IN THE INCOME TAX APPELLATE TRIBUNAL
*KOLKATA BENCH "**B**" KOLKATA*

Before **Shri Mahavir Singh, Judicial Member**and
Shri Waseem Ahmed, Accountant Member

ITA No.1160 & 2305/Kol/2013 Assessment Years :2008-09 & 2004-05

DCIT, Circle-11, P-7, Chowringhee Square, Kolkata – 700 069 AT & S India Pvt. Ltd., 12A, Industrial Area, Nanjangud, Mysore, Karnataka – 571 301 [**PAN NoAECA 2930J**]	**V/s.** **V/s.**	M/s AT & S India Pvt. Ltd., 12, Industrial Area, Nangangud, Mysore, Karnataka DCIT, Range-11, P-7, Chowringhee Square, Kolkata
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri Soumitra Chowdhury, Advocate
राजस्व की ओर से/By Revenue	Shri Niraj Kumar, CIT-DR
सुनवाई की तारीख/Date of Hearing	01-10-2015
घोषणा की तारीख/Date of Pronouncement	15-10-2015

आदेश/O R D E R

PER Waseem Ahmed, Accountant Member:-

These are two appeals - one by the Revenue and another by assessee are arising out of different orders of Commissioner of Income Tax (Appeals)-XII, Kolkata in appeal No.526 & 493/CIT(A)-XII/11/11-12 dated 05.02.2013 & 15.03.2013. Assessments were framed by ACIT, Kolkata Range-11/DCIT Circle-11, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred

to as 'the Act') vide their orders dated 30.12.2011 and 27.12.2010 for assessment years 2008-09 and 2004-05 respectively.

First we take up Revenue's appeal in ITA No.1160/Kol/2013 A.Y.08-09

2. Only issue raised by Revenue is as regard that Ld. CIT(A) has deleted the addition of Rs.1,59,95,287/- u/s 40(a)(ia) of the Act without appreciating the finding of Assessing Officer that assessee failed to deduct tax at source.

3. Briefly stated facts are that assessee is a private limited company and engaged into business of manufacture and sale of professional grade printed circuit boards. The assessee-company is a subsidiary of AT&S Austria. AT&S Austria has entered into global arrangements for various facilities and services, which are to be used by AT&S Austria and its group companies located in different countries, including India. The different companies with whom such arrangements have been entered into by AT & S Austria are – Austrian Telecom for WAN Satellite link between Austria and India, T systems DSS GmbH for Lotus products (software), Microsoft Ireland Operations Ltd. for Microsoft products (software), SAP Osterreich GmbH for SAP software, IBM Osterreich GmbH for SAP software, Symantec for Norton Antivirus software. During the year under consideration, assessee-company has claimed an expense of Rs.1,59,95,287/- towards share technology services. It was paid to qua company based in Austria. During the assessment proceedings, AO found that assessee has failed to deduct TDS of such expenses. The AO calls upon the assessee to explain the reasons for non-deduction of TDS. The AR of assessee submitted that these payments were nothing but reimbursement of expense in terms of agreement between assessee-company and AT&S Austria. The AO has disregarded the claim of assessee and added the same to the total income of assessee for violating the provision of Sec. 40(a)(ia) of the Act. Aggrieved, assessee preferred appeal before Ld. CIT(A).

4. Before Ld. CIT(A) it was submitted by Ld. AR of assessee that TDS arises only if the same were chargeable to tax in India. In the present case, amount was not chargeable to tax in India. So the provision of the section for withholding of tax does not apply. The liability to deduct TDS u/s 195 of the Act arise only if the income is taxable in the hands of non-resident/foreign company. The reference is also drawn to section 4(2) of the Act which provides that a person will have the obligation to withhold tax (TDS) under the Act in respect of income chargeable to tax u/s. 4(1) of the Act. The following case law were also submitted:-

i) Lufthansa Cargo India Private Ltd 140 Taxman 1 (AT-Del)
ii) GE India Technology Centre Pvt. Ltd.v. (2010) CIT 327 ITR 456 (SC)
iii) CIT v. Dunlop Rubber Co. Ltd. 142 ITR 493 (Cal)
iv) Van Oord ACZ India (P) Ltd. v. CIT (2010) TIOL 187
v) CIT v. Fortis Health Care Ltd. 181 Taxman 257
vi) DCIT v. Lazard India Pvt. Ltd. (2010) 41 SOT 72 (Mum)
vii) Nathpa Jhakri Joint Venture v. ACIT (2010) 5 ITR 75 (Mum)
viii) Mahindra and Mahindra Ltd. v. DCIt (2009) 313 ITR (AT) 263 (Mum)

It was also submitted that the section 90(2) of the Act provides that in case of double taxation avoidance agreement with the Govt. of another country, the provision of this act will apply only to the extent if it is beneficial to the assessee. The assessee also demonstrated that the payment is not towards royalty. Therefore it is out of the purview of the TDS provision and assessee also cited case law in support of its case as under:-

a) Tata Consultancy Services v. State of Andhra Pradesh 271 ITR 401
b) Nokia Networks NY [TS-700-High Court-2012 (Del)]
c) B4U International Holdings Ltd case [TS-358-ITAT-2012 (Mum)]
d) ITA No. 1448-1449/Kol/2008 (for AY 2002-03 & 2003-04)
e) CIT vs. Tejaji Farasram Kharawalla Ltd. (1968) 67 ITR 95 (SC)
f) Skycell Communication Ltd. v. DCIT 251 ITR 53
g) Wipro Ltd. v. ITO (2003) 80 TTJ (Bang)

h) BSES Telecom Ltd. v. DCIT (ITA No. 9281/Bang/2002)
i) Tata Consultancy Services v. State of Andhra Pradesh 271 ITR 401 (SC)
j) Cholamandalam MS General Insurance Co. Ltd. (2009) 309 ITR 356
k) CIT v. Industrial Engineering Projects Pvt. Ltd. (1993) 202 it 1014 (Cal)
l) Rolls Royce India Ltd. v. ITO (1998) 25 ITD 127 (Del)
m) ACIT v. Modicon Network Pvt. Ltd. (2007) 14 SOT 204 (Del)

The Ld. AR also made the reference to the model treaties issued by OECD (Organization for Economic Cooperation and Development) with regard to the payment for the computer programs. On the basis of above submission, the CIT(A) held that the expenses are out of the purview of TDS being reimbursed and also not chargeable of tax in India. Therefore, the addition made by AO stands deleted.

5. Aggrieved, now Revenue is in appeal before us.

Shri Niraj Kumar, Ld. Departmental Representative appearing on behalf of Revenue and Shri Soumitra Chowdhury, Ld. Authorized Representative appearing on behalf of assessee.

6. We have heard rival parties and perused the materials available on record. Before us Ld. DR supported the order of AO whereas Ld AR supported the order of Ld. CIT(A) and he stated that Ld. CIT(A) passed order by virtue of the order passed by this Tribunal in assessee's own case in various assessments including 2005-06- ITA 1262-186/Kol/2010, 2006-07- ITA 2071/Kol/2010 & 2007-08 – ITA 779/Kol/ 2012 vide order dated 29-01-2015, wherein this Tribunal has deleted the addition made by AO on account of TDS share technology services, the relevant Para- 7 of the ITAT order is reproduced as under:-

"18. We have considered the rival submissions. A perusal of the decision of the Hon'ble Supreme Court in the case of Tejaji Farasram Kharawalla Limited, supra clearly shows that Supreme Court has categorically held that the reimbursement of the actual expenses would not be taxable in the hands of the person receiving the reimbursements. Further Hon'ble Karnataka High Court in a recent judgment in the case of DIT v. Sun Microsystems India P. Ltd. (2014) 369 ITR 63(Karn) exactly on the similar issue interpreting article 7 of the DTAA between India and Signapore, which is identically worded to article 7 of DTAA between India and Austria, and held as under:-

'the material on record discloses that the assessee entered into an agreement for availing of logistic-service for Sun Microsystems Singapore P. Ltd. ("Sun Singapore" for brevity). In terms of the agreement, Sun Singapore is required to provide distribution, management and logistic services to Sun Microsystems India P. Ltd. ("Sun India" for brevity) and such services included providing spare management services provision of buffer planning to address service levels, etc., Sun Singapore is not having any place of business or permanent establishment in India. Entire services were rendered by Sun Singapore from outside India. Sun Singapore is not engaged in the business of providing logistic services in India. Sun India the assessee avails of services of Sun Singapore for which a service fee is paid. From the business description of the assessee, it is clear that the assessee is engaged in marketing and support system of hardware and software products. The material on record do not disclose that Sun Singapore has made available to the assessee its technical knowledge, experience or skill. Under these circumstances, the Tribunal held that, as Sun Singapore is not having any permanent establishment and that Sun Singapore has not made available the technical knowledge, experience or skill, the payments made by the assessee to Sun Singapore were not required to be taxed under the head "**Business**" and is not taxable in view of article 7 of the DTAA between India and Singapore. The Revenue is challenging the said finding on the ground that the terms of the agreement provides from making available inventory physical movement and self-control process, assistance to enable, inventory transactions and management and business planning to address service level relating to the local business and customer needs. However, the assessee is not utilizing the said services in order to avoid deduction tax at source.

This court had an occasions to consider this agreement in the case of CIT v. De Beers India Minerals P. Ltd. Reported in [2012] 346 ITR 467 (Karn), where after referring to various provisions of

law, it was held that the question, whether along with rendering technical services, whether the technical knowledge with which the services was rendered was also made available to the assessee/customers is purely a question of fact which is to be gathered from the terms of the contract, the nature of services undertaken and what has transmitted in the end after rendering technical services. If along with technical services rendered, if the service provider also makes available the technology which they used in rendering services, then it falls within the definition of "*fees for technical services*" as contained in the DTAA. However, if technology is not made available along with technical services what is rendered is only technical services and the technical knowledge is withheld, then such a technical service would not fall within the definition of "*technical services*" in the DTAA and the same is not liable to tax.

From the facts of this case, it is clear that Sun Singapore has not made available to the assessee the technology or the technological services which is required to provide the distribution, management and logistic services. That is a finding of fact recorded by the Tribunal on appreciation of the entire material on record. When once factually it is held the technical services has not been made available, then in view of the law declared in the aforesaid judgment, there is no liability to deduct tax at source and, therefore, the finding recorded by the appellant authority cannot be found fault with. In that view of the matter, the substantial question of law is answered in favour of the assessee and against the Revenue.

From the above judgment of Hon'ble Karnataka High Court it is clear that the parent company has not made available to the assessee the technology or the technological services which was required to provide the distribution,, management and logistic se5rivedes. In view of this judgment and perusal of the order of the AO giving effect to the order of Coordinate Bench of this Tribunal for the AY 2004-05 in ITA No. 1450/Kol/2008 dated 31.03.2010 clearly shows that the Assessing Officer after verifying the agreement with AT & S Austria has also taken into consideration the decision of CIT(A) for the AY 2005-06 and has held that the said warranty expenses are nothing but reimbursement of the actual cost and consequently there is no requirement of deduction of TDS under section 195 of the Act. We have gone through the orders of the coordinate Bench of this Tribunal in the assessee's own case in ITA Nos. 1448& 1449/Kol/2008 dated 24.07.2009 for AYs 2002-03 and 2003-04 and ITA No. 1450/Kol/2008 dated 31.03.2010 for the AY 2004-05, wherein it has been held as under:

'2.1. The fats of the case are that the assessee is a company which is deriving income from manufacture and sale of professional grade printed circuit boards. During the accounting year relevant to assessment year under consideration, the assessee made the payment of Rs.45,94,291/- to M/s AT & S, Austria Technology & Systemtechnik, Aktiengesellschaft (hereinafter called 'AT & S, Austria"). The above payment was made by the assessee without deduction of tax at source. Before the AO, it was explained by the assessee that the amount has been paid at cost of inter-company services received. The assessee has entered into an agreement dated 13.03.2001 with M/s AT & S, Austria. In the agreement, it is stated that M/s. AT & S, Austria has entered into different agreements with different providers of services. Apart from these services rendered by the service providers relates to business operation of the assessee and are utilized by the assessee.

2.2 At the time of hearing before us, the learned counsel for the assessee argued at length. His arguments were of two folds, viz.- (i) That the payment made by the assessee to M/s AT &S, Austria was only reimbursement. He pointed out that M/s. AT & S, Austria has entered into different agreements with different providers of service. Since part of the services were utilized by the assessee, M/s AT & S, Austria has recovered such part from the assessee. He pointed out that the allocation of the actual expenditure incurred has been made on a rational basis, i.e on the basis of number of PCs used by the assessee and other group concerns, the details of which were duly furnished before the lower authorities and the CIT(A) has also reproduced the same on page 6 of his order. He submitted that there is no liability of TDS for reimbursement of the expenditure. In support of this contention, he relied upon the following decisions:- 309 ITR 356 (AAR) – Cholamandalam Ms General Insurance Co. Ltd.
142 ITR 493 (Cal.) – CIT- vs.- Dunlop Rubber Co. Ltd.

(ii) That the services received by the assessee were in the nature of user of the copy right products. The licence to use copy right products does not amount to rendering of technical services within the meaning of section 9(1)(vii) of the Act. Therefore, merely because M/s AT & S. Austria had permitted the assessee to use the copy right products, i.e. software of various services providers, it does not amount to rendering of any technical services by M/s AT & S. Austria to the assessee within the meaning of section 9(1)(vii) of the Act. Thus no income has accrued in India and, accordingly, there is no liability to deduct the

tax at source. In support of this contention, he has relied upon the following decisions:-
251 ITR 53 (Mad/.) – Skycell Communications Ltd. – vs.- DCIT;
95 ITD 269 (Del-SB) – Motorola Income. –vs.- DCIT,Non-resident Circle;
94 ITD 91 (Bang.)-Samsusng Electronics Co. Ltd.-vs.- ITO (TDS).

2.3 The ld. Departmental Representative, on the other hand, relied upon the orders f the authorities below. He submitted that the assessee has utilized the services being provided by various service provider companies. The assessee made the payments for such services utilized by it. Therefore, in effect, the payment was made by the assessee to various service providing companies through M/S AT & S. Austria. M/s. AT & S. Austria was only a conduit through which payment was made. The services utilized by the assessee were highly technical and therefore, the same were within the meaning of technical services as provided u/s. 9(1)(vii) of the Act. He, therefore, submitted that the assessee was liable to deduct tax at source from the payments made by it. Since the assessee had failed to deduct tax at source, sec. 40(a)(ia) of the Act was attracted. The same should be sustained. The ld. DR also stated that the facts of various cases relied upon by the ld. Counsel for the assessee are altogether different.

2.4 In the rejoinder, it is stated by the ld. Counsel that the various service providers had an agreement with M/s. AT & S. Austria and not with the assessee-company. Therefore, the contention of the revenue that the payment is made by the assessee to the service providers through the conduit of M/s. AT & S. Austria is actually incorrect. As per the agreement with the various serviced provider companies, it was M/s. AT & S. Austria acquired the licence to use those services. In turn, M/s. At & S. Austria permitted its group concern worldwide to use those services and the total payment made to service providers was recovered from the service user companies on the basis of services actually utilized by them. Thus, in the process, no income has accrued to M/s. AT & S. Austria. It has only recovered the actual expenditure incurred from all group concerns.

2.5 We have carefully considered the arguments of both the sides and perused the material placed before us. M/s AT & S. Austria had entered into agreements with several companies for utilizing their products. In turn, it permitted its group concerns to utilize those products and the total payments made to the service providers were allocated to the group companies who actually

utilized the services, the details of which has given in page 6 of the CIT(A)'s order, read as under:

Sr.No.	*Particulars of service*	*Code*	*Kys*	*Total cost incurred by HQ*	*Share of AT & 2001-02*	*Invoice/agreement received*
3	*Service provided by Microsoft Ireland Operations Ltd., see licenses for AT&S*					
	A licence for Microsoft product. Charges will be based on number of PCs used per legal entity.	*1N4*	*2*	*180.431*	*36,754*	*Yes*
	Microsoft enterprise Lizenzen	*1N5*	*2*	*0*	*0*	*No.*
	Microsoft Medien					
4	*Services provided by SAP Osterreich GMbH, see contract with AT&S, Austria*					
	SAP Maintenance, charges will be passed on the number of SAP users per legal entity					
	Wartung my SAP.com	*1N6*	*3*	*181,794*	*22,388*	*Yes*
5	*Services provided by 1BM Osterreich GmBH International Buromaschinen Gessels chaft*					
	A. SAP maintenance. Charges will be passed on the number of SAP users per legal entity					
	mySAP.com Lizenzvertrag	*1N7*	*3*	*20,315*	*2,502*	*No*
	SAP R/3 Lizenzgebuhr	*1N8*	*3*	*84,417*	*10,396*	*No*
	SAP R/3 Einfuhurung	*1N9*	*3*	*108,693*	*13,386*	*No*
	B. Licences for firewall software and hardware. Costs will					

	be evenly spared among the total number of plants lin the AT&S group					
	Project Firewall Cisco PIX	*1N11*	*4*	*3,589*	*449*	*No*
	Wartung Firewall Cisco PIX		*4*	*0*		
7	*Not mentioned*					
	ND Charon Faxserver-Kauf	*1N11*	*2*	*7,885*	*1,606*	
	TOTAL				*87,481*	

2.6 From the above, it is evident that the allocation of expenditure for utilizing Microsoft products was on the basis of number of PCs used by the service receiver companies. Similarly, services provided by SAP, Austria were allocated on the basis of number of SAP users. In view of the above, we are of the opinion that the amount paid by M/s AT & S. Austria for using the products of various service provider companies was allocated amongst the group companies including the assessee on the basis of services actually utilized by them.Therefore, the nature of payment by the assessee to M/s. AT & S. Austria was in the nature of reimbursement of the expenditure actually incurred by M/s AT & S. Austria.

2.7. That the Hon'ble jurisdictional High Court has considered the similar issue in the case of Dunlop Rubber Co. Ltd. (supra) and held as under:-

> 'that the Tribunal was right in arriving at the view that the payment was for the recoupment of the expenses incurred for the technical data for which a research department was maintained by the assessee-company in London. The result of the research was for the benefit of all concerned including the head office and the subsidiary concerns. It was for the sharing of the expenses of the research which was utilized by the subsidiaries as well as the head office organization that the payments were made by the Indian company and received by the assessee-company. The fact that after the termination what was to happen to the information gathered was not mentioned, indicated that it could not be anything but sharing of the expenses. But the fact that the technical data was jointly obtained and the expenses were shared together indicated that it could not be treated as income. The act that only 0.67 per cent of the

> turnover was allowed as research contribution to the assessee-company, was because of the restrictions imposed by the Government. Therefore the amounts received by the assessee-company did not constitute income assessable to tax."

The above decision of Hon'ble jurisdictional High Court was also relied upon by the Authority for Advance Rulings in the case of Cholamandalam Ms Generai insurance Co. Ltd. (supra), wherein their Lordships held as under:-

> 'That the amount paid by the applicant could not be said to be in the nature of consideration for offering the services of I. The parties had entered into a mutually beneficial agreement, and incidental thereto, the applicant reimburse a part of the salary of the employee payable by HMFICL. What the applicant paid went to reimbursement of the cost borne by HMFICL on account of employment 1, that too, partly. In this process no income could be said to have been generated which answered the description of "*fees for technical services*"

2.8. In view of the above decisions of Hon'ble jurisdictional High Court as well as Authority for Advance Rulings, we hold that in the process of reimbursement of expenditure, no income can be said to have generated requiring deduction of tax at source. Since there was no liability of deduction of tax at source, section 40(a)(i) of the Act cannot be invoked. Accordingly, ground no. 2 of the assessee's appeal is allowed."

As the facts are similar for the AY 2005-06 considering the fact that for the AY 2004-05 the AO has accepted the claim of the assessee that the reimbursement of the warranty expenses is not liable for TDs u/s 195 of the Act and as the Revenue has not been able to dislodge this finding, the finding of CIT(A) deleting the disallowance mad on account of non-deduction of TDS in respect of warranty expenses stands confirmed. This issue of revenue's appeal is dismissed."

So from the aforesaid discussion, it is clear that the reimbursement cost incurred by the assessee is out of the purview of the TDS provision as it does not generate any income in the hands of the recipient and consequently the provisions of section 40(a)(ia) could not be invoked. Hence this ground of appeal of the revenue is dismissed.

Coming to assessee'a appeal ITA No.2305/Kol/2013 AY 04-05.

7. In this appeal assessee has raised the following grounds:-

"1. That the order passed by the learned Commissioner of Income-Tax (Appeals)['Ld. CIT(Appeals)'] under section 250 of the Income-tax Act, 1961 ('Act'), to the extent prejudicial to the Appellant, is bad in law and liable to be quashed.

2. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in upholding the disallowance of Rs.10,128,788/- made by the Learned Deputy Commissioner of Income Tax ['AO'], being reimbursement of rework costs by the Appellant to AT&S Austria by applying the provisions of section 40(a)(ia) of the Act.

3. That the Ld. CIT(Appeals) erred in upholding the action of the Ld. AO by confirming that, the aforesaid payment was in the nature of fees for technical services under section 9(1)(vii) of the Act and accordingly, taxes are required to be deducted at source.

4. That the Ld. CIT(Appeals) erred in confirming the order of the AO holding that, tax was required to be deducted at source from the impugned payment by applying the provisions of section 40(a)(ia) of the Act.

*5. That the Ld. CIT(Appeals) and the Ld. AO erred in not following the decision of the Hon'ble Kolkata ITAT in Appellant's own case (***ITA No.s 1448 & 1449(Kol) of 2008** *dated July 24,2009) for AY 2002-03 and AY 2003-04, wherein it was held that reimbursement of Information technology costs does not result in income in the hands of the recipient an hence, the payments are allowable deductions and not fall within the mischief of section 40(a)(i) read with section 195.*

4. That the Ld. AO erred in consequently levying interest under section 234B of the Act."

8. Briefly stated facts are that the assessee has claimed the expenses of Rs.1,01,28,788/- in the form of reimbursement cost incurred by AT & S Austria towards the cost of repair / remanufacturing of defective products. The AO held that expenses as fees for technical services as defined under section 9(1)(vii) of the Act, so he disallowed the said expenses for the violation of the provisions of section 40(a)(i) of the Act. The AO also relied on the judgment Hon'ble Delhi Tribunal in the case of Sahara Airlines Ltd. Vs DCIT(2002) 83

ITD 11, 41(Delhi) and Hon'ble ITAT Hyderabad in the case of *Mannesmann Demag Launchhammer Vs. CIT* (1988) 26 ITD 198, 202-03(Hyd.).

Aggrieved assessee preferred an appeal before CIT(A) who has upheld the order of the AO.

9. Now aggrieved assessee is in second appeal before us. The Ld AR submitted that the decision of the Hon'ble Kolkata ITAT in Appellant's own case (**ITA No.s 1448 & 1449(Kol) of 2008** dated July 24,2009) for AY 2002-03 and AY 2003-04, wherein it was held that reimbursement of Information technology costs does not result in income in the hands of the recipient an hence, the payments are allowable deductions and not fall within the mischief of section 40(a)(i) read with section 195. On the other hand, Ld. DR supported the order of the authorities below.

10. We find from the aforesaid discussion and submission of the assessee that the facts have already been decided by the Hon'ble Kolkata ITAT bench in favour of the assessee in the case of *DCIT v. M/s AT&S India Pvt*. Ltd. In **ITA No. 1262/Kol/2010, 186/Kol/2011, 2071/Kol/2010 & 779/Kol/2012** for AYs 2005-06, 2006-07 & 2007-08 vide dated 29-01-2015. The relevant portion of the order is extracted below :

> *"18. We have considered the rival submissions and gone through facts and circumstances of the case. A perusal of the decision of the Coordinate Bench of this Tribunal referred to supra for the assessment years 2002-03 and 2003-04 clearly shows that the Tribunal has taken into consideration the agreement dated 13.03.2001 between the assessee and AT & S Austria. Further, similarly, Hon'ble Karnataka High Court in a recent judgment in the case of* DIT v. Sun Microsystems India P. Ltd. *(2014) 369 ITR 63 (Karn) exactly on the similar issue interpreting article 7 of the DTAA between India and Singapore, which is identically worded to article 7 of DTAA between India and Austria held that the parent company has not made available to the assessee the technology or the technological services which was required to provide the distribution, management and logistic services. We further noticed that in the said order the Tribunal has taken into consideration the decision of the Hon'ble Jurisdictional High Court in the case of* CIT v.

Dunlop Rubber Co. Limited *(1983) 142 ITR 493 (Cal) and in the similar circumstances that of the assessee to hold that the reimbursement of the expenditure does not generate any income in the hands of the recipient and consequently there was no requirement of deduction of TDS and consequently the provisions of section 40(a)(ia) could not be invoked. The facts being identical for this assessment year, respectfully following the decision of Coordinate Bench of this Tribunal in the assessee's own case for the assessment years 2002-03 and 2003-04 referred to supra, finding of CIT(A) stands reversed and the disallowance as made by the Assessing Officer in respect of the reimbursement of the payments made to AT & S Austria to the extent of Rs.1,50,44,031/- stands deleted. This issue of assessee's appeal is allowed."*

Since the matter is already covered in favour of assessee in its own case by this Tribunal, we conclude the appeal in favour of assessee.

11. **In the result, appeal of Revenue is dismissed and that of assessee's is allowed.**

Order pronounced in the open court 15/10/2015

Sd/-	Sd/-
(Mahavir Singh)	(Waseem Ahmed)
(Judicial Member)	(Accountant Member)

*Dkp

दिनांकः- 15/10/2015 **कोलकाता** ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-M/s AT & S India Pvt. Ltd. 12A, INdstrial Area, Nangangud, Mysore, Karnataka - 571301
2. राजस्व/Revenue- DCIT Cir-11, P-7, Chowringhee Square, Kolkata - 69
3. संबंधित आयकर आयुक्त/ Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण,**कोलकाता**/ DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।