

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 6616/Mum/2018 (A.Y. 2015-16)**

S.R. Technics Switzerland Limited.  
C/o. B-206, Citipoint, A.K. Road,  
Andheri (East), Mumbai-400059.

**PAN: AALCS3475M**

..... Appellant

Vs.

ACIT (International Taxation),  
Range- 4(2) (2),  
Mumbai-400020.

..... Respondent

Appellant by	:	Sh. Dhanesh Bafna / Sh. Pratik Shah
Respondent by	:	Ms. Surabhi Sharma, CIT-DR
Date of hearing	:	29/08/2022
Date of pronouncement	:	25/11/2022

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by the assessee is directed against the order of ACIT(IT-4(2)(2), Mumbai, [hereinafter referred to as ['ACIT']] dated 24.09.2018 passed under section 143(3) read with section 144(C)(13) of the Income Tax Act, 1961 (hereinafter referred to as ['the Act']) for the Assessment Year (AY) 2015-16. The assessee has raised the following grounds of appeal:

Sr.No.	Grounds of appeal	Tax dispute amount (in Rs.)
1.	On the facts and in the circumstances of the case and in law. the Learned Assessing Officer (Ld. AO) and Hon'ble Dispute Resolution Panel (Hon'ble DRP) erred in concluding that the Liaison Office (LO) of the Appellant constitutes a business connection of Appellant in India as per provisions of Section 9(1)(1) of the Income-tax Act, 1961 (IT Act).	-
2.	On the facts and in the circumstances of the case and in law, the Ld. AO and Hon'ble DRP erred in concluding that the Appellant has a Permanent Establishment (PE) in India under Article 5 of the India - Switzerland Double Taxation Avoidance Agreement (DTAA) and thereby erred in charging to tax, the business profits of the Appellant in India under Article 7 of the India - Switzerland DTAA.	-
3.	On the facts and in the circumstances of the case and in law, the learned AO and Hon'ble DRP erred in concluding that the Appellant has a Service PE in India under Article 5(2)(1) of the India - Switzerland DTAA.	-
4.	On the facts and in the circumstances of the case and in law, the learned AO and Hon'ble DRP erred in concluding that the Appellant has an Agency PE in India under Article 5(5) of the India- Switzerland DTAA.	-
5.	On the facts and circumstances of the case and in law, the learned AO and Hon'ble DRP erred in arbitrarily computing the business income at Rs. 1,50,75,988 from repair, maintenance and integrated component services (including Single Component Services) activities by estimating an adhoc profit rate of 10% and thereafter arbitrarily attributing 50% of income to the alleged PE.	Rs. 66,86,211

6.	On the facts and circumstances of the case and in law, the Ld. AO erred in computing consequential interest under Section 234B of the IT Act.	Rs. 10,46,424/-
7.	On the facts and circumstances of the case and in law, the Ld. AO erred in computing consequential interest under Section 234B of the IT Act.	Rs. 32,89,584/-
8.	On the facts and circumstances of the case and in law, the Ld. AO erred in computing interest under Section 234C of the IT Act of Rs. 4, 78,770 instead of Rs. 4, 55,702 as computed on returned income.	Rs. 23,068/-
9.	On the facts and circumstances of the case and in law, the Ld. AO erred in computing tax liability, without appreciating the fact that the Appellant has not received any refund of Rs. 90,240 nor has it received any intimation under Section 245 of IT Act for adjustment of refund.	Rs. 90,240/-
10.	On the facts and circumstances of the case and in law, the Ld. AO erred in levying interest under Section 234D of the IT Act, without appreciating the fact that the Appellant has not received any refund nor has it received any intimation under Section 245 of IT Act for adjustment of refund.	Rs. 6,317/-
11.	On the facts and circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under Section 271(1)(c) of the IT Act.	-
	Total tax effect ( <i>see note below</i> )	Rs. 1,11,41,845/-

2. Brief facts of the case are that this appeal filed by the assessee, incorporated in Switzerland. The assessee is engaged in business of maintenance, repair and overhaul for aircrafts, engines and components. The assessee also

provides components and spare engines on lease. The assessee's principle place of business is Zurich, Switzerland. The assessee filed its return of income electronically declaring total income of Rs. 9, 23, 94,201/- on 31-03-2017. Assessee's case was assessed u/s 143(3) r.w.s. 144C (13) on 24-09-2018 at Rs. 10, 53, 15,412/-. Aggrieved with this order of AO, assessee preferred present appeal before us.

3. During the year assessee had following three lines of revenues stream as under:

Name of the Party	Types of Contract		
	Lease Charges	Repairs and Maintenance including piece repairs	Integrated component series including single component services
Air India Ltd		2,67,546	11,27,08,962
Air India Charters Ltd.		1,09,53,301	21,11,989
Spice Jet Ltd.	09,02,39,424	16,52,57,027	99,69,674
Jet Airways Ltd			2,51,262
Total	09,02,39,424	17,64,77,874	12,50,41,887

4. Out of above streams of the revenue, assessee offered only lease charges to tax in India as royalty @10% on gross basis as per Article 12(2) of the India-Switzerland DTAA. Rest of the streams of revenue from repairs and maintenance; and form integrated component services, have not been offered to tax, by claiming benefit of DTAA saying that the balance services are not in the nature of technical services and hence neither taxable under section 9(1) (vii) of the Income

Tax Act, 1961 nor Article 12 the DTAA. It also claims that it does not have a Permanent Establishment in India.

5. However, AO was of the opinion that assessee has a Liaison Office (LO) as a Service PE or Dependent Agency Permanent Establishment (DAPE), there is no option but to perforce resort to estimation of the taxable profits of the assessee as per Rule 10 of the Income Tax Rules. The AO held Rule 10(ii) will not be applicable in the instant case since the global profits and gains of the assessee have not been computed in accordance with the provisions of the Indian Income Tax Act. The income of the assessee is, therefore, liable to be computed as per Rule 10(i) read with rule 10(iii) of the Income Tax Rules, which provides that income of the assessee may be determined at a reasonable percentage of the turnover. As per global profitability details submitted by the assessee, it is observed that during year end December 2014 and December 2015, the average profit percentage is 2.645. However, the global profit and loss statement submitted by the assessee does not give a break up of profit region wise. Based on Rule 10 of the Income-Tax Rules, 1962, 10% is considered as an appropriate profit percentage. Further, since actual MRO operations have been carried out in the respective country of residence Switzerland, it is also reasonable to estimate that the residence and source country (India) have a 50:50 right over the income so received by the assessee. Hence, 50% of income is attributable to India. 10% of that is profit chargeable u/s 9(1) (i) of the Income Tax Act, 1961. The receipts of the assessee from repairs and maintenance and ICS/SCS contract total to Rs. 30,15,19,760/-. Profits to be attributed to the PE of assessee in India = Rs. 30, 15, 19,750/- \* 5% = Rs. 1, 50, 75,988/-.

6. Against, this order of AO passed u/s 143(3) r.w.s. 144C (13) of the IT Act, assessee preferred this present appeal before us. We have gone through the directions of DRP-2, submissions of the assessee and the order of AO. We observe that assessee has a subsidiary company in Switzerland, i.e. SR Techniques Management Ltd., Zurich, Switzerland. This subsidiary has a Liaison Office (LO) in India. The LO was permitted to be set up by the RBI. The AO held that the LO was subsidiary constitute a PE of the assessee in India in terms of Article 5(2) (1) (Service PE) and Article 5(5) (Agency PE of the India-Switzerland DTAA).

7. In our observation following facts that emerge out of various orders and submissions of the assessee are as under:

*a. As per the RBI approval letter the LO was allowed to Act only as communication channel with parties in India (Vide page no. 199 to 201 of the paper book). This approval was further renewed vide letter dated 04-12-2012.*

*b. This liaison office pertains to the subsidiary namely M/s. SR Techniques Management Ltd. and not to the assessee*

*c. As per the approval of the RBI LO of the subsidiary can perform following activities*

- (i) Representing the parent company/group companies in India
- (ii) Promoting export/import from/to India
- (iii) Promoting technical/financial collaborations between parent/group companies and companies in India.
- (iv) Acting as a communication channel between the parent company and Indian companies.

8. The assessee's subsidiary in India i.e. SR Technics India Private Limited has not carried any business activities/operations in India. It is a dormant company since incorporation and does not have any employees. This is evident from the fact that its name was struck of the Companies Register in India by the Registrar.

We are further reproducing a table narrating the contentions of the AO and assessee's rebuttal thereon as under:

<b>Sr. No.</b>	<b>AO's contentions</b>	<b>Assessee's rebuttal</b>
1.	The AO has stated that the assessee has a LO with the address at B-206, City-point, AK Road, Andheri (E), Mumbai 400059 in India as reasons already stated above, the LO mentioned on its website itself. The AO observed that "it is surprising that the assessee has not mentioned even an iota of information about it's LO in India".	At the outset, it is submitted that the LO is not of the assessee, but of its subsidiary company, SRT ML. For the Reasons already stated above, the LO does not result in any tax obligations of the assessee for its business income earned from Indian customers. Nevertheless, upon a specific show cause, the assessee sought the details and promptly provided it to the AO for the purpose of the assessment proceedings.
2.	The LO belongs to the assessee and it renders services over and above co- ordination and communication services. As such the LO is actively involved in the business activities such as negotiating and entering into contracts for and on behalf of the assessee in India.	The LO provides coordination and communication activities. The LO is neither authorised nor has negotiated/conclusion contracts with Indian customers. These facts are also supported as per following regulatory documents and provisions, which the LO is in compliance of  * RBI approval letter dated 10 January 2007  * Extension letter issued by the authorised dealer bank dated 4 December 2012 and  * As per Annexure C of the Master Directions under the list of permitted activities for a LO in India.
3.	The management of SRT ML is subservient to the management of the assessee in India. Hence, LO has	The AO has ignored the facts of case under consideration which is that the LO is merely a communication

	<p>an automatic obligation towards the assessee in all its business activities in India, even though it may belong to separate legal entity. SRT ML acts as a legal buffer between the assessee and the LO to shield it from any direct tax impact.</p>	<p>channel or coordinator between the assessee in Switzerland and the Indian airline companies. The LO does not carry out any repair, maintenance and ICS/SCS activities in India. Further. LO does not conclude any contract on behalf of the assessee in India. Based on these facts, the LO does not create any PE of the assessee in India and hence, there is no tax liability as such.</p>
4.	<p>Based on the perusal of financial statement of LO, the AO in Para 6 of the impugned draft assessment order has stated the following:</p> <p>* It is reasonably clear that the LO is incurring huge expenses on account of salaries, motor car and travelling and conveyance. Such expenses do not appear to be solely incurred for the purpose of mere coordination/communication activities, which can be performed even without making or incurring such expenses.</p> <p>* Average salary of the employees of LO is about Rs. 4, 00,000/- each month. This figure is absurdly high for any employee who is merely doing coordination/communication activity (or rather just acting like a post office). Paying high amount of salaries implies that the assessee is extracting professional services out of the employees who are well qualified and thereby paying them reasonably handsome amount of salaries.</p> <p>* The high amount of motor car and travelling expenses also leads to a conclusion that the assessee's LO is acting in the area of business</p>	<p>The AO has erred in referring to the amount of expenses incurred by the LO to conclude that LO does not merely act as a communication channel/coordination services. It is submitted that the quantum of expenses incurred cannot be a criterion to decide the nature of activities carried by the LO for the assessee. It is submitted that the expenses incurred by the LO are for their daily business considerations and that they are incurred only for the purpose of carrying communication/coordination function for the assessee.</p> <p>As submitted earlier, the activities conducted by employees of LO are communication/coordination function between the assessee and Indian airline companies. To conduct these communication activities, the LO employs personnel with industry specific knowledge. Considering the business requirements and the knowledge and skills possessed by the employees, the salary paid to the employees of LO are in one with the market for the maintenance, repair and overhaul industry.</p>



<p>development and day-to-day activities for conducting the business in India, rather than just being a communication channel.</p> <p>* The cost on communication charges is very low at Rs. 3, 21,548/- which is about Rs. 27,000 every month. If the LO was a mere communication office, then its communication expenses should have been the highest, as opposed to salary or travelling and motor car.</p> <p>* The LO is completely dependent on the assessee for its financial requirements.</p> <p>Thus, the AO has held that the LO does not merely act as a communication office.</p>	<p>It is submitted that the employees of LO are neither authorised to and not take any (1) commercial decisions, (ii) negotiations or (iii) conclusion of contracts with Indian airline companies. Such activities are performed entirely from outside India, i.e., in Zurich. Thus, the employees of LO assist the assessee in undertaking marketing activities in India. No evidence has been brought on record by the AO to support that the LO is not merely communication/ coordination office.</p> <p>It is submitted that the communication with the assessee is performed by the employees of the LO through telephone calls/emails for which the assessee has incurred such expense. The cost of such expenses is as levied by the third party vendors and is as per the prevailing market standards for availing such communication services. Hence, a simple comparison of communication and salary not appropriate.</p> <p>As per the regulatory provisions governing LO, the LO is required to meet all its expenses by way of inward remittance from its head office. The LO is prohibited from conducting any income generating activity and as such, does not have any external revenues as evident from the financial statements of the LO on record. Hence, to this extent, the LO is necessarily required to be dependent upon its head office, which fact by no means results in any tax implication for revenues earned by the assessee.</p>
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5.	The assessee provides MRO services to the clients in India through LO.	As discussed above and as is evident from various clauses of the contract placed on record, the MRO services are rendered from outside India, i.e. in Zurich. For example, we wish to draw your attention to recital A (page 3). Para 2.2 (page 7), Para 1.6-3 (page 23). A-12.1 (page 25) and A-12.3 (page 25) of the Repairs and Maintenance contract which clearly provide that the repair activities are performed in Zurich. A similar fact is also clear from Para 1 (page 4), Para 14.6 (page 12), Para A-4.1 (page 22) and Para C-8.5-5 (page 38) of the ICS contract. These contracts are filed in assessment proceedings. At the cost of repetition it is clarified that the Assessee does not have any employees/assets/tools/facility in India from or through which the repair activities under the contract can be performed.
6.	Considering the business activities carried by the LO, being market intelligence and administrative support, the learned AO held that the LO renders technical services to the assessee under clause 5(2) (1) of India Switzerland DTAA and thus creates a Service PE of the assessee in India.	The assessee submits that it has not sent any employees to India to render technical services to Indian airline companies. As such the assessee is not rendering any technical services in India. Further, as per the provisions of Article 5(2) (1) of India Switzerland DTAA, a Service PE is constituted if the assessee furnishes services and not when the services are rendered by the LO to assessee as erroneously held by the AO. Thus, the question of existence of Service PE under Article 5(2) (1) of India Switzerland DTAA does not arise.
7.	LO performs all core activities on behalf of the assessee in India and the final entry into contracts though undertaken de facto by the assessee on paper, in reality, is based on the	All the activities relating LO submission of bids/responses to Indian airline companies, negotiations relating to contracts, discussions on commercial

	<p>vital inputs and functions performed by LO in India and there hardly remains any further critical function to be performed outside India except for signing the contract. The learned AO has also held that the LO exercises indirect authority to negotiate and enter into a contract to or on behalf of the assessee and the LO habitually secures orders for or on behalf of the assessee.</p>	<p>considerations, conclusion of contract price, etc., which are the key activities of any business are carried by the assessee from Switzerland only. The role of LO's employee is merely limited to provision of tender/RFP related information to the assessee, that too based on publicly available information. No evidence has been brought on record by the AO to demonstrate that the contracts are executed by the LO, whereas the facts and the documents placed on record clearly prove, substantiate the otherwise correct position of the assessee.</p>
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9. The facts discussed in the table reproduced (supra) has to be read with the fact that the assessee was adhering to the conditions imposed by the RBI for running a LO, and the RBI had accepted the functioning of the assessee's LO for over the years, points out to the fact that the assessee has complied to the conditions, one of which was that it could not carry on any business or trading activity in the LO.

10. The activities carried out by the employees of LO are merely communication/coordination function. It is settled position that such support activities fall within the exclusionary provisions under Article 5(3) (d)/5(3)(e) of India Switzerland DTAA, i.e. they are preparatory/auxiliary in nature. The relevant provisions of Article 5(3) of India Switzerland DTAA are reproduced below for ready reference:

The term "permanent establishment" shall not be deemed to include:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information or for scientific research, being activities solely of a preparatory or auxiliary character in the trade or business of the enterprise;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character..." (Emphasis supplied)

In light of the above and the judicial precedents (which are binding and squarely applicable to the facts of case) discussed in detail below, it is observed that the communication/coordination activity as done by the employees of the LO fall within the preparatory/auxiliary activities and hence, the LO does not constitute a PE of the assessee in India.

In connection with the above observations we place reliance on the principles arising from following judicial precedents, which are squarely applicable to facts of case:

***U.A.E. Exchange Centre Ltd. vs. Union of India [313 ITR 94 (Delhi HC)]***

***DIT vs. Mitsui & Co. [84 taxmann.com 3 (Delhi HC)]***

***Columbia Sportswear Company vs. DIT [235 Taxman 349 (Kar HC)]******ADIT vs. J. Ray Mc Dermott Eastern Hemisphere Ltd. [180 TTJ 660 (Mumbai ITAT)]***Analysis in facts of case

In light of the above facts and legal submissions, we observe that the LO in India does not constitute PE in India under Article 5 of India Switzerland DTAA because:

The LO does not constitute a fixed place through which business of assessee is carried out in India. Employees of the LO do not negotiate, finalise or discuss the mechanics of contracts including pricing with the assessee's customers. As such the employees of LO merely act as a communication link between the assessee and the airline companies. The LO did not carry any activity, beyond that permitted by the RBI. The activities carried by the LO are thus, preparatory (auxiliary) in nature. The activities/operations of the assessee in connection with the contracts are carried from outside India.

Further, as per Article 5(7) of India Switzerland DTAA, merely because an Indian company is controlled by a Switzerland company or fact that Switzerland Company carries business in India, does not result in Indian company being considered as a PE of Switzerland Company in India. Thus, it is submitted that SRT India cannot be regarded as a PE of the assessee merely because it is controlled by the assessee or merely because the assessee carries on business activities in India.

11. In addition to above, we have gone through the sample engine repair and maintenance agreement and invoices thereto and sample integrated component solution agreement and invoices thereto. As submitted vide page no. 46 to 185 of

Paper Book dated 10.02.2020. The relevant clauses of both the agreements are reproduced below to appreciate the factual matrix of the case as under:

“Clause-2 vide page no. 56 of Paper Book of sample engine repair and maintenance agreement”

2.1 SR Technics shall perform services with respect to the Engines listed in the Indicative Fleet Plan as per Annex G (as may be revised by mutual agreement from time to time) as specified in the scope of services in Annex A on the terms of this Agreement.

2.2 SR Technics shall (a) perform the work in workshops at Zurich Airport or at other FAA & EASA approved location per MOE using appropriate tools and other equipment and (b) shall provide, inspect and calibrate all tooling and equipment required to accomplish the work.

**A-5 Engine maintenance, modification and repair**

SR Technics shall perform Engine maintenance in accordance with applicable manufactures standards, manuals and publications.

These services shall include:

Incoming inspection bore scope inspection and report of findings.

Performance of as-received Engine test, if required or requested by Spice jet

QEC removal, repair as necessary and reinstallation

Engine and module disassembly, module and Engine reassembly

Repair, replacement or exchange of Engine Parts

Incorporation of modifications/performance of inspections to fulfil AD's

Incorporation of OEM and Vendor SB's at Engine shop visit

Engine Component bench test, overhaul and/or repair and incorporation of requested modifications during Engine shop visit

Engine testing

Preservation of the Engine (for 12 month)

### **Preparation for shipment including bore scope inspection**

Rates and charges: For the services of this clause shall be included in the fixed prices in Annex C.

Note: Spice Jet shall be responsible for the on-wing maintenance, on-wing trouble shooting and trouble rectification, engine removal and installation and accomplishment of core water wash procedures as mutually agreed between the parties.

#### **A-6.3 Slot Availability**

##### **Scheduled Shop Visits**

For scheduled shop visits the Engines shall be inducted in accordance with the mutually agreed engine removal plan, as per clause A-71, provided that the Engine arrives at **SR Technics maintenance facility at Zurich Airport** during the week previously agreed between Spice Jet and SR Technics.

##### **Unscheduled Shop**

Visits For unscheduled shop visits, SR Technics will do its utmost to induct the Engine into the shop as soon as possible but no later than 10 days and TAT will start no later than fifteen (15) calendar days after SR Technics has been notified by Spice Jet provided that Engines have arrived at **SR Technics maintenance facility at Zurich Airport** within the agreed time frame.

#### **A-7.2 Program management**

SR Technics nominates a dedicated account manager in Zurich to Spice jet who is the focal point for communication between the parties. The account manager shall be appointed for ensuring that all rework instructions are properly performed and to monitor all of Spice Jet interests within the overhaul shop.

Following key responsibilities are related to this position:

Ensures overall contract performance and acts as focal point to Spice Jet

Responsible to issue and maintain the Procedure Reference Manual (PRM) that outlines all the procedures and process required to fulfil the contract

Handles all contract related issues between Spice Jet and SR Technics

Ensures service delivery with special focus on services that are not directly shop visit related (e.g. shop visit-, removal-and spare engine planning)

Defines and drives continuous improvement initiatives

Ensures transparency on shop visit performance and communicates event status:

Tracks and records all elements that may affect timely engine redelivery

Assess spare engine situation

Provide recommendations for preventive maintenance actions based on EHM data and bore scope findings

Follows-up on technical issues, changes in work scope supervises engine documentation including invoicing

To follow up on any other requirement as per the agreement

#### **A-12 Delivery and Redelivery**

##### **A-12.1 Delivery of the Engine from Spice Jet to SR Technics**

Spice Jet shall deliver the Engine FCA to respective pick up location on-time to meet the agreed shop induction date as per clause A-6.3 and SR Technics shall organize the transportation of the Engine from the respective pick up location to SR Technics maintenance facility at Zurich Airport, Switzerland The respective pick up location shall be any airport where Spice Jet is operating

##### **A-12.2 Redelivery of the Engine from SR Technics to Spice jet**

SR Technics shall organize the redelivery and Spice Jet shall accept the Engine CPT arrival at a suitable scheduled freighter destination as advised by Spice jet

##### **A-12.3 Delivery of documents and Engine Parts from Spice Jet to SR Technics**

Spice Jet shall deliver the documentation and if applicable Spice Jet supplied Engine Parts, DAP SR Technics maintenance facility at Zurich Airport.

#### **D-4 Logistics**

##### **D-4.1 Preparation, packaging and transportation requirements**

Spice jet shall prepare any Engines removed for shipment to the SR Technics by (a) capping and plugging all openings of the Engine; (b) completely sealing the Engine with heavy gauge vinyl plastic; (c) using OEM recommended transportation stand (d) otherwise preparing the Engine in accordance with the CFM's specifications and



requirements relating to such transportation as stipulated by the International Air Transport Association (IATA) for safe and secure shipment of Engines and Engine Components (e) transport (in case of unqualified Shop Visits) the Engine or Engine Components in accordance with the OEM engine shop manual specification and requirements related to transportation of an Engine by either air, land or ship. All cost arising from damages sustained due to the improper shipment preparation of the Engines; and any losses, damages, liabilities, claims and penalties that may be brought against SR Technics by third parties or Government Entities resulting from Spice jet's failure to comply with aforesaid obligations shall be borne solely by Spice jet.

#### D-4.2 Shipping marks

Each shipment to SR Technics shall be marked as follows:

SR Technics Switzerland Ltd.  
Hangarstrasse / Gate 140  
Material Receiving SRT  
CH-8302 Kloten, Switzerland

#### 2. Local SR Technics Representative

If mutually agreed, SR Technics shall assign a local representative, who shall only act as technical and commercial Interface between Spice jet and SR Technics in respect to the Fulfilment of the Agreement, specifically in regard to the following matters:

- (a) Disruptions, if any, due to engine problems
- (b) Engine removals
- (c) Work scopes
- (d) Engine transportation
- (e) On site support

The representative shall regularly report and follow-up on technical and/or commercial issues Rates and charges: The services in this clause 2 are included in the RBS FHR stated in the Agreement.

As per Article 7(1) of India Switzerland DTAA, if business is carried on through a PE, profits from business to the extent attributable to the PE in India is taxable in India. As discussed above, the assessee does not carry any activity through LO other than routine communication and client coordination, which can be called to constitute a PE in India. Therefore, in absence of any PE of the assessee in India, the business income earned by the assessee is not taxable under Article 7 of the India Switzerland DTAA.”

11. We have thoroughly considered the whole issue with reference to the order of AO, proceedings of DRP, submissions of the assessee and Paper Book submitted. It is an established fact that Revenue streams not offered by assessee were not chargeable to tax in India (accepted by AO also) until unless assessee has a PE in India. After a thorough study of assessment order, the foundation of allegations laid down by the AO to prove LO of subsidiary company as PE of assessee, no substantive and cogent evidence were produced on record. All the allegations and working done in that regard were merely a guess work and looks to be a conclusion drawn on conjunctions, surmises and wrong application of law on the given set of facts.

12. Here it is pertinent to mention that LO did not have any infrastructure, facilities and relevant stocks of spare parts to carry out repairs and maintenance, piece part repairs, integrated component service and replacement of parts. Moreover, the staff exist at India were not of that level in the hierarchy of such a big giant who can negotiate with the customers, sign and finalize the contracts and run the office of the assessee at their own. The fact that the LO was adhering to the conditions imposed by the RBI and the RBI had accepted the functioning of the LO for quite some time points out to the fact that the LO has complied to the condition one of which was that it could not carry on any business or trading activity. This fact about conditions imposed on LO are nowhere under challenge by the AO. This, itself weakens the case of the Revenue that they are not able to bring on record any material which proves that conditions imposed on LO were actually not complied with. Till the time LO is fulfilling the conditions imposed by the RBI, the case of the Revenue cannot stand on its own feet.

13. Statute empowers AO to conduct enquiry under section 131 and 133(6) to strengthen his allegations about non-fulfilment of the conditions imposed by the RBI on the LO by summoning and direct interaction with the parties like Air India, Spice jet Ltd. and Jet Airways Ltd. Instead of following this procedure to substantiate his allegation, AO rather worked on the documents available on record supplied by the assessee that is too by applying wrong principles on the given set of facts.

14. AO worked on an assumption that simply by having a liaison office in India would result in setting up a PE within the meaning of DTAA, this assumption of the AO in these circumstances (conditions imposed by RBI) being contrary to the well-established principles as well as provisions of law. Once an activity (as can be confirmed with reference to conditions imposed by RBI while granting the licence to open LO) once an activity is construed as being subsidiary or in aid or support of the main activity, it would fall within the category of preparatory or often auxiliary character.

15. In the light of facts of the case discussed above, we are of the opinion that the LO in India does not constitute PE in India under Article 5 of India Switzerland DTAA because. The LO does not constitute a fixed place through which business of assessee is carried out in India. Employees of the LO do not negotiate, finalise or discuss the mechanics of contracts including pricing with the assessee's customers. As such the employees of LO merely act as a communication link between the assessee and the airline companies. The LO did not carry any activity, beyond that permitted by the RBI. The activities carried by the LO are

thus, preparatory (auxiliary in nature). The activities/operations of the assessee in connection with the contracts are carried from outside India.

16. In view of the above findings, Ground No.1 to 4 raised by assessee are allowed and held that LO of subsidiary of assessee does not constitute a PE in the case of assessee, hence, addition on this ground made by AO is directed to be deleted.

17. In view of our findings for ground nos. 1 to 4 above, ground No.5 to 11 became academic in nature, no further adjudication is required.

**18. In the result, appeal filed by the assessee is allowed.**

Order pronounced in the open court on 25<sup>th</sup> day of November, 2022.

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER  
Mumbai, दिनांक / Dated: 25/11/2022  
SK, Sr.PS

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)  
ITAT, Mumbai