

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.464/PUN/2015
निर्धारण वर्ष / Assessment Year :2008-09

M/s. Sandvik System Development AB,
C/o Sandvik Asia Pvt. Ltd.,
Mumbai-Pune Road,
Dapodi, Pune – 411012

.... अपीलार्थी/Appellant

PAN: AAHCS7485H

Vs.

The Dy. Director of Income Tax
(International Taxation)-II, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Danesh Bafna
प्रत्यर्थी की ओर से / Respondent by : Ms. Nirupama Kotru, CIT

सुनवाई की तारीख / Date of Hearing : 09.10.2017	घोषणा की तारीख / Date of Pronouncement: 10.11.2017
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of DCIT (IT)-II, Pune, dated 23.02.2015 relating to assessment year 2008-09 passed under section 143(3) r.w.s. 147 r.w.s. 144C(13) of the Income-tax Act, 1961 (in short ‘the Act’).

2. The assessee has raised the following grounds of appeal:-

1. Ground 1:

On the facts and circumstances of the case, and in law, the Learned Dispute Resolution Panel ('Ld.DRP') erred in confirming the action of the Learned Assessing Officer ('Ld.AO') in reopening the assessment proceedings without any 'reason to believe' as required by the provisions of section 147.

2. Ground 2:

Without prejudice to Ground 1 above, on the facts and circumstances of the case, and in law, the Ld. DRP erred in upholding the action of Ld. AO of taxing receipts for IT support services provided to its Indian affiliates amounting to Rs.19,725,038 as Fees for Technical Services (FTS) within the meaning of Article 12 of the Double Taxation Avoidance Agreement between India and Sweden ('tax treaty between India and Sweden') read with the protocol thereto.

3. Ground 3:

Without prejudice to Ground 1 above, on the facts and circumstances of the case, and in law, the Ld. DRP erred in upholding the action of Ld. AO of taxing receipts for IT Support Services provided to its Indian affiliates amounting to Rs.19,725,038/- as Royalty within the meaning of Article 12 of the tax treaty between India and Sweden.

It is prayed that the addition made by the Ld. AO and confirmed by the Ld. DRP be deleted.

3. The first jurisdictional issue which arises by way of ground of appeal No.1 is against reopening of assessment without any reason to believe as required by the provisions of section 147 of the Act.

4. Briefly, in the facts of the case, the assessee had filed the return of income declaring income of Nil on 30.09.2008. Notice under section 148 of the Act on 28.03.2013 was issued and served upon the assessee. In response to the said notice, the assessee vide its letter dated 30.04.2013 submitted that the original return of income may be considered as filed in response to the said notice. The assessee requested for supply of reasons recorded for reopening the assessment. The reasons were communicated to the assessee. The reasons are reproduced at page 2 of the assessment order. In reply, the assessee objected to the reasons recorded for reopening the assessment and pointed out that similar reasons were recorded in assessment year 2005-06. The assessee relied upon several judicial

pronouncements also. The Assessing Officer rejected vide office letter dated 06.02.2014 the judicial pronouncements submitted by the assessee and were held to be different from the facts of the present case. The first aspect which was noted was that there was no assessment under section 143(3) / 147 of the Act in the case, prior to reopening. Further, notice under section 148 of the Act was validly issued where the Assessing Officer had reason to believe that it was fit case for reopening the assessment, since there was escapement of income. The Assessing Officer further had noted that there was tangible material to entertain *prima facie* belief that income chargeable to tax had escaped the assessment. The reopening was on the basis of material which was definite and not vague and fanciful and in view of explicit reasons, it was fit case for reopening. With regard to assessee's reliance on the order of Dispute Resolution Panel (DRP) in earlier year i.e. assessment year 2005-06, it was pointed out that an appeal was filed before the Tribunal and hence, the same cannot be accepted. The Assessing Officer passed draft assessment order, against which the assessee filed objections before the DRP. The DRP relying on the decision of the Hon'ble Supreme Court in ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500 (SC), held that reopening was valid. The Assessing Officer in this regard passed the assessment order under section 143(3) r.w.s. 144C(13) of the Act and also decided the issue on merits against the assessee.

5. The assessee is in appeal against the order of Assessing Officer.

6. The learned Authorized Representative for the assessee has pointed out before us that in the absence of any tangible material for reason to believe that income has escaped assessment, there is no merit in exercise of jurisdiction by the Assessing Officer under section 147/148 of the Act. He further pointed out that on

similar tangible material and recording of reasons to believe, the case of the assessee was reopened in assessment year 2005-06, which was dismissed for low tax effect. In assessment year 2006-07 also, similar plea was raised of low tax effect and hence, the same was also dismissed. In assessment year 2007-08 though the issue of jurisdiction under section 148 of the Act was against the assessee, the issue on merits was decided in favour of assessee, hence no appeal has been filed for that year in assessment year 2008-09. The learned Authorized Representative for the assessee pointed out that the issue stands covered in favour of assessee by the order of Tribunal in DDIT (IT) Vs. Sandvik Information Technology AB, in ITA No.128/PUN/2014 along with CO No.10/PUN/2015, relating to assessment year 2005-06, order dated 28.12.2016. He further pointed out that combined DRP order was passed in the case of three sister concerns and it was held to be not valid in the case of Sandvik Information Technology AB. He further pointed out that the Assessing Officer at page 2 has reproduced the reasons recorded for reopening the assessment. Our attention was drawn to the assessment order for assessment year 2005-06, where on the basis of same tangible material, reopening was held to be invalid by the DRP, against which the Revenue's appeal was dismissed for low tax effect. The learned Authorized Representative for the assessee further referred to page 2 of the Paper Book and pointed out that computation of income was offered along with Notes i.e. complete information was offered in the return of income itself, so there is no need to refer to the proceedings of any other assessment years. He further referred to the order of DRP in assessment year 2006-07, wherein in paras 2.1.2 to 2.1.9, the DRP has held that in the absence of any fresh material on the same facts, there is no merit in invoking provisions of section 147 of the Act. However, the DRP in assessment year 2008-09 i.e. in the year under appeal has relied on the ratio laid down by the Hon'ble Supreme Court in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt.

Ltd. (supra) and held the reopening to be valid, against which the assessee is in appeal. The learned Authorized Representative for the assessee stressed that in all the earlier years, the DRP gave relief and in the absence of any tangible material in the year under appeal, there is no merit in the order of DRP/Assessing Officer. The assessment framed therein is thus, bad in law. The learned Authorized Representative for the assessee referred to the ratio laid down by the Hon'ble High Court of Delhi in Orient Craft Ltd. Vs. CIT reported in 354 ITR 536 (Del) and reliance was placed on various judicial precedents which are mentioned in the order of DRP for assessment year 2005-06.

7. The learned Departmental Representative for the Revenue pointed out that in the year under appeal, it was case of escapement of income. Our attention was drawn to the copy of reasons recorded for reopening the assessment. The learned Departmental Representative for the Revenue pointed out that after four year proviso comes into play and on that basis, the DRP has quashed re-assessment proceedings in earlier years. However, in this year, there is no proviso in operation. He further stated that in the absence of any assessment completed in the case of assessee, where the assessee has failed to offer income to tax, then it cannot be held to be review as laid down by the Hon'ble Supreme Court in ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra).

8. The learned Authorized Representative for the assessee in rejoinder pointed out that proviso to section 147 of the Act was not applicable since it would become operatable only if the case of assessee falls in main section. He stressed that there has to be 'reason to believe' for escapement of income and in the absence of the same, there is no merit in exercise of jurisdiction. He further referred to the order of DRP and pointed out that in the said order, the same was not quashed for

assessment proceedings being reopened beyond four years. He further stressed that requirement of section was of tangible material, which remains to be sacrosanct. He further referred to the order of Tribunal in the case of sister concern and pointed out that the Tribunal had not made any distinction before or beyond four years and had gone on the principle of no tangible material. He further pointed out that receipts were not offered to tax but the same were declared and ample disclosure was made in this regard.

9. We have heard the rival contentions and perused the record. The issue raised in the present appeal is applicability of provisions of section 147 of the Act. The said section provides that in cases where there is any escapement of income, which comes to the knowledge of the Assessing Officer, on the basis of some tangible material, then the said proceedings can be reopened in order to assess the escapement of income in the hands of assessee. The assessee had furnished the return of income in time declaring total income at Nil. The Assessing Officer recorded his reasons for reopening the assessment on the ground that it was noticed from the submissions made during the assessment for assessment year 2005-06 that the assessee had received IT support fees of Rs.1.94 crores and licence fees of Rs.3,10,396/- from Sandvik Asia Pvt. Ltd. in assessment year 2008-09, but the same were not offered for tax. The reasons mentioned that for assessment year 2005-06, the Assessing Officer had concluded that receipts under the head 'IT Support Fees' received by the assessee from Sandvik Asia Pvt. Ltd., were in the nature of royalty and fees for technical services and taxable as per Article 12 of DTAA of India and Sweden as well as section 9(1)(vi) & 9(1)(vii) of the Act. The Assessing Officer further holds that on examination of nature of payments made to the assessee as per agreement dated 01.04.2002, it could be concluded that the payments received by the assessee constitute royalty and fees for

technical services, as per sections of the Act as well as Article 12 of the DTAA between India and Sweden. Reference was made to several decisions in this regard and also to the order under section 201(1) and 201(1A) of the Act in the case of Sandvik Asia Pvt. Ltd. for assessment year 2008-09, wherein the Assessing Officer held that the payments received constitute royalty and fees for technical services. After recording aforesaid reasons for reopening the assessment, the Assessing Officer issued notice under section 148 of the Act. The assessee filed letter stating that earlier return of income may be treated as filed in response to the notice under section 148 of the Act. Thereafter, the assessee sought reasons for reopening the assessment and filed objections. The objections filed by the assessee were rejected by the Assessing Officer as there was no assessment under section 143(3)/147 of the Act and the Assessing Officer was satisfied that there was escapement of income on the basis of tangible material before him, then it was fit case for reopening the assessment. The DRP also upheld the action of Assessing Officer, in view of the ratio laid down by the Hon'ble Supreme Court in ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra).

10. The assessee is in appeal against the said exercise of jurisdiction by the Assessing Officer under section 147 of the Act. The first plea which has been raised by the assessee is that in the absence of any tangible material for reason to believe that there is escapement of income, the action adopted by the Assessing Officer was without any basis. The learned Authorized Representative for the assessee pointed out that in assessment year 2005-06 same tangible material was available with the Assessing Officer and the re-assessment proceedings were reopened. However, the DRP held that there was no material brought in the reasons recorded on the basis of which valid reasons to believe could be formed. The DRP held that it was case of re-appraisal of existing facts. It was further held

by the DRP that reopening of assessment without new material was not permissible even if the original assessment was processed under section 143(1) of the Act and order was not passed under section 143(3) of the Act. Reliance of the Assessing Officer on ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra) was found to be misplaced, where the case of the Assessing Officer was that the Hon'ble Supreme Court had decided that in case the return was processed under section 143(1) of the Act, the Assessing Officer is empowered to issue notice under section 148 of the Act. Reliance in this regard was placed on the ratio laid down by the Hon'ble High Court of Delhi in Orient Craft Ltd. Vs. CIT (supra), hence reopening in the case of three sister concerns was held to be invalid. The Revenue did file an appeal before the Tribunal in this regard and the appeal was dismissed for low tax effect. Similarly, in assessment year 2006-07, same issue was raised and the DRP decided the issue in favour of assessee in the absence of any fresh material and the appeal of Revenue was dismissed for low tax effect. In assessment year 2007-08, though the issue of reopening under section 148 of the Act was decided against the assessee, but since the issue on merits was decided in favour of assessee, no appeal was filed by the assessee or the Revenue.

11. Now, coming to the appeal in assessment year 2008-09. The Assessing Officer recorded reasons for reopening assessment on the basis of reasons recorded in assessment year 2005-06. The Assessing Officer very categorically states that information came to his knowledge during proceedings in assessment year 2005-06 that the assessee had received IT Support fees and Licence fees, which has not been offered to tax. The question which arises before us is whether any tangible material is available with the Assessing Officer to come to finding of escapement of income. The second aspect of the issue is in case no assessment has been completed under section 143(3) of the Act, where there is escapement of

income, proceedings can be reopened under section 147/148 of the Act keeping the spirit of provisions which are applied in the present case. The first and foremost for invoking the said provisions is the 'reason to believe' of escapement of income and such reason to believe has to be based on tangible material or otherwise there has to be live link between the reason to believe and escapement of income' then only the proceedings under section 147 of the Act can be initiated. The proviso under section 147 of the Act provides that where assessment under section 143(3) of the Act has been made, then no action under the main section would be taken after expiry of four years from the end of relevant assessment year, unless escapement of income is by reason of failure on the part of assessee to make return under section 139 of the Act or in response to notice under section 142(1) of the Act or 148 of the Act to disclose fully and truly all material facts necessary for assessment for that assessment year. Undoubtedly, proviso is applicable in case of non-fulfilment of certain conditions laid down but before applying the provisions provided in the proviso to the section, the provisions of main section have to be seen, which clearly provides that there has to be reason to believe of escapement of income and then only provisions of section 147 of the Act can be triggered. There is no merit in the reasoning of the Revenue that where no assessment under section 143(3) of the Act has been completed and the assessment is only completed under section 143(1) of the Act and since the assessee has failed to disclose fully and truly all material facts necessary for assessment, then action under section 147 of the Act can be taken. We find no merit in the plea of the Revenue.

12. Now, coming to the facts of the present case, wherein there is finding in the case of assessee itself though by the DRP that no tangible material was brought in the reasons recorded on the basis of which valid reason to believe could be formed.

It may be reiterated herein itself that reasons recorded for assessment years 2005-06 and 2008-09 are same. Though the appeal of assessee before the Tribunal in assessment year 2005-06 was dismissed for low tax effect along with appeal of another sister concern, which was also reopened by the Assessing Officer on identical reasons to believe' however, in the case of third entity against which proceedings under section 147 of the Act were recorded, the matter travelled to the Tribunal and the Tribunal in DDIT (IT) Vs. Sandvik Information Technology AB, in ITA No.128/PUN/2014 along with CO No.10/PUN/2015, relating to assessment year 2005-06, order dated 28.12.2016 had considered the re-assessment proceedings on the basis of details furnished by Sandvik Asia Pvt. Ltd., one of the group concerns. As per information, payments were made on account of IT Support services which information was treated as tangible material by the Assessing Officer and proceedings were initiated under section 147/148 of the Act. The case of Revenue before the Tribunal was that the Assessing Officer had reason to believe that income of assessee had escaped assessment. The case of assessee was that the said information derived from alleged tangible material for re-assessment proceedings were already furnished by the assessee in form No.3CEB filed along with return of income. The said information is reproduced at page 9 of the order of Tribunal dated 28.12.2016. The Tribunal held that the Assessing Officer can have belief for reopening assessment if there is any tangible material in his possession. The Tribunal further held that in the said case, the Assessing Officer had no new information or tangible material to come to the conclusion that there was escapement of income. The relevant findings of the Tribunal are as under:-

"16. In so far contentions of the department that the Assessing Officer did not get opportunity to apply his mind on the documents furnished by assessee as the original assessment was completed u/s.143(1), we do not find any force in the said contentions. The Hon'ble Delhi High Court in the case of CIT Vs. Orient Craft Ltd. (supra) has held that expression, 'reason to believe' does not have different meaning, where assessments are framed u/s.143(1) and where assessment is

completed u/s.143(3) of the Act. The relevant extract of the findings of the Hon'ble High court are as under :

"13. Having regard to the judicial interpretation placed upon the expression "reason to believe", and the continued use of that expression right from 1948 till date, we have to understand the meaning of the expression in exactly the same manner in which it has been understood by the courts. The assumption of the Revenue that somehow the words "reason to believe" have to be understood in a liberal manner where the finality of an intimation under Section 143(1) is sought to be disturbed is erroneous and misconceived. As pointed out earlier, there is no warrant for such an assumption because of the language employed in Section 147; it makes no distinction between an order passed under section 143(3) and the intimation issued under section 143(1). Therefore it is not permissible to adopt different standards while interpreting the words "reason to believe" vis-à-vis Section 143(1) and Section 143(3). We are unable to appreciate what permits the Revenue to assume that somehow the same rigorous standards which are applicable in the interpretation of the expression when it is applied to the reopening of an assessment earlier made under Section 143(3) cannot apply where only an intimation was issued earlier under Section 143(1). It would in effect place an assessee in whose case the return was processed under Section 143(1) in a more vulnerable position than an assessee in whose case there was a full-fledged scrutiny assessment made under Section 143(3). Whether the return is put to scrutiny or is accepted without demur is not a matter which is within the control of assessee; he has no choice in the matter. The other consequence, which is somewhat graver, would be that the entire rigorous procedure involved in reopening an assessment and the burden of proving valid reasons to believe could be circumvented by first accepting the return under Section 143(1) and thereafter issue notices to reopen the assessment. An interpretation which makes a distinction between the meaning and content of the expression "reason to believe" in cases where assessments were framed earlier under Section 143(3) and cases where mere intimations were issued earlier under Section 143(1) may well lead to such an unintended mischief. It would be discriminatory too. An interpretation that leads to absurd results or mischief is to be eschewed."

13. The Tribunal also took note of the contention of the Department that where the original assessment was completed under section 143(1) of the Act, then the Assessing Officer does not get opportunity to apply the mind and relied upon the Hon'ble Bombay High Court in Khubchandani Healthparks (P.) Ltd. Vs. ITO reported in 68 taxmann.com 91 (Bom.), which was also in relation to assessment being completed by issue of intimation under section 143(1) of the Act and thereafter, issue of notice under section 148 of the Act. The Hon'ble Bombay High Court also considered the ratio laid down by the Apex Court in ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra). The relevant observations of the Tribunal in this regard are as under:-

"16. In so far contentions of the department that the Assessing Officer did not get opportunity to apply his mind on the documents furnished by assessee as the original assessment was completed u/s.143(1), we do not find any force in the said contentions. The Hon'ble Delhi High Court in the case of CIT Vs. Orient Craft Ltd. (supra) has held that expression, 'reason to believe' does not have different meaning, where assessments are framed u/s.143(1) and where assessment is completed u/s.143(3) of the Act. The relevant extract of the findings of the Hon'ble High court are as under :

"13. Having regard to the judicial interpretation placed upon the expression "reason to believe", and the continued use of that expression right from 1948 till date, we have to understand the meaning of the expression in exactly the same manner in which it has been understood by the courts. The assumption of the Revenue that somehow the words "reason to believe" have to be understood in a liberal manner where the finality of an intimation under Section 143(1) is sought to be disturbed is erroneous and misconceived. As pointed out earlier, there is no warrant for such an assumption because of the language employed in Section 147; it makes no distinction between an order passed under section 143(3) and the intimation issued under section 143(1). Therefore it is not permissible to adopt different standards while interpreting the words "reason to believe" vis-à-vis Section 143(1) and Section 143(3). We are unable to appreciate what permits the Revenue to assume that somehow the same rigorous standards which are applicable in the interpretation of the expression when it is applied to the reopening of an assessment earlier made under Section 143(3) cannot apply where only an intimation was issued earlier under Section 143(1). It would in effect place an assessee in whose case the return was processed under Section 143(1) in a more vulnerable position than an assessee in whose case there was a full-fledged scrutiny assessment made under Section 143(3). Whether the return is put to scrutiny or is accepted without demur is not a matter which is within the control of assessee; he has no choice in the matter. The other consequence, which is somewhat graver, would be that the entire rigorous procedure involved in reopening an assessment and the burden of proving valid reasons to believe could be circumvented by first accepting the return under Section 143(1) and thereafter issue notices to reopen the assessment. An interpretation which makes a distinction between the meaning and content of the expression "reason to believe" in cases where assessments were framed earlier under Section 143(3) and cases where mere intimations were issued earlier under Section 143(1) may well lead to such an unintended mischief. It would be discriminatory too. An interpretation that leads to absurd results or mischief is to be eschewed."

17. The Hon'ble Bombay High Court in the case of Khubchandani Healthparks (P) Ltd. Vs. ITO (supra) has reiterated that notice issued u/s.148 would be without jurisdiction for absence of 'reason to believe' that income has escaped assessment even in case where assessment has been completed earlier by intimation u/s.143(1) of the Act. The Hon'ble High Court while holding so, considered the decisions rendered by the Hon'ble Apex Court in the case of CIT Vs. Rajesh Jhaveri Stock Brokers (P) Ltd. reported as 291 ITR 500 and CIT Vs. Zuari Estate Development & investment Co. Ltd. (supra). The relevant extract of the judgment rendered in the case of Khubchandani Healthparks (P) Ltd. Vs. ITO (supra) reads as under :

"3. On hearing the parties, we find that the Apex Court in Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers P. Ltd. 291 ITR 500, had an occasion to deal with identical facts, namely reopening Notices issued under Section 148 of the Act where assessment is completed earlier by Intimation under Section 143(1) of the Act. In the above

case, the Apex Court held that a Notice for-reopening an assessment under Section 148 of the Act could only be justified if the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment. This decision of the Supreme Court in *Rajesh Jhaveri Stock Brokers P. Ltd.* (Supra) has not been disturbed by the Apex Court in *Zuari Estate Development and Investment Co. Ltd.* (Supra). In fact, the Supreme Court in *Zuari Estate Development and Investment Co. Ltd.* (Supra) makes a specific reference to its decision in *Rajesh Jhaveri Stock Brokers P. Ltd.* (Supra) to hold that where the assessment has been completed by Intimation under Section 143(1) of the Act, there can be no question of change of opinion.

4. We further find that the Apex Court in *Zuari Estate Development and Investment Co. Ltd.* (Supra) has not dealt with the issue whether before invoking Section 148 of the Act, the Assessing Officer must have reason to believe that income chargeable to tax has escaped assessment, where the original assessment has been completed by Intimation under Section 143(1) of the Act. The Revenue is trying to infer that because the Apex Court in *Zuari Estate Development and Investment Co. Ltd.* (Supra) has set aside the order of this Court and restored the issue to be decided on merits by the Tribunal, it must be inferred that the Apex Court had come to the conclusion that reason to believe was not necessary for issuing reassessment Notices where the regular assessment was completed under Section 143(1) of the Act. As rightly pointed out by Mr. Pardiwalla, it can equally be inferred that the Apex Court in the above case had come to the conclusion that there is reason to believe that income had escaped assessment and consequently restored the issue to the Tribunal to decide the reassessment proceedings on merits.”

18. Thus, in view of the facts of the present case and the case laws discussed above we hold that the Assessing Officer had no tangible material to justify his “reason to believe” that income has escaped assessment. The reassessment proceedings initiated by the Assessing Officer u/s.147 are without jurisdiction and hence, are not sustainable. Accordingly ground No.1 to 3 raised by Department in appeal are dismissed.”

14. In the facts of the present case also the assessee in the computation of total income, copy of which is placed at page 2 of the Paper Book, had in the Note given a declaration in respect of such receipts and had pointed out that the same do not fall within ambit of royalty or fees for technical services. The relevant Note reads as under:-

“Note:

1. Sandvik Systems Development AB (‘SSDAB’) is a non-resident company incorporated in Sweden. SSDAB does not have any office (or any other establishment) in India. It is a tax resident of Sweden under the Double Taxation Avoidance Agreement between India and Sweden (‘Tax treaty’).
2. SSDAB provides IT support services to Sandvik AB Group companies all over the world, including Sandvik Asia Limited (‘SAL’) and Walter Tools India Private Limited (‘Walter India’) in India.
3. During the year ended 31 March 2008, SSDAB has charged Rs.19,414,642 to SAL and Rs 310,396 to Walter India towards the aforesaid IT support services.

The receipts towards such IT support services rendered by SSDAB do not fall within the ambit of Royalties or Fees for technical services within the meaning of Article 12 of the Tax treaty read with the Protocol thereto.”

15. Further in Form No.3CEB, audited report, the assessee in clause 12 Appendix B has given declaration in respect of international transactions with associated enterprises, which is as under:-

Particulars in respect of mutual agreement or arrangement:

International transactions with an associated enterprise or enterprises by way of mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit.

Sr.No.	Name and address of the associated enterprise with whom the international transaction has been entered into	Description of such mutual agreement or arrangement	Amount paid/received or payable/receivable in the transaction		Method used for determining the arm's length price (See section 92C(1))
			as per books of account	as computed by the assessee having regard to the arm's length price	
			(Rs)	(Rs)	
	Clause 12(a)	Clause 12(b)	Clause 12(c)		Clause 12(d)
1	Sandvik Asia Limited, Mumbai-Pune Road, Dapodi, Pune-411012	Receipt for IT support services	19,414,642	19,414,642	Refer Note 7 to Appendix C
2	Walter Tools India Private Limited, Mumbai-Pune Road, Dapodi, Pune-411012	Receipt for IT support services	310,396	310,396	Refer Note 7 to Appendix C

16. In view of the above said declarations made by the assessee which has also been considered by the Pune Bench of Tribunal in sister concern of the assessee i.e. Sandvik Information Technology AB, though for assessment year 2005-06, we hold that in the absence of any tangible material establishing escapement of income in the hands of assessee, there is no merit in the exercise of invoking of re-assessment proceedings under section 147 of the Act. The reason to believe escapement of income should have a live link. There is no merit in the stand of

authorities below that in the present case, where the assessment order was passed under section 143(1) of the Act, then the Assessing Officer had no action to look at or to consider the same. Under the provisions of the Act, it is incumbent upon the Assessing Officer to come to finding on the basis of tangible material to establish his case of reason to believe of escapement of income; in the absence of which, re-assessment proceedings are invalid and bad in law. Accordingly, we hold so and cancel the same. The consequent order passed under section 143(3) r.w.s. 147 of the Act also does not stand. Thus, the ground of appeal No.1 raised by the assessee is allowed and the balance grounds of appeal become academic in nature.

17. In the result, appeal of the assessee is allowed.

Order pronounced on this 10th day of November, 2017.

Sd/- (ANIL CHATURVEDI)	Sd/- (SUSHMA CHOWLA)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 10th November, 2017.

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the order is forwarded to :

1. The Appellant;
2. The Respondent;
3. The DRP, Pune;
4. The DIT (TP/IT), Pune;
5. The DR 'B', ITAT, Pune;
6. Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune