IN THE INCOME TAX APPELLATE TRIBUNAL
"I" Bench, Mumbai

Before Shri S.Rifaur Rahman, Accountant Member
and Shri Ravish Sood, Judicial Member

ITA No.7458/Mum/2018
(Assessment Years: 2014-15)

M/s BNP Paribas BNP Paribas House,1 North Avenue, Maker Maxity, Bandra Kurla Complex, Bandra East, Mumbai- 400 051	Vs.	Deputy Commissioner of Income Tax (International Taxation) Range – 1(3)(1), R. No.527, 5th Floor, Air India Building, Nariman Point, Mumbai – 400 021
PAN – AAACB4868Q		
(Appellant)		**(Respondent)**

Appellant by: Shri F.V. Irani, A.R
Respondent by: Shri Sanjay Singh, D.R

Date of Hearing: 11.11.2020
Date of Pronouncement: 04.01.2021

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the A.O under Sec. 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 (for short „Act"), dated 30.10.2017 for A.Y. 2014-15. The assessee has assailed the impugned order on the following grounds of appeal before us:

> "Aggrieved by the order passed by the Deputy Commissioner of Income-tax (International Taxation) - 1(3)(1), Mumbai ('AO') dated 30 October 2018, under section 143(3) read with section 144C(13) of the Act, pursuant to the directions of the Hon'ble Dispute Resolution Panel - I ('DRP'), Mumbai, BNP Paribas ('the Appellant') respectfully submits that the learned AO has erred in passing the order on the following grounds:
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> 1. The learned AO has erred in not accepting the claim that the rate of tax applicable to domestic companies and/ or co-operative banks for AY 2014-15 is also applicable to the Appellant, in accordance with the provisions of Article 26 (Non-discrimination) of the India-France tax treaty.
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> 2. The learned AO has erred in subjecting to tax, the data processing fees paid by Indian branch offices of the Appellant to its Singapore branch, as income of the Appellant to the tune of Rs.40,78,10,733.

3. Without prejudice to Ground 2 above, the learned AO has erred in levying surcharge of 5 percent and education cess of 3 percent on the tax computed under Article 13 of the India-France tax treaty.

4. The learned AO has erred in proposing to hold that interest payable/ paid by the Indian branch offices of the Appellant to the head office and its other overseas branches amounting to Rs 8,22,02,991 as chargeable to tax.

5. Without prejudice to Ground 4 above, the learned AO has erred in levying surcharge of 5 percent education cess of 3 percent on the tax computed under Article 12 of the India-France tax treaty.

6. The learned AO has erred in granting short credit of taxes deducted at source (IDS) amounting to Rs 2.59,07,320.

7. The learned AO has erred in levying interest under section 234A of the Act of Rs 29,58,846 without having regard to the fact that the return of income was filed by the Appellant within the prescribed due date for filing the return of income.

8. The learned AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act.

Each of the grounds of appeal referred above is separate, and may kindly be considered independent of each other.

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

2. Briefly stated, the assessee company which is a commercial bank having its head office in France had filed its return of income for A.Y. 2014-15 on 29.11.2014, declaring a total income of Rs.399,27,25,040/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee which was involved in normal banking activities including financing of foreign trade and foreign exchange transactions had eight branches in India i.e at Mumbai, New Delhi, Kolkata, Bangalore, Pune, Ahmedabad, Chennai and Hyderabad. As the assessee had carried out international transactions with its Associated Enterprise's (AEs), therefore, a reference was made by the A.O to the Transfer Pricing Officer (for short „TPO') for computing the Arm's Length Price of the aforesaid transactions.

TPO vide her order passed under Sec. 93CA(3), dated 23.10.2017 did not make any adjustment to the value of the international transactions entered into by the assessee.

4. After receiving the order passed by the TPO under Sec. 92CA(3) the A.O passed a draft assessment order under Sec. 143(3) r.w.s.144C(1), dated 29.12.2017 wherein he proposed to assess the income of the assessee company at Rs.446,33,19,200/-.

5. Objecting to the additions which were proposed by the A.O vide his draft assessment order passed under Sec. 143(3) r.w.s 144C(1), dated 29.12.2017, the assessee approached the Dispute Resolution Panel-1 (WZ), Mumbai (for short „DRP"). The DRP after deliberating on the contentions advanced by the assessee therein passed its order on 04.09.2018. The A.O after receiving the order passed by the DRP under Sec. 144C(5), dated 04.09.2018 framed the assessment vide his order passed under Sec.143(3) r.w.s 144C(13) of the Act, dated 30.10.2017 and assessed the income of the assessee company at an amount of Rs.446,33,19,200/-.

6. Aggrieved, the assessee has assailed the assessment framed by the A.O under Sec. 143(3) r.w.s 144C(13), dated 30.10.2017 in appeal before us. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements that have been pressed into service by them to drive home their contentions in context of the aforesaid respective issues raised before us. As multiple issues are involved in the present appeal, we, therefore, shall take them up in a chronological manner, as under:

7. <u>1st Ground of appeal:</u>

> ""1. The learned AO has erred in not accepting the claim that the rate of tax applicable to domestic companies and/ or co-operative banks for AY 2014-15 is also applicable to the Appellant, in accordance with the provisions of Article 26 (Non-discrimination) of the India-France tax treaty."

8. The ld A.R fairly admitted that the aforesaid issue was covered against the assessee by a series of orders passed by various coordinate benches of the Tribunal in the assessee"s own case. Elaborating upon his aforesaid submission the ld. A.R took us through a „chart" wherein reference was made of the various orders of the Tribunal i.e for A.Y. 2004-05 to A.Y. 2013-14 and the aforesaid issue had been decided against the assessee by the various benches of the Tribunal. At the same time, it was submitted by the ld. A.R that the appeal of the assessee against some of the aforementioned orders had been admitted by the Hon"ble High Court of Bombay.

9. Per contra, the ld. Departmental Representative (for short „D.R") did not rebut the aforesaid claim of the counsel for the assessee and relied on the orders of the lower authorities.

10. We have perused the various orders of the coordinate benches of the Tribunal in context of the aforesaid issue under consideration and are persuaded to subscribe to the claim of the ld. A.R that the aforesaid issue had consistently been decided by the coordinate benches against the assessee. On a perusal of a recent order of the Tribunal passed in the assessee"s own case for A.Y. 2013-14 in ITA No. 552/Mum/2018, dated 22.04.2019, we find, that the Tribunal by relying on its earlier order for A.Y. 1996-97 in ITA No. 2760/Mum/2008, dated 28.08.2013 had therein concluded that the tax levied at a higher rate in the case of a foreign company is not to be regarded as a violation of the non-discrimination clause. For the sake of clarity the view taken by the Tribunal in context of the aforesaid issue is reproduced as under:

> "We find that while deciding the appeal for AY 1996-97 (ITA No. 2760/Mum/2008 dated 28.08.2013), the Tribunal has decided the issue as under:
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> > "4.The third issue is relating to tax rate. The assessee has submitted that the tax levied at higher rate in the case of foreign companies is discriminatory in nature and, accordingly, relief has been sought on this account. The claim has been rejected by the authorities below.

> 4.1 We have heard both the parties in the matter. We find that this issue has already been examined by the Tribunal in the case of M/s BNP Paribas, decided in ITA Nos. 4601 & 4602/M/ 2004,vide order dated 1-7-2013. In that case also the tax rate applied in the case of the assessee, a foreign company was 48% compared to 38% applied in case of domestic companies. The assessee had argued that it was discriminatory and not in accordance with law. Reference was made to non-discrimination clause in the Treaty, as per which there should not be any discrimination between the domestic and the non-resident company. The Tribunal, however, referred to the Explanation in the Section 90, inserted in the IT Act with retrospective effect from 01-04-1962 as per which the higher tax rate in case of foreign company, should not be regarded as violation of non-discrimination clause. The Tribunal also referred to the judgment of the Hon'ble Supreme Court in the case of ACIT Vs. J.K. Synthetics. The Tribunal accordingly, rejected the ground raised by the assessee. The facts in the present appeal are identical and, therefore, respectfully following the decision of the Tribunal in the case of M/s BNP Paribas(supra), we dismiss this ground raised by the assessee."

Following the same, we uphold the order of the Ld. CIT(A) and dismiss the 1st ground of appeal.

As the facts and the issue in the present appeal of the assessee remains the same, therefore, we respectfully follow the aforesaid order of the Tribunal. Accordingly, the **Ground of appeal No. 1** is dismissed.

11. **2nd Ground of appeal:**

> "2. The learned AO has erred in subjecting to tax, the data processing fees paid by Indian branch offices of the Appellant to its Singapore branch, as income of the Appellant to the tune of Rs.40,78,10,733."

12. Adverting to the aforesaid issue, it was submitted by the ld. A.R that the same was squarely covered by the order passed by the Tribunal in the assessee's own case for A.Y. 2005-06 to A.Y. 2010-11, A.Y. 2012-13 and A.Y. 2013-14. Apart from that, it was submitted by the ld. A.R that the appeals of the revenue for A.Y. 2006-07 to A.Y. 2009-10 against the aforementioned orders of the Tribunal had thereafter been dismissed by the Hon'ble High Court of Bombay.

13. Per contra, the ld. D.R relied on the orders of the lower authorities.

14. We have deliberated at length on the contentions advanced by the authorised representatives for both the parties in the backdrop of the orders of the lower authorities and have also perused the material available on record.

On a perusal of the aforesaid ground, we find, that the issue herein involved is about taxability of data processing fees paid by the Indian branch offices of the assessee to its Singapore branch (service agent) to the tune of Rs.40,78,10,733/- under Article 13 of the India-France Tax Treaty. We find that the Tribunal while disposing off the appeal of the assessee for A.Y. 2013-14 in ITA No. 552/Mum/2018, dated 22.04.2019 had adjudicated the said issue by relying on its earlier order passed in the assessee"s own case for A.Y. 2009-10 in ITA No. 3541/Mum/2014, dated 31.03.2016, observing as under:

> "In the above ground of appeal, the issue is about data processing fees paid by Indian Branch Office of the assessee to Singapore Branch to the tune of Rs.325,963,282/- under Article 13 of the India-France treaty. We find that while deciding the appeal for AY 2009-10 (ITA No. 3541/Mum/2014 dated 31.03.2016), the Tribunal has decided the issue as under:
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> > "5. Ground No.3 pertains to subjecting the data processing charges paid to the Singapore branch of the assessee amounting to Rs.132,335,594/- applying the provisions of Article 13(Royalties, fees for technical services and payments for use of equipment) of the India-France Tax Treaty. This issue is also covered by the order of the Tribunal in assessee"s own case for AY 2001-02 to 2003-04 wherein interest paid by assessee to Head Office/overseas branches was held to be not liable to tax, following was the precise observation of the Tribunal in its order dated 20-6-2012 for AY 2002-03:-
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> > > 3. The solitary issue involved in the appeal of the assessee for, the A.Y. 2002-03 relates to the addition of Rs.1,48,30,613/- made by the A.O. and confirmed by the Ld. CIT (A) on account of "interest" paid by the Indian Branches of the assessee bank to its head office and other overseas branches.
> > >
> > > 4. The assessee, in the present case is a commercial bank having its Head Office in France. It carries on the normal banking activities Including financing of foreign trade and foreign exchange transactions in India through its eight branches situated at Mumbai, New Delhi, Kolkata, Bangalore, Pune, Ahmedabad, Chennai and Hyderabad. During the previous year relevant to A.Y. 2002-03, the Indian Branches of the assessee bank have paid total interest of Rs.1,48,30,613/- to its Head office and overseas branches and the same was claimed as a deduction while determining the profits attributable to Indian Branches, which was chargeable to tax in India. The said interest was treated by the A.O. as income of the assessee's Head office/overseas branches chargeable to tax in India. This decision of the A.O. was challenged by the assessee in the appeal filed before the Ld. CIT(A) and the contention raised before the Ld. CIT (A) in this regard was that the Head office of the assessee bank as well as all its branches being the same person and one taxable entity as per the Indian Income tax Act, interest paid by Indian Braches to head office and other overseas Branches was payment to self, which did not give rise to any income as per the Income-tax Act. In support of this contention, reliance was placed on behalf of the assessee on the decision of Hon'ble Supreme Court in the case of Sir Kikabhai Premchand vs. CIT (Central) 24 ITR 506 as well as the decision of Kolkata Special Bench of

the ITAT in the case of ABN Amro Bank NV vs. Asst. Director of Income-tax 98 TTJ 295. The contention of the assessee, however, was not accepted by the Ld. CIT (A) and relying on the decision of Mumbai Bench of the ITAT in the case of Dresdner Bank AG vs. Add1. CIT 108 ITD 375, he held that the interest paid by the Indian branches of the assessee bank to its head office and overseas branches was chargeable to tax in India. Accordingly, the addition made by the A.O. on this issue was confirmed by the Ld. CIT(A).

5. We have heard the arguments of both the sides and perused the relevant material on record. As agreed by the Ld. Representatives of both the sides, the issue involved in this appeal of the assessee now stands squarely covered by the decision of Special Bench of the ITAT in the case of Sumitomo Banking Corp. Mumbai wherein it was held, after elaborately discussing the legal position emanating from the interpretation of relevant provisions of Indian Income tax Act as well as treaty, that interest paid to the head office of the assessee bank as well as its overseas branches by the Indian branch cannot be taxed in India being payment to self which does not give rise to income that is taxable in India as per the domestic law or even as per the relevant 'tax treaty'. Respectfully following the said decision of Special Bench of the ITAT which is directly applicable in the present case, we delete the addition of Rs.1,48,30,613/- made by the A.O. and confirmed by the Ld. CIT (A) on this issue and allow the appeal of the assessee.

5.1 The issue has also been dealt by the Special Bench of the Tribunal in the case of Sumitomo Mitsui Banking Corporation (supra),wherein the observation of the Bench at para 88 is as under :-

"88. Keeping in view all the facts of the case and the legal position emanating from the interpretation of the relevant provisions of domestic law as well as that of the treaty as discussed above, we are of the view that although interest paid to the head office of the assessee bank by its Indian branch which constitutes its PE in India is not deductible as expenditure under the domestic law being payment to self, the same is deductible while determining the profit attributable to, the PE which is taxable in India as per the provisions of art. 7(2) and 7(3) of the Indo-Japanese Treaty read with, para 8 of the Protocol which are more beneficial to the assessee. The said interest, however, cannot be taxed in India in the hands of assessee bank, a foreign enterprise being payment to' self which cannot give rise to income that is taxable in India as per the domestic law. Even otherwise, there is no express provision contained in the relevant tax treaty which is contrary to the domestic law in India on this issue, This position applicable in the case' of interest paid by Indian branch of a foreign bank to its head office equally holds good for the payment of interest made by the Indian branch of a foreign bank to its branch offices abroad as the same stands on the same footing as the payment of interest made to the head office. At the time of hearing before us, the learned representatives of both the sides have also not made any separate submissions on this aspect of the matter specifically. Having held that the interest paid by the Indian branch of the assessee bank to its head office and other branches outside India is not chargeable to tax in India, it follows that the provisions of s. 195 would not be attracted and there being no failure to deduct tax at source from the said payment of interest made by the PE, the question of disallowance of the said interest by invoking the provisions of s. 40 (a)(i) does not arise. Accordingly we answer question No. 1 referred to this Special Bench in the negative i.e. in favour of the assessee and question No. 2 in affirmative i.e. again in favour of the assessee."

As the facts and circumstances of the case during the year under consideration are perimateria, where payment made by assessee to Singapore Branch for data processing, was brought to tax. Respectfully following the order of the Tribunal in assessee"s own case as well as the order of the Special Bench of the Tribunal in the case of Sumitomo Mitsui

> Banking Corporation (supra), we hold that the department was not justified in taxing the data processing charges to the Singapore Branch of the assessee by applying the provisions of Article 13 of the India-France Tax Treaty."
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> 13. In effect thus, reversing the stand of the DRP, the coordinate bench has come to the conclusion that the payment on account of data processing charges paid to BNP Singapore cannot be taxed in the hands of the assessee. The conclusion arrived at by the coordinate bench, whatever may have been the path traversed by the coordinate bench to reach this point, are the same as arrived at by us. Of course, our reasons are different, as set out earlier in this order, but that does not really matter as of now. We fully agree with the conclusions arrived at by the coordinate bench. We, therefore, direct the Assessing Officer to delete the impugned disallowance of Rs 13,10,97,790. The assessee gets the relief accordingly.
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> 14. Ground no. 2 is thus allowed."
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> 6. We see no reasons to take any other view of the matter than the view so taken in assessee"s own case in assessment year 2008-09. Respectfully following the same, we direct the Assessing Officer to delete the impugned disallowance of Rs.18,53,83,446/-.The assessee gets the relief accordingly."

Also, the above order has been followed by ITAT „L" Bench, Mumbai in assessee"s own case in A.Y.2010-11 (ITA No. 1182/Mum/2015). Further, the Hon"ble Bombay High Court has not admitted the Department"s appeal on this ground for AYs 2006-07 and 2007-08.

Facts being identical, we follow the above orders of the Co-ordinate Bench and allow the 2nd ground of appeal."

As the facts in context of the aforesaid issue under consideration remains the same as was there before the Tribunal in the assessee"s own case for A.Y. 2013-14, therefore, we respectfully follow the view therein taken. Accordingly, we herein direct the A.O to delete the impugned addition of Rs.40,78,10,733/-. The **Ground of appeal No. 2** is allowed.

15. **3rd Ground of appeal:**

> "3. Without prejudice to Ground 2 above, the learned AO has erred in levying surcharge of 5 percent and education cess of 3 percent on the tax computed under Article 13 of the India-France tax treaty."

16. On a perusal of the ground of appeal No. 3, we find, that the assessee had assailed the levy of surcharge of 5 percent and education cess of 3 percent on the tax computed under Article 13 of the India-France Tax Treaty. At the time of hearing of the appeal, it was inter alia submitted by the ld. A.R that in case the ground of appeal no. 2 is decided in the assessee"s favour, then, the said ground would be rendered as merely academic in nature. As we have decided the ground of appeal No. 2 in favour of the assessee, therefore,

going by the aforesaid concession of the ld. A.R the **Ground of appeal No. 3** is dismissed as having been rendered as merely academic in nature.

17. **4th Ground of appeal:**

> "4. The learned AO has erred in proposing to hold that interest payable/paid by the Indian branch offices of the Appellant to the head office and its other overseas branches amounting to Rs.8,22,02,991/- as chargeable to tax."

18. Adverting to the aforesaid issue, wherein the A.O had held that interest payable/paid by the Indian branch offices of the assessee to its head office and its other overseas branches amounting to Rs.8,22,02,991/- was chargeable to tax, it was submitted by the ld. A.R that the said issue was squarely covered by the orders of the coordinate benches of the Tribunal in the assessee"s own case for A.Y. 2004-05 to A.Y. 2007-08, A.Y. 2010-11 and A.Y. 2012-13. In order to buttress his aforesaid claim, the ld. A.R took us through the observations drawn by the various benches of the Tribunal in context of the aforesaid issue under consideration. Per contra, the ld. D.R relied on the orders of the lower authorities.

19. We have given a thoughtful consideration to the contentions advanced by the authorized representatives for both the parties in context of the aforesaid issue under consideration. On a perusal of the records, we find, that the issue as to whether or not interest payable/paid by the Indian branch offices of the assessee to its head office and its other overseas branches would be chargeable to tax had been looked into by the various benches of the Tribunal in the assessee"s own case for the aforementioned years. On a perusal of the order passed by the Tribunal in the assessee"s own case for A.Y. 2012-13 in ITA No. 1232/Mum/2018, dated 17.07.2019, the Tribunal following the order of the „Special bench" of the ITAT, Mumbai in the case of Sumitomo Mitsui Banking Corporation Vs. DDIT (2012) 163 ITD 66 (Mum) (SB) and the orders of the coordinate benches of the Tribunal in the assessee"s own case for the preceding years, had concluded, that the interest income received by the assessee from its Indian branch being a payment made to self was thus not taxable in the hands of the assessee. For a fair

appreciation of the aforesaid observation of the Tribunal we herein reproduce the same, as under:

> "21. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. Undisputedly, the issue relating to the taxability of interest paid by the Indian Branch to the Head Office is a recurring dispute between the assessee and the Revenue from preceding assessment years. While deciding the issue in the preceding assessment years, the Tribunal following the Special Bench decision in case of Sumitomo Mitsui Banking Corporation (supra) has consistently held that interest paid by the Indian Branch to the Head Office being a payment made to self is governed by the principles of mutuality, hence, not taxable. In the latest order passed by the Tribunal in assessee"s own case in assessment year 2011–12, vide ITA no.444/Mum./2017, dated 29th August 2018, the Tribunal again reiterated the same view. Thus, as could be seen from the facts on record, the issue has been consistently decided by the Tribunal in favour of the assessee up to the assessment year 2011–12. As regards the contention of the Department that as per the provision contained under section 9(1)(v)(c) of the Act interest income is taxable in India and the applicability of such provision has been ignored by the appellate authority, we must observe, this particular aspect relating to the applicability of section 9(1)(v)(c) of the Act was also under consideration of the Special Bench in case of Sumitomo Mitsui Banking Corporation (supra) and the Special Bench clearly and categorically held that since the interest payable by the Indian Branch to the Head Office is a payment to self, it cannot be brought to tax by relying upon the provision of section 9(1)(v)(c) of the Act. Therefore, insofar as the applicability of the aforesaid provision is concerned, it stands settled in favour of the assessee by the decision of the Tribunal, Special Bench, referred to above. Moreover, by virtue of explanation to section 9(1)(v)(c) of the Act, it is provided that in case of non–resident engaged in banking business any interest payable by the PE in India to the Head Office would be chargeable to tax in India. However, the aforesaid explanation has been inserted by Finance Act, 2015, w.e.f. 1st April 2016. From the notes and memorandum as well as CBDT Circular explaining the object and purport of introducing such explanation, it is evident that such explanation was introduced to overcome the effect and implication of the Special Bench decision of the Tribunal in case of Sumitomo Mitsui Banking Corporation (supra). However, it has been made clear by the CBDT that such amendment by way of explanation will apply from the assessment year 2016–17 onwards. That being the case, as per the relevant statutory provisions applicable to the impugned assessment year and as per the ratio laid down by the Tribunal, Special Bench in case of Sumitomo Mitsui Banking Corporation (supra), which is applicable to the impugned assessment year, the interest income received by the assessee from its Indian Branch being a payment made to self, is not taxable at the hands of the assessee. Therefore, respectfully following the Special Bench decision of the Tribunal, Mumbai Bench, in Sumitomo Mitsui Banking Corporation (supra) and the decisions of the Co–ordinate Bench in assessee"s own case in the preceding assessment years, which we are bound to follow adhering to the norms of judicial discipline in the absence of any material difference in facts, we have no hesitation in upholding the decision of the learned Commissioner (Appeals) on the issue. Grounds are dismissed."

As the facts involved in context of the aforesaid issue for the year under consideration remains the same as was there before the Tribunal in the

assessee"s own case for A.Y. 2012-13, we, therefore, finding no reason to take a different view respectfully follow the same. Accordingly, we herein hold that the interest income received by the assessee from its Indian branch office being a payment made to self would not be taxable in the hands of the assessee. Accordingly, the A.O is directed to vacate the addition of Rs.8,22,02,991/- made in the hands of the assessee company. The **Ground of appeal No. 4** is allowed in terms of our aforesaid observations.

20. **5th Ground of appeal:**

> "5. Without prejudice to Ground 4 above, the learned AO has erred in levying surcharge of 5 percent education cess of 3 percent on the tax computed under Article 12 of the India-France tax treaty."

21. On a perusal of the ground of appeal no. 5, we find, that the assessee had assailed the levy of surcharge of 5 percent and education cess of 3 percent under Article 12 of the India-France Tax Treaty. It was submitted by the ld. A.R that in case the ground of appeal No. 4 is decided in favour of the assessee and the interest payable/paid by the Indian branch offices to the assessee is held as not taxable in its hands, then, the said ground of appeal would be rendered as merely academic in nature. As we have allowed the assessee"s ground of appeal No. 4 and have concluded that the interest payable/paid by the Indian branch offices to its head office and its other overseas branches being in the nature of a payment to self would thus not be taxable in the hands of the assessee, therefore, going as per the concession of the ld. A.R the **Ground of appeal no. 5** is dismissed as having been rendered as merely academic in nature.

22. **6th Ground of appeal:**

> "6. The learned AO has erred in granting short credit of taxes deducted at source (TDS) amounting to Rs 2.59,07,320."

23. Adverting to the ground of appeal no.6, it was submitted by the ld. A.R that the A.O had erred in granting short credit of tax deducted at source (TDS) of Rs.2,59,07,320/-. Elaborating on his aforesaid claim, it was submitted by

the ld. A.R that as against the assessee‟s claim for credit of tax deducted at source of Rs.5,18,11,932/-, the A.O, had while framing the assessment allowed a short credit to the extent of Rs.2,59,07,320/. As the aforesaid issue would require verification of records, we, therefore, restore the matter to the file of the A.O with a direction to verify the aforesaid claim of the assessee. In case the claim of the assessee is found to be in order then credit for the deficit amount of tax deducted at source shall be allowed by the A.O as per the extant law. Needless to say, the A.O shall in the course of the "set aside" proceedings afford an opportunity of being heard to the assessee who shall remain at a liberty substantiate his aforesaid claim. The **Ground of appeal No. 6** is allowed for statistical purposes.

24. **7th Ground of appeal:**

> "7. The learned AO has erred in levying interest under section 234A of the Act of Rs 29,58,846 without having regard to the fact that the return of income was filed by the Appellant within the prescribed due date for filing the return of income."

25. The assessee has assailed the interest of Rs.29,58,846/- that has been levied by the A.O under Sec. 234A of the Act. It was averred by the ld. A.R that as the return of income was filed by the assessee within the „due date‟ prescribed for filing of the same, therefore, the lower authorities were in error in saddling the assessee with interest under the aforesaid statutory provision.

26. We have perused the records and find that the assessee had admittedly e-filed its return of income for the aforesaid year under consideration i.e A.Y. 2014-15 on 29.11.2014. It was stated by the ld. A.R that the „due date‟ for filing of the return of income by the assessee company for the year under consideration i.e A.Y. 2014-15 as per Explanation 2(aa) to Sec. 139(1) of the Act was 30.11.2014. In the backdrop of his aforesaid claim, it was submitted by the ld. A.R that as the aforesaid return of income filed by the assessee company on 29.11.2014 was well within the stipulated time period, thus, interest was wrongly levied by the A.O under Sec. 234A of the Act. In the

backdrop of his aforesaid plea, it was submitted by the ld. A.R that the interest wrongly levied by the A.O u/s 234A be vacated.

27. We have given a thoughtful consideration and find that it is a matter of fact borne from the record that the assessee company had e-filed its return of income for the year under consideration i.e A.Y. 2014-15 on 29.11.2014, vide e-filing acknowledgment No. 429259941291114. In the backdrop of the claim of the ld. A.R that the assessee had filed its return of income well within the prescribed time limit, therefore, no interest under Sec. 234A was liable to be saddled upon it, we herein restore the issue to the file of the A.O for making necessary verification. In case, the assessee is found to have filed its return of income within the stipulated time period contemplated in sub-section (1) to Sec. 139 of the Act, then, no interest under Sec. 234A of the Act shall be imposed on it. The **Ground of appeal No. 7** is allowed for statistical purposes.

28. **8th Ground of appeal:**

> "8. The learned AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act."

29. As can be gathered from above, the assessee has assailed the initiation of the penalty proceedings under Sec. 271(1)(c) of the Act. In our considered view, as the aforesaid grievance of the assessee is premature, therefore, we herein refrain from adverting to and therein adjudicating the same. The **Ground of appeal No. 8** is dismissed.

30. Resultantly, the appeal of the assessee is partly allowed in terms of our aforesaid observations

Order pronounced in the open court 04.01.2021

Sd/-	Sd/-
S. Rifaur Rahman	Ravish Sood
(ACCOUNTANT MEMBER)	(JUDICIAL MEMBER)

Mumbai, Date: 04.01.2021
PS: Rohit

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "I" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai