SC),** which have been duly dealt with and found distinguishable with the facts of the present case by the coordinate Bench of the Tribunal in taxpayer's own case for AY 2015-16.

12. Coordinate Bench of the Tribunal in **taxpayer's own case for AY 2015-16** (supra) in identical facts and circumstances of the case decided the issue in controversy in favour of the taxpayer by specifically distinguishing the decision of Hon'ble Delhi High Court in the case of **Centrica India Offshore P. Ltd. vs. CIT**

(supra) relied upon by the Revenue by returning following findings:-

> ***"21. The next grievance relates to the disallowance of Rs. 56.58 crores for alleged failure of non-deduction of tax at source.***
>
> ***22. During the course of assessment proceedings, the Assessing Officer sought clarification of services performed by Boeing Company USA, Boeing Defence Australia Ltd, Boeing Korea LLC and whether the salary paid to expatriates has been included in the total salary. Further, the assessee was asked to explain the work performed by the expatriates. The assessee was asked to explain the reimbursement of expenses to Boeing company USA, Boeing International Corporation Korea and Boeing Defence Australia. The assessee furnished necessary details. It was explained that reimbursement of salary cost to expatriate employees is not taxable as FIS, both under the provisions of the Act and relevant DTAA, and no withholding tax was required on the same.***
>
> ***23. It was further explained that the assessee was a real and economic employer of expatriate employees, as these employees were under the control of the company without any relation/connection with the AEs and salary expenses have been borne by the assessee on which the appropriate taxes were duly deducted and deposited u/s 192 of the Act. It was strongly contended that reimbursement of cost charges of salary of expatriate employees is not taxable as FTS/FIS.***
>
> ***24. The Assessing Officer was not convinced with the submissions of the assessee and referring to the terms of secondment agreement and drawing support from the decision of the Hon'ble High Court in the case of CentricaIndia Offshore India Ltd 364ITR 336 and further referring to various judicial decisions, the Assessing Officer finally came to the conclusion that the assessee has failed to deduct tax at source on the expenditure towards salaries and other allowances and invoking the provisions of section 40(a)(i) of the Act, the Assessing Officer made disallowance of Rs. 56,58,19,799/-.***
>
> ***25. Objections were raised before the DRP but were of no avail.***
>
> ***26. Before us, the ld. counsel for the assessee vehemently stated that the assessee has deducted tax at source/s 192 of the Act, and, therefore, there should not be any disallowance u/s 40(a)(i) of the Act. Reliance was placed on the decision of the co-ordinate bench in the case of Neemrana Hotels Pvt Ltd ITA No.***

98/DEL/2017 order dated 10.07.2019. It is the say of the ld. counsel for the assessee that since tax has been deducted u/s 192 of the Act, provisions of section 195 will not apply.

27. Distinguishing the decision of Centrica India Offshore India Ltd [supra], the ld. counsel for the assessee vehemently stated that the decision in the case of Centrica India Offshore India Ltd was based upon entirely different set of facts wherein in that case,the Indian company was a newly formed entity and did not have necessary trained human resources and scope of work emerging from service agreement and secondment agreement clearly shows that secondees were sent to India with the knowledge of various processes and practices and also with experience in managing and applying such processes and practices.

28. On these facts, the Hon'ble High Court was satisfied that the secondary employees are making available their experience and skill in managing and applying the processes. It is the say of the ld. counsel for the assessee that in so far as the assessee is concerned, it is in existence since 2003 and the employees recruited outside India do not possess any specific skill set that is not available with Indian employees. The ld. counsel for the assessee explained that in in-house administration support division, the appellant has 58 employees out of which only 6 are expatriate employees. This division renders travel logistics, finance and accounting support etc and the qualifications and role show that such expatriate employees cannot make available any knowledge. Further reliance was placed on the decision of the co- ordinate bench in the case of AT & T Communication Services India Pvt Ltd 101 TAxmannn.com 105 [Delhi Trib]

29. Per contra, the ld. DR strongly supported the findings of the lower authorities and placed strong reliance on the decision of the Hon'ble High Court in the case of Centrica India Offshore Pvt Ltd [supra].

30. We have given thoughtful consideration to the orders of the authorities below. We have also carefully perused the salary reimbursement agreement, which is placed at pages 296 onwards of the paper book, and as per clause1.1, it is provided that the secondees have expressed their willingness to be deputed to BIPICL [the appellant] and TBC [AE] have agreed to release these employees to BIPICL. It is provided that TBC will facilitate payment of salaries in secondees home country on behalf of BICIPL. Under the head employment status, it is provided that the secondees shall be working for BICIPL and will be under supervision, control and management of BICIPL as an employee of BICIPL.

31. It is clear from the afore-stated relevant clauses that the secondees were, in fact, in employment of the appellant and as per the terms, the 'A' was paying salaries at the home country of the secondees and, therefore, there was reimbursement by the appellant. These facts clearly show that the assessee has been paying to its own employees and this fact alone clearly distinguishes the facts of the decision in the case of Centrica India Offshore Ltd [supra].

32. The co-ordinate bench in the case of AT & T Communication Services India Pvt Ltd. [supra], distinguishing the decision of the Hon'ble Delhi High Court in the case of Centrica India Offshore Pvt Ltd [supra], has held as under:

> ***"30. The DRP has affirmed the decision of the Ld. AO by holding that the assessee has deducted withholding tax on substantial payments and yet argued that the tax is not deductible u/s 195 of the act and provision of section 40(a)(i) cannot be invoked in the case of said payment.***
>
> ***31. The DRP has affirmed the decision of the AO by holding that the assessee has deducted withholding tax on substantial payments and yet argued that the tax is not deductible u/s 195 of the act and provision of section 40(a)(i) cannot be invoked in the case of said payment.***
>
> ***32. The Special Auditors in their Audit Report have worked out particulars of payments in respect of which no TDS was deducted u/s 40(a)(ia) of the Act. Consequently, an amount of Rs. 54,06,328/- was not to be allowed as expenditure."***

33. We have also perused the TDS certificates, Forms 15CA and 15CB, tax deducted by the assessee and all these documents are part of the paper book. There is no dispute that the assessee has deducted tax at source u/s 192 of the Act. On the given facts of the case, we are of the considered opinion that the provisions of Section 195 of the Act do not apply. Considering the facts of the case in totality, in light of judicial decisions referred to hereinabove, we do not find any merit in the disallowance made by the Assessing Officer/DRP. We, accordingly, direct for deletion of addition of Rs. 56.58 crores."

13. Undisputedly, the taxpayer was liable to pay the salary to the expatriate employees employed in India and working under its control creating relationship of employer and employees between

expatriate and the taxpayer and the salary payable to them was accounted for as expense under "Salaries & Wages" in the books of account by the taxpayer and has deducted the tax at source u/s 192 of the Act. In the given circumstances, reimbursing the amount to AEs who had disbursed the salaries to the employees on behalf of the taxpayer does not make any change in the nature of the salary paid to the expatriate.

14. Hon'ble Delhi High Court in case of **Director of Income-tax vs. HCL Infosystems Ltd. 274 ITR 261 (Del.)** (supra) also decided the identical issue *"as to making payment of salary or fee for technical services to foreign technicians was placed at the disposal of the taxpayer and held that taxpayer has rightly considered the payment as salary and had rightly deducted tax at source u/s 192 of the Act and Explanation to section (9)(1)(vii) is not applicable in case of salary"* by returning following findings:-

> ***" The Income-tax Department after a lapse of six years issued notices requiring the assessee to show cause why the remittances made by it to Hewlett Packard (USA) in respect of salaries paid by HP (USA) on behalf of the assessee to four 'foreign technicians /I /expatriates, be not treated as 'fee for technical services" and why the assessee should not be treated as an assessee-in-default for not deducting tax from the said payment under section 195 of the Income-tax Act, 1961. Considering the documents placed on record and various other documents, the Income-tax Appellate Tribunal arrived at the conclusion that the remittances were by way of "salaries" and were not 'fee for technical services" as claimed by the Revenue. It was specifically observed by the Tribunal that the presumption raised by the Commissioner (Appeals) could not be sustained 'in view of the fact that in so far as HP (USA) was concerned, the***

fee for technology transfer and for the transfer of know-how by HP (USA) to HP (India) had already been quantified and separately received. The technicians were deputed and the services were placed at the disposal of the assessee during the deputation period, The assessee was not only liable to pay the salary but to pay the tax thereon. On appeal to the High Court:

> ***Held, dismissing the appeal, that the Tribunal relying on material evidence, had held that the assessee had rightly considered the payment as salary and had rightly deducted tax at source under section 192. The Explanation to section 9(1)(vii) makes it clear that salaries would not fall within the expression "fees for technical services", The Tribunal was right and no substantial question of law arose from its order."***

15. Identical issue has also been decided by the Hon'ble High Court of Judicature at Bombay in case of **Director of Income-tax (International Taxation)-II, Mumbai vs. M/s. Marks & Spencer Reliance India Pvt. Ltd. in ITA No.893 of 2014 order dated 03.05.2017** by returning following findings :-

> **"3] The Tribunal after having noted all these facts found that the first appellate authority by its order dated 28th November 2011 for the assessment year 2010-2011 rightly interfered with the order of the Assessing Officer. The finding of fact of the Tribunal is that the Commissioner was right that the assessee paid sum of Rs.4866187/- to M/s. Marks & Spencer PLC towards salary expenditure of four employees deputed to the assessee for providing assistance in the area of management, to setting up of business, property selection and retail operations etc. There was a service agreement drawn up and for providing such assistance between these two companies. It was essentially a joint venture. Having noted all the clauses in the agreement, the Tribunal rendered a finding of fact that there is no rendering of service within the meaning of the double tax avoidance treaty. This was a clear case of deputing the officials / employees for the promotion of the business of the assessee which is Indian arm of M/s. Marks & Spencer PLC, UK. Since the said payment to the employees is already subjected to tax in India, therefore there is no question of treating the assessee in default for non deduction of tax at source. Once the facts were clear, as these, there was no illegality in the order of the Commissioner of Income Tax (Appeals) which was maintained by the Tribunal. The appeal of the Revenue was rightly dismissed by the Tribunal."**

16. Coordinate Bench of the Tribunal in case of **AT&T Communication Services (India) P. Ltd. vs. DCIT in ITA No.354/Del/2017 & ITA No.1653/Del/2016 order dated 31.10.2018** also decided the identical issue by observing that, *"When the payment to non-resident entity is in the nature of payment consisting of income chargeable under the head 'salary' the taxpayer does not have any tax withholding applications under section 195 of the Act. So, when the salary is subjected to TDS u/s 192 of the Act, section 195 has no application."*

17. In view of what has been discussed above, following the decisions rendered by the coordinate Bench of the Tribunal in **taxpayer's own case for AY 2015-16** in the identical facts and circumstances and by following the decisions rendered by Hon'ble Delhi High Court in the cases of **Centrica India Offshore P. Ltd. vs. CIT, Director of Income-tax vs. HCL Infosystems Ltd. 274 ITR 261 (Del.)** (supra), Hon'ble High Court of Judicature at Bombay in case of **Director of Income-tax (International Taxation)-II, Mumbai vs. M/s. Marks & Spencer Reliance India Pvt. Ltd.** & coordinate Bench of the Tribunal in **AT&T Communication Services (India) P. Ltd. vs. DCIT** (supra), when relationship of employer and employees between expatriate employees and the taxpayer have been established in view of the

Secondment Agreement duly discussed in para 31 of the order passed in **taxpayer's own case for AY 2015-16** (supra) and that taxpayer has duly deducted full tax u/s 192 of the Act being on the income chargeable under the head 'salaries', section 195 of the Act has no applicability. Moreover, when expatriate employees seconded to the taxpayer have worked as employees of the taxpayer company, their salary has been rightly subjected to section 192 of the Act and Explanation to section 9(1)(vii) of the Act which apparently makes it clear that salary would not fall within the expression 'fee for technical services' has no applicability to the facts and circumstances of the case. Consequently, addition made by the AO and confirmed by the ld. CIT (A) on account of disallowance under section 40(a)(i) of the Act is not sustainable in the eyes of law and hence ordered to be deleted. Grounds no.1, 2, 2.1 & 2.2 are determined in favour of the taxpayer.

GROUNDS NO.3, 4, 5, 6, 7, 8, & 9 IN ITA No.2374/Del./2018 (AY 2012-13)

GROUNDS NO.3, 4, 5, 6, 7 & 8 IN ITA No.2375/Del./2018 (AY 2013-14)

18. Ld. TPO/CIT (A) made adjustment of Rs.2,55,230/- u/s 92CA of the Act on account of outstanding receivables from AEs. Ld. AR for the taxpayer challenged the adjustment on the grounds

inter alia that outstanding receivables and payables of the taxpayer were in accordance with the arm's length standard and that interest on the receivables is not a separate international transaction because interest proposed to be charged is already built in price charged for services rendered and further contended that in Assessment Year 2011-12, the TPO did not impute any interest on outstanding receivables and as such, principle of consistency needs to be followed and relied upon the decisions rendered by Hon'ble Supreme Court in the cases of **CIT vs. Shivsagar Estate (2002) 257 ITR 59 (SC) & Union of India vs. Kaumudini Narayan Dalal and Anr. (2001) 249 ITR 219 (SC).**

19. However, on the other hand, ld. DR for the Revenue relied upon the order passed by the AO/CIT(A).

20. When undisputedly identical issue has already been decided by the TPO in favour of the taxpayer by not imputing any interest on outstanding receivables, the TPO in the instant case has no option except to follow the rule of consistency, as has been held by the **Hon'ble Supreme Court in case of CIT vs. Shiv Sagar Estate** (supra) that when the Revenue has accepted the contention of the applicant in the earlier year, it would not be entitled to challenge that contention in subsequent years by returning following findings :-

> ***"Having regard to the fact that no appeal has been carried against the orders of identical assessment for the previous year, the civil appeals and special leave petitions are dismissed."***

21. Similarly, in case of **UOI vs. Kaumudini Narayan Dalal & Anr.** (supra), Hon'ble Supreme Court has held that if the Revenue has accepted the point raised by the taxpayer it is subsequently barred from challenging the same point by returning following findings :-

> ***"The order under challenge in this appeal by the Revenue followed the earlier judgment of the same High Court in the case of Pradip Ramanlal Sheth us. Union of India [1993] 204 ITR 866. Learned counsel for the Revenue states that the papers before us suggest that a special leave petition was preferred against that judgment but he has no instructions as to what happened thereafter. Learned counsel for the respondents states that their enquiries with the Registry reveal that no appeal against that judgment was preferred by the Revenue.***
>
> ***If the Revenue did not accept the correctness of the judgment in the case of Pradip Ramanlal Sheth {1993J 204 ITR 866 (Guj), it should have preferred an appeal there against and instructed counsel as to what the fate of that appeal was or why no appeal was filed. It is not open to the Revenue to accept that judgment in the case of the Assessee in that case and challenge its correctness in the case of other Assessees without just cause. For this reason, we decline to consider the correctness of the decision of the High Court in this matter and dismiss the civil appeal."***

22. So, in view of the matter, we are of the considered view that when AO/TPO have not brought on record any distinguishable fact they are required to follow the rule of consistency by not imputing any interest to the outstanding receivables. So, this issue is remitted back to the TPO/AO to decide afresh by following the rule of consistency. Grounds No.3, 4, 5, 6, 7, 8 & 9 in

ITA No.2374/ Del. /2018 and Grounds No.3, 4, 5, 6, 7 & 8 in ITA No.2375/Del./2018 are determined in favour of the taxpayer for statistical purposes.

23. Resultantly, both the appeals being ITA No.2374/Del/2018 & ITA No.2375/Del/2018 for AYs 2012-13 & 2013-14 respectively are allowed for statistical purposes.

Order pronounced in open court on this 27th day of November, 2020.

Sd/-	**sd/-**
(ANIL CHATURVEDI)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 27th day of November, 2020
TS

Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.DRP
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.