IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 17.04.2026	Delivered On: 02.06.2026

CORAM

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

T.C.A.Nos.733 to 735 of 2010

T.C.A.No.733 of 2010

M/s.Vedanta Limited,
(Successor in Interest to Cairn India Limited),
ASF Center, Tower B, 362-363, Jwala Mill Road,
Phase IV, Udyog Vihar, Gurugram,
Haryana-122 016. … Appellant

Cause title amended vide court order dated 13.03.2026 made in CMP.No.1065/2025 in TCA.No.733/2010 (GJJ and SSAJ)

vs.

The Assistant Commissioner of Income Tax,
TDS-II,
Chennai 600 034. … Respondent

Prayer: Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961, against a consolidated order dated 11.12.2009 passed by the Income Tax Appellate Tribunal, Chennai in ITA No.881/Mds/2002, 880/Mds/2002 and 879/Mds/2002 for the Assessment years 1998-99 (Financial Year 1997-98), 2000-2001 (Financial Year 1999-2000) and 1999-2000 (Financial Year 1998-1999) respectively served on the appellant on 4th January 2010.

T.C.A.No.734 of 2010

M/s.Vedanta Limited,
(Successor in Interest to Cairn India Limited),
ASF Center, Tower B, 362-363,
Jwala Mill Road, Phase IV,
Udyog Vihar, Gurugram,
Haryana-122 016. … Appellant

Cause title amended vide court order dated 13.03.2026 made in CMP.No.1064/2025 in TCA.No.734/2010 (GJJ and SSAJ)

vs.

The Assistant Commissioner of Income Tax,
TDS II,
Chennai 600 034. … Respondent

Prayer: Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961, against a consolidated order dated 11.12.2009 passed by the Income Tax Appellate Tribunal, Chennai in ITA No.881/Mds/2002, 880/Mds/2002 and 879/Mds/2002 for the Assessment years 1998-99 (Financial Year 1997-98), 2000-2001 (Financial Year 1999-2000) and 1999-2000 (Financial Year 1998-1999) respectively served on the appellant on 4th January 2010.

T.C.A.No.735 of 2010

M/s.Vedanta Limited,
(Successor in Interest to Cairn India Limited)
ASF Center, Tower B, 362-363,
Jwala Mill Road, Phase IV, Udyog Vihar,
Gurugram, Haryana-122 016. … Appellant

Cause title amended vide court order dated 13.03.2026 made in CMP.No.994/2025 in TCA.No.735/2010 (GJJ and SSAJ)

vs.

The Assistant Commissioner of Income Tax,
TDS II, Chennai 600 034. … Respondent

Prayer: Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961, against a consolidated order dated 11.12.2009 passed by the Income Tax Appellate Tribunal, Chennai in ITA No.881/Mds/2002, 880/Mds/2002 and 879/Mds/2002 for the Assessment years 1998-99 (Financial Year 1997-98), 2000-2001 (Financial Year 1999-2000) and 1999-2000 (Financial Year 1998-1999) respectively served on the appellant on 4th January 2010.

For Appellant in all cases	: Mr.Srinath Sridevan, Senior Advocate, for M/s.M.V.Swaroop, Gayathri, B.Devadharshini, Hredai, Thivakkaran Rajagopalan, Sankar
For Respondent in all cases	: Mr.B.Ramana Kumar, Senior Standing Counsel (IT) & Mr.Avinash Krishnan Ravi, Junior Standing Counsel

COMMON JUDGMENT

These three Tax Case Appeals are filed by the assessee, directed against the consolidated order dated 11.12.2009 passed by ITAT in ITA Nos:879, 880 and 881 of 2002. The Tribunal dismissed the assessee's appeal, thereby confirming the order of the Assessing Officer (AO). In short, the issue in these appeals is whether the payments made by the assessee to its parent non-resident company as reimbursement of the expenses, will attract tax in view of Section 44 BB of the Income Tax Act.

2. The Assessing Officer, the Appellate Authority, as well as the Tribunal concurrently held that the payments made for services rendered by the parent company is not reimbursement of expenses but 'fees for technical services' or 'normal service charges'. Hence, Section 44 BB of the Income Tax Act is applicable to the payments made by the assessee to its Non-resident parent company and to the third parties, even though such payments are made in terms of the Production Sharing Contract (PSC).

3. The assessee, in alternate had claimed that, even if the payment made to reimburse the expenses is to be construed as 'payment for service', the same cannot be taxed in view of the DTAA (Double Taxation Avoidance Agreement) between India (where the assessee company is located) and Australia (where the parent company is located). According to the assessee, the recipient of payment has to pay tax, if any, only to the Australian Government. However, the Department rejected the alternate plea also by holding that the DTAA and Section 90 of the Income Tax Act has no role to play in the case of the assessee.

Brief Facts:

4(i) On 28.10.1994, in order to exploit the petroleum resources in the Territorial waters and continental shelf of India, the Union of India, along with the Oil and Natural Gas Corporation (ONGC), to get financial assistance and technical know-how had entered into a Production Sharing Contract with three Private Companies, viz., Videocon Petroleum Limited, Command Petroleum (India) Pvt. Ltd., and Ravva Oil (Singapore) Pvt Ltd.

4(ii) M/s.Command Petroleum (India) Pvt Ltd, is a company incorporated in Australia. It was later taken over by M/s.Cairn Energy Pvt Limited and presently M/s.Vedanta Limited is the successor-in-interest to Cairn India Limited which is the assessee/appellant.

4(iii) Though the subject matter in appeals are the assessment orders for three different years and figures are different, nonetheless the issue considered and adjudicated before the Appellate Authority as well as the Tribunal were almost similar. Therefore, composite order was passed by the Appellate Authority as well as by the Tribunal.

5. For the sake of brevity and convenience, the figures in respect of Assessment Year 1998-99 alone is extracted below. For the Assessment Years

1999-2000 and 2000-01, the amounts disclosed in the returns alone differs, hence, we omit to extract those figures, since they are not necessary for deciding the disputed question of law.

6. The assessee, M/s.Cairn Energy India Ltd., filed its return of Income for the Assessment Year 1998-99 (financial year 1997-98) declaring 'NIL' income. The return was processed under Section 143(1)(a) and 30% of book profit was computed at Rs.22,36,07,273/- Pending assessment, the assessee filed its revised return to rectify error in calculation and same was also entertained and considered. The Assessing Officer (AO), disallowed a substantial amount debited on account of provision for site restoration costs. According to the Assessing Officer, the amount kept aside for site restoration costs, not actually paid, but only a provision for future. Such deduction is neither as per the Production Sharing Contract (PSC) nor under the existing provisions of the Income Tax Act as existed during the relevant financial years.

7. The argument of the assessee that the deduction of Rs.1,49,31,918/- shown as the time-cost wages was admissible under Section 42 and therefore outside the purview of Section 40 (a)(i) was not accepted by the Assessing

Officer. The assessee relied on Clause 1.4.9, Article 1.65 (Site restoration) and Article 2.4 (Accounting procedures) to sustain its claim. However, the Assessing Officer held that, for the purpose of computation of Income Tax, Article 17 of the PSC allow expenses in relation to commercial production and expenses in respect of drilling and exploration activities alone incurred before or after production commences. The terms of the agreement/contract cannot be prejudice to the computation of income tax under the applicable provisions of the Income Tax, 1961. Hence, the Assessing Officer added back a sum of Rs.1,01,63,385/-.

8. This part of the assessment order is subject matter of yet another set of appeals, pending for consideration before us.

9. That apart, in the course of assessment proceedings, it was found by the Assessing Officer that certain payments to the assessee non-resident parent company in respect of the expenditure incurred by the parent company in connection with the business activity carried on by the assessee in India, however the assessee has not deducted the tax at source (TAS) in terms of

Section 195 of the Income Tax Act. Hence, the assessee held liable for payment of tax along with interest under Sections 201(1) and 201(1A).

10. The deduction of tax at source and interest payment for the respective assessment years, as computed by the Assessing Officer, are as below:-

Assessment Year	Short deduction	Interest on short deduction
1998-1999	Rs.75,99,719/-	Rs.41,92,115 /-
1999-2000	Rs.70,28,012/-	Rs.29,77,163/-
2000-2001	Rs.13,62,800/-	Rs.3,88,273/-

Subsequently, the order was rectified after considering the arithmetic error pointed out by the assessee.

11. The second part of the assessment orders imposing Tax and Penalty for not deducting Tax at Source (TAS) alone is the subject matter under consideration in the appeals.

12. The Assessee assailed the computation of tax and imposition of interest under Sections 201(1) and 201(1A) before the Commissioner of Income

Tax (Appeals). The appeal was dismissed, thereby confirming the assessment order. On further appeal, the Income Tax Appellate Tribunal (ITAT) examined the grounds of appeal raised by the assessee and narrowed down the point for consideration as follows 'The solitary common issue arises for consideration and adjudication is whether the CIT(A) is justified in confirming the order of the Assessing Officer passed under Sections 201(1) and 201(1A) of the Income Tax Act and holding the provisions of Section 44BB are applicable in all the payments made by the assessee to non-residents.'

13. Following its earlier orders in the case of ***Poombuhar Shipping Corporation Ltd vs. ITO*** reported in ***(2008) ITR (AT) 219 [Chennai]*** and the judgment of the Hon'ble Supreme Court rendered in the case of ***Transmission Corporation of A.P vs. ITO*** reported in ***(1999) 239 ITR 587 (SC) at page 594,*** dismissed the appeals of the assessee insofar as the assessment orders for the Assessment Years 1999-2000 and 2001-2001. In respect of the assessment order for the Assessment Year 1998-1999, the appeal was partly allowed. The case was remitted back to the CIT (A) with a direction to give opportunity of hearing to the assessee and to consider the items of expenditures not considered and adjudicated by him in the order impugned.

14. Unsatisfied, the assessee has preferred the present appeals under Section 260A of the Income Tax Act, before this Court. Considering the conclusions and reasoning of the Tribunal, the following substantial questions of law were framed:-

T.C.(A).No.733 of 2010:

1. Whether the Tribunal was correct in confirming the order made under Section 201(1) and Section 201(1A) of the Act, in respect of reimbursement made by the assessee Company to Cairn Energy Asia Limited, Australia (CEAL) and unrelated third parties when there is no liability to deduct taxes at source under Section 195 for reimbursement of expenses, which are not chargeable to income tax?

2. Whether the Tribunal was correct in holding that Section 44BB of the Act, would be applicable to reimbursement of expenses made to the parent company outside India and payment to third parties for services?

3. Whether the Tribunal was correct in holding that the payments made under the Production Sharing Contract (PSC) were not reimbursements of expenses, but "fees for technical services" or "normal service charges" covered under Section 44BB of the Act?

4. Whether the Tribunal is correct in upholding the interpretation of Clause of 3.14 of Section

3 of Production Sharing Contract made by the Commissioner (Appeal) in its order?

5. Whether the Tribunal is correct in holding that the provisions of DTAA was inapplicable in the facts and circumstances of the case?

In T.C.(A).Nos.734 & 735 of 2010, in addition to the above five issues, the following 6th issue was framed:-

6. Whether the Tribunal erred in not setting aside the issues, which are not adjudicated by the Commissioner of Income-Tax (Appeals)?

15. For the purpose of discussion and decision, the above substantial questions of law can be précised as below:-

Whether the payment made to the non-resident company towards reimbursement of the expenses in compliance of the terms of the Production Sharing Contract (PSC) is assessable to tax. If so, whether the assessee is liable to deduct tax at source under Section 195 of the Income Tax Act and whether failure to deduct the tax at source will attract interest under Sections 201(1) and 201(1A) and if tax demand on the said payment will amount to double taxation.

16. The contention of the Learned Senior Counsel for the Assessee/ Appellant is that the expenses incurred by M/s.Cairn Energy Asia Limited (CEAL), at the instance of the assessee, M/s.Cairn Energy India Limited (CEIL), were basically related to Geological & Geophysical services, seismic processing, petroleum engineering, information technology and communication services etc. CEAL has recharged the assessee with the actual costs and expenses. This expense reimbursed to CEAL by including the time cost charges (wages) paid by CEAL to its employee who have worked on Indian Ravva Joint Venture. Since there was no profit element embedded in the said reimbursement, no income chargeable to tax in India under the provisions of Income Tax Act and also in accordance with the Double Taxation Avoidance Agreement (DTAA) between India and Australia. Therefore, the assessee had not deducted tax at source on the amount reimbursed. When the amount expended is only a reimbursement, there is no element of income for the receiver i.e., the non-resident company or any liability on the assessee to deduct tax at source under Section 195(2). While so, the payment of interest under Sections 201 (1) and 201(1A) does not arise.

17. The Learned Senior Counsel for the appellant/assessee relied on the following judgments to sustain the grounds of appeal:-

1) *Commissioner of Income Tax vs. Dunlop Rubber Co. Ltd: (1982) 10 Taxmann 179 (Calcutta).*

2) *Commissioner of Income Tax vs. Siemens Aktiongesellschaft: (2009) 177 Taxmann 81(Bombay).*

3) *Director of Income Tax (International Taxation) vs. Krupp Udhe GMBH: (2013) 40 Taxmann.com 38 (Bombay).*

4) *Commissioner of Income Tax vs. Enron Expat Services Inc: (2009 SCC OnLine UTT 1416.*

5) *GE India Technology Centre (P) Ltd vs. Commissioner of Income-Tax: (2010) 327 ITR 456 (SC).*

6) *Commissioner of Income Tax, Dehradun vs. Enron Oil and Gas India Ltd: (2008) 173 Taxman 348 (SC).*

18. On behalf of the respondent/Income Tax Department, the Senior Standing Counsel submitted that the scheme of the Income Tax Act, in the case of business for prospecting, etc., for mineral oil provides special provisions for deductions (Section 42) and for computing profits and gains (Section 44BB). Where a person responsible for paying any such sum chargeable under the Act (other than salary) to a non-resident considers that the whole of such sum would

not be income chargeable in the case of the recipient, he may make an application to the Assessing Officer to determine the appropriate proportion of such sum so chargeable [Section 195(2)]. The provisions of Section 195 of the Act is applicable for all kinds of payment, irrespective of the element of profit. This proposition of law settled by the Hon'ble Supreme Court in the case of ***Transmission Corporation of Andhra Pradesh Ltd vs. CIT*** reported in ***(1999) 239 ITR 587 (SC)***. The sum chargeable to tax on remittance made to a non-resident is liable for deduction at source. The expenditures sought as reimbursement for services rendered by the non-resident are not part of the Production Sharing Agreement and those services were availed within the territory of India. Therefore, the assessee either should have deducted tax at source for those payments or should have applied to the Commissioner under Section 195(2) for determination of the appropriate apportionment. The failure to opt either of these two options, had disentitled the assessee for deduction under Section 42 of the Act and also liable for payment of interest on the disallowed portion.

19. According to the Learned Counsel for the Department/Respondent, the law as it stood during the relevant assessment

years, the Double Taxation Relief was only in case of agreement with Government of foreign countries under Chapter-IX of the Act. This chapter not apply to private companies incorporated in foreign Territories. Only after the Finance Act, 2006, with effect from 01.06.2006, after adoption by the Central Government, the double taxation relief got extended to specific associations outside India other than Foreign Governments. Therefore, the alternate plea of benefit under the Double Taxation Avoidance Agreement (DTAA) is not available to the assessee.

20. According to the Learned Senior Standing Counsel for the Department, the ITAT had rightly confirmed the order of the Assessing Officer and the CIT(A) by holding against the assessee. Section 44BB is applicable to any payment made to the parent company outside India for the services rendered. The payments made under the Production Sharing Contract (PSC) were not reimbursements of expenses, but “fees for technical services” or “normal service charges” covered under Section 44BB of the Act. The benefit of the DTAA was inapplicable in the facts and circumstances of the case.

21. Heard the Learned Senior Counsels on either side.

22. The assessee had claimed deduction of the amounts paid to the non-resident parent company under the heads *Time Cost Wages, Consultant Costs Reimbursement, Financing Documentation drafting, IT & Communication, Taxation Consultants and International Travel Expenses,* as reimbursements made to the parent company without any element of profit and those payment is not chargeable to tax. As a consequence Tax at source (TAS) is not payable.

23. Contrarily, the Learned Counsel for the Department vehemently argued that, on reading of the charging sections and the special provisions dealing with computation of tax on Companies such as the assessee involved in prospecting mineral oil, the remittance to the non-resident claimed as reimbursement of actual expenditure were, in fact, “fees for technical service” or “normal service charges.” Hence, the assessee, who desired to get deduction, ought to have satisfied the mandatory requirement under Section 195 of the Act. In *Transmission Corporation of AP Ltd vs. CIT (1999) 239 ITR 587 (SC)*, the Hon’ble Supreme Court has categorically held that any remittance to a non-resident includes an element of income is eligible to tax in India. The accounting procedure annexed to the Production Sharing Contract in it. Article

3.1.4 mandates the parties to the contact to charge only the actual costs for the service rendered. However, by incorporating the 'arm's length' clause in Article 1.8, it only restricts the costs and expenditure shall not be higher than the competitive basis with third parties. Therefore, the payment to the non-residential company will not take away the character of 'income'. Thus, the ITAT has rightly held that the expenditure charged by the parent company in comparison is at par with the third party for bringing similar services under similar terms and conditions. Therefore, the payments though made under the head "reimbursement of Expenses", the same was a normal service charges in the normal course of business of the parent company.

24. Before adverting further on the rival contentions, it is appropriate and also profitable to have a birds-eye view of the relevant provisions.

> ***Section 9(1):*** *The following income shall be deemed to accrue or arise in India:-*
>
> ....
>
> *(vii): Income by way of fees for technical services payable by –*
>
> *(a) the Government; or*
>
> *(b) ...*

(c) a person who is a non-resident, where the fees are payable in respect of services utilised in a business or profession carried on by such persons in India or for the purposes of making or earning any income from any source in India.

Section 42: Special provision for deductions in the case of business for prospecting, etc., for mineral oil.

[(1)] For the purpose of computing the profits or gains of any business consisting of the prospecting for or extraction or production of mineral oils in relation to which the Central Government has entered into an agreement with any person for the association or participation [of the Central Government or any person authorised by it in such business] (which agreement has been laid on the Table of each House of Parliament), there shall be made in lieu of, or in addition to, the allowances admissible under this Act, such allowances as are specified in the agreement in relation—

(a) to expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commercial production by the assessee;

(b) after the beginning of commercial production, to expenditure incurred by the assessee, whether before or after such commercial production, in respect of drilling or exploration activities or services or in respect of physical assets used in that connection, except assets on which allowance for depreciation is admissible under section 32:

[Provided that in relation to any agreement entered into after the 31st day of March, 1981, this clause shall have effect subject to the modification that the words and figures

"except assets on which allowance for depreciation is admissible under section 32" had been omitted; and]

(c) to the depletion of mineral oil in the mining area in respect of the assessment year relevant to the previous year in which commercial production is begun and for such succeeding year or years as may be specified in the agreement;

and such allowances shall be computed and made in the manner specified in the agreement, the other provisions of this Act being deemed for this purpose to have been modified to the extent necessary to give effect to the terms of the agreement.

(2) Where the business of the assessee consisting of the prospecting for or extraction or production of petroleum and natural gas is transferred wholly or partly or any interest in such business is transferred in accordance with the agreement referred to in sub-section (1), subject to the provisions of the said agreement and where the proceeds of the transfer (so far as they consist of capital sums)—

(a) are less than the expenditure incurred remaining unallowed, a deduction equal to such expenditure remaining unallowed, as reduced by the proceeds of transfer, shall be allowed in respect of the previous year in which such business or interest, as the case may be, is transferred;

(b) exceed the amount of the expenditure incurred remaining unallowed, so much of the excess as does not exceed the difference between the expenditure incurred in connection with the business or to obtain interest therein and the amount of such expenditure remaining unallowed, shall be chargeable to income-tax as profits and gains of the business in the

previous year in which the business or interest therein, whether wholly or partly, had been transferred:

Provided *that in a case where the provisions of this clause do not apply, the deduction to be allowed for expenditure incurred remaining unallowed shall be arrived at by subtracting the proceeds of transfer (so far as they consist of capital sums) from the expenditure remaining unallowed.*

Explanation.—Where the business or interest in such business is transferred in a previous year in which such business carried on by the assessee is no longer in existence, the provisions of this clause shall apply as if the business is in existence in that previous year;

(c) are not less than the amount of the expenditure incurred remaining unallowed, no deduction for such expenditure shall be allowed in respect of the previous year in which the business or interest in such business is transferred or in respect of any subsequent year or years:

Provided that where in a scheme of amalgamation or demerger, the amalgamating or the demerged company sells or otherwise transfers the business to the amalgamated or the resulting company (being an Indian company), the provisions of this sub-section—

(i) shall not apply in the case of the amalgamating or the demerged company; and

(ii) shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the latter had not transferred the business or interest in the business.

Explanation.—For the purposes of this section, "mineral oil" includes petroleum and natural gas.

Section 44BB. Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils.—

(1) Notwithstanding anything to the contrary contained in sections 28 to 41 and sections 43 and 43A, in the case of an assessee, [being a non-resident,] engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils, a sum equal to ten per cent of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession":

Provided that this sub-section shall not apply in a case where the provisions of section 42 or section 44D or 5 [section 44DA or] section 115A or section 293A apply for the purposes of computing profits or gains or any other income referred to in those sections.

(2) The amounts referred to in sub-section (1) shall be the following, namely:—

(a) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India; and

(b) the amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.

(3) Notwithstanding anything contained in sub-section (1), an assessee may claim lower profits and gains than the profits and gains specified in that sub-section, if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB, and thereupon the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee under sub-section (3) of section 143 and determine the sum payable by, or refundable to, the assessee.

Explanation.—For the purposes of this section,—

(i) "plant" includes ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the purposes of the said business;

(ii) "mineral oil" includes petroleum and natural gas.

***Section 90.** Agreement with foreign countries or specified territories.—*

(1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India,—

(a) for the granting of relief in respect of—

(i) income on which have been paid both income-tax under this Act and income-tax in that country or specified territory, as the case may be, or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, or

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(2A) Notwithstanding anything contained in sub-section (2), the provisions of Chapter X A of the Act shall apply to the assessee even if such provisions are not beneficial to him.

(3) Any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

(4) An assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless 2 [a certificate of his being a resident] in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory.

(5) The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed.

Section 195. Other sums.—

(1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, [any interest (not being interest referred to in section 194LB or section 194LC)] [or section 194LD] or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries" shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft

or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:

Provided that in the case of interest payable by the Government or a public sector bank within the meaning of clause (23D) of section 10 or a public financial institution within the meaning of that clause, deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode:

Explanation 1.—For the purposes of this section, where any interest or other sum as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

Explanation 2.—For the removal of doubts, it is hereby clarified that the obligation to comply with sub-section (1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has—

(i) a residence or place of business or business connection in India; or

(ii) any other presence in any manner whatsoever in India.

(2) Where the person responsible for paying any such sum chargeable under this Act (other than salary) to a non-resident considers that the whole of such sum would not be

income chargeable in the case of the recipient, he may make an application to the [Assessing Officer] to determine, [by general or special order], the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

(3) Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the [Assessing Officer] for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

(4) A certificate granted under sub-section (3) shall remain in force till the expiry of the period specified therein or, if it is cancelled by the [Assessing Officer] before the expiry of such period, till such cancellation.

(5) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (3) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

(6) The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.

(7) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Board may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.

Section 201. Consequences of failure to deduct or pay.

(1) Where any person, including the principal officer of a company,—

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (1A) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:

Provided [further] that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the statement in accordance with the provisions of subsection (3) of section 200.

Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.

(2) Where the tax has not been paid as aforesaid after it is deducted, [the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A) shall be a charge] upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.

(4) The provisions of sub-clause (ii) of sub-section (3) of section 153 and of Explanation 1 to section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).

Explanation.—For the purposes of this section, the expression "accountant" shall have the meaning assigned to it in the Explanation to sub-section (2) of section 288.

Appendix C of the Production Sharing Contract (PSC)

Accounting Procedure

Article 1.8: Arms Length Transactions:

Unless otherwise specifically provided for in the Contract, all transactions giving rise to revenues, costs or expenditures which will be credited or charged to the accounts prepared, maintained or submitted hereunder shall be conducted at arms length or on such a basis as will assure that all such revenues, costs or expenditures will not be lower or higher, as the case may be, than would result from a transaction conducted at arms length on a competitive basis with third parties.

Article 3.1.4: Charges for services:

(i) Third Party

The actual costs of contract services, services of professional consultants, utilities and other services necessary for the conduct of Petroleum Operations under the Contract performed by third parties other than an Affiliate of the Contractor, provided that the transactions resulting in such costs are undertaken pursuant to Section 1.8 of this Accounting Procedure.

(ii) Affiliates of Contractor

(a) Professional and Administrative Services and Expenses:

Cost Of professional and administrative services provided by any Affiliate of the Contractor for the direct benefit of Petroleum Operations, including, but not limited to, services provided by the production, exploration, legal, financial, insurance, accounting and computer services divisions other than those covered by Section 3.1.4 (ii) (b) which Operator may use in lieu of having its own employees. Charges shall be equal to the actual cost of providing their services, shall not include any element of profit and shall not be any higher than the most favourable prices charged by the Affiliate to third parties for comparable services under similar terms and conditions elsewhere and will be fair and reasonable in the light of prevailing international oil industry practice and experience.

b) Scientific or Technical Personnel:

Cost of scientific or technical personnel services provided by any Affiliate of Contractor for the direct benefit of Petroleum Operations, which cost shall be charged on a cost of service basis. Charges therefor shall not exceed charges for comparable services currently provided by outside technical service organizations of comparable qualifications. Unless the work to be done by such personnel is covered by an Approved Budget and Work Programme, Operator shall not authorize work by such personnel without approval of the Management Committee.

C) Equipment, Facilities and Property of Affiliates:

Equipment, Facilities and Property owned and furnished by the Contractor's and furnished by the Contractor's Affiliates, at rates commensurate with the cost of ownership and operation provided, however, that such rates shall not exceed those currently prevailing for the supply of like equipment, facilities and property on comparable terms in the are where the Petroleum Operations are being conducted. The equipment and facilities referred to herein shall exclude major investment items such as (but not limited to) drilling rigs, producing platforms, oil treating facilities, oil and gas loading and transportation systems, storage and terminal facilities and other major facilities, rates for which shall be subject to separate agreement with the Management Committee."

25. Insofar as those assessees involved in business for prospecting etc., of mineral oil, special provisions such as Sections 42, 44BB and 195 of the Income Tax Act deals about deductions and computations. That apart, the terms of the agreement in Production Sharing Contract (PSC), which has received the approval of the Parliament, also play a role when the issue of payment of tax on income to non-resident arises.

26. The High Court of Bombay, in ***Director of Income-Tax (International Taxation) vs. Krupp Udhe GMBHE*** case, had an occasion to

deal with similar plea of the assessee in respect of reimbursement of air tickets to the technicians. Following the decision of Calcutta High Court, the Division Bench of Bombay High Court held as below:-

> *6. The question as to whether a reimbursement for expenses would form part of the taxable income is not res integra in so far as this court is concerned. In CIT v. Siemens Aktiongesellschaft(2009) 310 ITR 320 (Bom), a Division Bench of this court held that it was in agreement with the view taken by the Calcutta High Court in CIT v. Dunlop Rubber Co. Ltd. (1983) 142 ITR 493 (Cal) and by the Delhi High Court in CIT v. Industrial Engineering Projects (P.) Ltd. (1993) 202 ITR 1014 (Delhi). The observations of this court in Siemens (2009) 310 ITR 320 (Bom) are as follows (page 340):*
>
> > *"That leaves us with the last contention as to whether the amounts by way of reimbursement are liable to tax. To answer that issue, we may gainfully refer to the judgment of a Division Bench of the Delhi High Court in CIT v. Industrial Engineering Projects (P.) Ltd. (1993) 202 ITR 1014 (Delhi). The learned Division Bench of the Delhi High Court was pleased to hold that reimbursement of expenses can, under no circumstances, be regarded as a revenue receipt and in the present case the Tribunal had found that the assessee received no sums in excess of expenses incurred. A similar issue had also come up for consideration before the Division Bench of the Calcutta High Court in CIT v. Dunlop Rubber Co. Ltd. (1983) 142 ITR 493 (Cal). The learned Division Bench was answering the following question:*
> >
> > *'Whether, on the facts and in the circumstances of the case, the amounts received by the assessee (English company) from M/s. Dunlop Rubber Co. (India) Ltd.*

(Indian company) as per the agreement dated January 29, 1957, constituted income assessable to tax?'

On considering the issue the learned Bench noted that the Tribunal was of the view that what was recouped by the English company was part of the expenses incurred by it. The learned court upheld the said finding. The learned Bench was pleased to hold that sharing of expenses of the research utilised by the subsidiaries as well as the head office organisation would not be income which would be assessable to tax. A similar view was taken in CIT v. Stewarts and Lloyds of India Ltd. (1987) 165 ITR 416 (Cal)."

27. In *GE India Technology Cen.(P) Ltd* case *(cited supra)*, the Hon'ble Supreme Court had elaborately discussed the scope of Section 195 and when the assessee is responsible to deduct tax at source while making payments to a non-resident Company. The relevant portion of the judgment reads as below:-

5. At the outset, we quote hereinbelow the relevant provisions of Section 195, as it stood at the relevant time.

"195. (1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest on securities) or any other sum chargeable under the provisions of this Act (not being income chargeable under the head 'Salaries') shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft

or by any other mode, whichever is earlier, deduct income tax thereon at the rates in force:

(2) Where the person responsible for paying any such sum chargeable under this Act, other than interest on securities and salary to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the assessing officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable:

(3) Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income tax has to be deducted under sub-section (1) may make an application in the prescribed form to the assessing officer for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).”

……

7.... While deciding the scope of Section 195(2) it is important to note that the tax which is required to be deducted at source is deductible only out of the chargeable sum. This is the underlying principle of Section 195. Hence, apart from Section 9(1), Sections 4, 5, 9, 90, 91 as well as the provisions of DTAA are also relevant, while applying tax deduction at source

provisions. Reference to ITO(TDS) under Section 195(2) or Section 195(3) either by the non-resident or by the resident payer is to avoid any future hassles for both the resident as well as the non-resident. In our view, Sections 195(2) and 195(3) are safeguards. The said provisions are of practical importance. This reasoning of ours is based on the decision of this Court in Transmission Corpn. [(1999) 7 SCC 266 : (1999) 239 ITR 587] in which this Court has observed that the provision of Section 195(2) is a safeguard. From this it follows that where a person responsible for deduction is fairly certain then he can make his own determination as to whether the tax was deductible at source and, if so, what should be the amount thereof.

28. In *Director of Income-Tax, International Taxation, Delhi-II vs. Schlumberger Asia Services Ltd*, the judgment of Uttarakhand High Court, is in respect of reimbursement of customs duty paid for the machinery imported for the purpose of extraction of mineral oil. However, the Court declined to accept the plea of the Revenue, when the assessee was levied tax under Section 44BB. The Court observed as below:-

7. Learned counsel for the respondent submitted that for import of the machinery or equipment, liability to pay the customs duty was on the Oil and Natural Gas Corporation (for short "the ONGC"), who has hired the services of the assessee in contract. It is further submitted that there cannot be element of profit in reimbursement of the customs duty, paid by the

assessee. As such, it is contended on behalf of the respondent/assessee that the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal, has rightly held that the said amount, received by the assessee is to be excluded in computing profits under section 44BB of the Act.

8. *Having considered the submissions of learned counsel for the parties, we are of the view that reimbursement towards the customs duty, paid by the assessee, being statutory in nature, cannot form part of amount for the purposes of deemed profits unlike the other amounts received towards reimbursement. Therefore, we do not find any sufficient reason to interfere with the impugned orders, passed by the Income-tax Appellate Tribunal, which has affirmed the view taken by the Commissioner of Income-tax (Appeals). The question of law stands answered accordingly.*

9. *For the reasons, as discussed above, the appeal is dismissed.*

29. In *Commissioner of Income-Tax vs. Enron Expat Services Inc. (cited supra)*, the issue regarding the taxability of amounts paid for the services provided on a cost-to-cost basis under a Production Sharing Contract came up for consideration before the High Court of Uttarakhand, wherein the Hon'ble Judges held in favour of the assessee, observing that:

"....in terms of Article 3.1.4 of Appendix C of the Production Sharing Contract the assessee cannot

charge a profit from the joint venture as it is an affiliate of EOGIL. The production sharing contract has been passed by both the Houses of Parliament as required under section 42(1) of the Act. The assessees have clearly substantiated the fact that there is no element of profit, therefore, in terms of article 7 of the Double Taxation Avoidance Agreement between India and the USA, the assessees cannot be taxed."

30. In *Commissioner of Income-Tax, Dehradun vs. Enron Oil & Gas India Ltd.,* (cited supra), while considering the issue of reimbursements of expenditure under the Production Sharing Contract in the business for prospecting/exploration of mineral oil, the Hon'ble Apex Court had said:-

16. Section 42 of the 1961 Act was enacted to ensure that where the structure of PSC was at variance with the accounting principles generally used for ascertaining taxable income, the provisions of PSC would prevail. Section 42 provides for deduction on expenditure incurred on prospecting for or extraction or production of mineral oil whereas Section 44-BB contains special provision for computing profits and gains in connection with the business of exploration or extraction or production of mineral oils. The headnote itself indicates that Section 42 is a special provision for deduction on expenditure incurred on prospecting, extraction or production of mineral oils.

17. PSC is a contract in which the Central Government is not only a party, it is a partner in the process. Such contracts are required to be placed before each House of Parliament under Section 42.

18. Analysing Section 42(1), it becomes clear that the said section is a special provision for deductions in the case of business of prospecting, extraction or production of mineral oils. As stated above, Section 42(1) inter alia provides for deduction of certain expenses.

19. Broadly speaking, Section 42(1) provides for admissibility in respect of three types of allowances provided they are specified in PSC. They relate to expenditure incurred on account of abortive exploration, expenditure incurred before or after the commencement of commercial production in respect of drilling or exploration activities and expenses incurred in relation to depletion of mineral oil in the mining area. If one reads Section 42(1) carefully it becomes clear that the above three allowances are admissible only if they are so specified in PSC. For example, in PSC in question expenses incurred on account of depletion of mineral oil is not provided for. Therefore, to that extent, the respondent would not be entitled to claim deduction under Section 42(1)(c). Under Section 42(1) it is made clear that for the purpose of computing the profits or gains of any business consisting of prospecting, extraction or production of mineral oil, an assessee would be entitled to claim deduction in respect of the abovementioned three items of expenditure in lieu of or in addition to the allowances admissible under the 1961 Act. Further, such allowances shall be computed and made in the manner specified in the agreement. In short, an assessee is entitled to

allowances which are mentioned in PSC. According to the Department, translation losses claimed by EOGIL are not specified in PSC, hence they cannot be claimed as deduction under Section 42(1).

31. From the provisions of law and the above judgments which has interpreted the relevant provisions of law in respect of reimbursements to non-resident company, it is amply clear that if the terms of Production Sharing Contract (PSC) restricts reimbursement of expenditure on cost-to-cost basis, the application of Section 44 BB of Income Tax Act is not called for. Contrarily, if the assessee makes a consolidated claim of expenses under the head 'reimbursement' without break- up details, the assessee is not entitled for relief, without determination by the Commissioner under Section 195(2). The 'arm's length' principle laid down in Article 1.8 of PSC is not a Rule of Presumption. The assessee, in its profit and gain statement as well as in the return of income has to provide details about the nature of expenditure which can be taken as reimbursement. In the appeal before the High Court under Section 260A of the Act, the assessee for the first time submits that the expenses incurred by M/s.Cairn Energy Asia Limited (CEAL) at the instance of the assessee-Cairn Energy India Limited (CEIL), related to Geological & Geophysical services, seismic processing, petroleum engineering, information technology and

communication services etc. Hence, Section 44BB of Income Tax Act is not applicable and as a consequence it is not a deemed income of the non-resident company so as to deduct tax at source under Section 195 of the Act. Unfortunately, the assessee had failed to satisfy the Assessing Officer by placing expenditures on those individual heads and got determination of the taxability, which is mandatory under Section 195 (2).

32. Precisely, in *Transmission Corporation of A.P. Ltd v. Commissioner of Income Tax*, the Hon'ble Supreme Court has held that:-

> *"10. The scheme of sub-sections (1), (2) and (3) of Section 195 and Section 197 leaves no doubt that the expression "any other sum chargeable under the provisions of this Act" would mean "sum" on which income tax is leviable. In other words, the said sum is chargeable to tax and could be assessed to tax under the Act. The consideration would be — whether payment of sum to a non-resident is chargeable to tax under the provisions of the Act or not? That sum may be income or income hidden or otherwise embedded therein. If so, tax is required to be deducted on the said sum. What would be the income is to be computed on the basis of various provisions of the Act including provisions for computation of the business income, if the payment is trade receipt..."*

33. In the light of the above discussion, we are of the considered view that the ITAT, on facts had considered the claim of the assessee and found unsustainable, since the expenses alleged to have made as reimbursement not substantiated with particulars or break-up. A consolidated amount claimed as deduction under the head 'Reimbursement of Expenses' to the non-resident parent company under the PSC is impermissible. The alternate plea to take umbrage under DTAA is a misconceived claim made to defeat the legal right of the Revenue. During the relevant assessment years under consideration, the benefit of double taxation relief was restricted to Foreign Governments and not to consortium of the private parties having contracted with Government of India and ONGC.

34. As a result, the substantial questions of law are answered against the appellant/assessee. Consequently, the common order of the Income Tax Appellate Tribunal is upheld. The Tax Appeals Nos.733 to 735 of 2010 stand dismissed. There shall be no order as to costs.

(**Dr. G.JAYACHANDRAN, J.**) & (**R. SAKTHIVEL, J.**)
02-06-2026

Index :Yes/No.
Neutral Citation :Yes/No.

To,

1. The Income Tax Appellate Tribunal, Chennai.
2. The Assistant Commissioner of Income Tax,
TDS-II,
Chennai 600 034.

Dr. G.JAYACHANDRAN, J.
&
R. SAKTHIVEL, J.
bsm

Pre-Delivery common judgment made in
T.C.A.Nos.733 to 735 of 2010

02-06-2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	**27.02.2026**
Order pronounced on	**01.06.2026**

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

WP No. 6176 of 2022

M/s.Zoho Corporation Private Limited
Represented by its Authorized Signatory
Mr.Jaianand. N, Estancia IT Park, Plot No.140,
151, GST Road, Vallancheri, Chennai,
Chengalpattu District- 603 202, India.

..Petitioner(s)

Vs

The Deputy Commissioner of Income Tax
Circle 2 (2), International Taxation Room No.410,
4th Floor, Tower- I, BSNL Building, No.16,
Greams Road, Chennai- 600 006.

..Respondent(s)

PRAYER: This writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the Respondent in relation to the Impugned Order dated 12.10.2021 passed by the Respondent and quash the same as invalid, direct the Respondent to grant a refund of the Equalisation Levy paid by the Petitioner in respect of inter-company transactions of reimbursements for the impugned period immediately.

For Petitioner(s): Mr.N.V.Balaji

For Respondent(s): Mr.B.Ramana Kumar, Senior Panel Counsel

ORDER

Background

The petitioner applied for refund of equalization levy for financial years 2016-17 and 2017-18. Said request for refund was rejected under order dated 12.10.2021, which is the subject of challenge in this writ petition.

2. The petitioner is a software product company headquartered in India. The software products of the petitioner are sold online. In order to carry out activities outside India, the petitioner has formed overseas subsidiary companies in several jurisdictions, including the United States of America (the USA). Such subsidiaries function as the primary re-sellers/distributors of the petitioner's products in the respective geography. Out of the overseas geographies catered to by the petitioner, the USA accounts for about 60% of the turnover.

3. A subsidiary named Zoho Corporation, USA (Zoho USA) functions as the re-seller of the petitioner's products within the USA. Within said geographical area, said subsidiary markets and resells Zoho Products to end-users in consideration for the reseller margin. The main channel to market Zoho products through the online mode is by use of the Google AdWords Program, which is an online sales platform developed by Google. The Google AdWords Program was availed of by Zoho USA under an agreement entered into by it

with Google. Google invoiced Zoho USA towards services provided and payments were made by Zoho USA to Google. The petitioner, thereafter, reimbursed Zoho USA towards marketing cost reimbursements of INR 332 crore in financial year 2016-17 and INR 550 crore in financial year 2017-18.

4. An equalization levy was introduced under Chapter VIII of the Finance Act, 2016, in relation to the provision of online advertising services by a non-resident to a resident of India or the permanent establishment (PE) of a non-resident carrying on business in India. Said equalization levy was made applicable with effect from 01.07.2016. The petitioner deposited/paid a sum of Rs.20.17 crores towards equalization levy in financial year 2016-17 in respect of the reimbursement of Rs.332.84 crore to Zoho USA. Out of this sum, on the ground that only Rs.5 lakhs was payable, the petitioner had applied for refund of a sum of Rs.20.12 crore. As regards financial year 2017-18, the petitioner did not initially make payment towards equalization levy on the ground that such levy is not attracted in respect of payment made as reimbursement to Zoho USA for online advertising services availed of by its subsidiary.

5. In the above circumstances, the revenue authorities conducted a TDS survey under Section 133A of the Income-Tax Act, 1961 (the I-T Act) at the business premises of the petitioner on 19.03.2019. During the survey, the statements of several employees of the petitioner were recorded and copies of

books, documents and records were taken by the respondents. After such survey, the petitioner deposited a sum of Rs.36.94 crore towards equalization levy under protest for financial year 2017-18. The claim for refund was made thereafter. Because such request was rejected, the present writ petition was filed.

Counsel and their contentions

6. The contentions of Mr.N.V.Balaji, learned counsel for the petitioner, may be summarised as under:

(i) Equalization levy cannot be imposed because the advertising service was provided by Google USA to Zoho USA and not to Zoho India.

(ii) The petitioner did not set up Zoho USA after equalization levy was introduced with effect from 01.07.2016. Said subsidiary was incorporated much earlier and the petitioner made similar reimbursements to the subsidiary much before equalization levy was introduced. Google AdWords agreement dated 23.07.2010 with Zoho USA; Google invoice dated 31.03.2014 to Zoho USA; Payment Advice dated 10.04.2014 from Zoho USA to Google; Debit Note dated 31.03.2014 from Zoho USA to Zoho India and reimbursement by debit from the petitioner's account on 29.04.2014 were relied on in this connection. Similar documents and evidence of reimbursement on 16.10.2015 and 11.02.2016 were also relied upon to demonstrate that such reimbursements were being made by the petitioner to Zoho USA prior to the entry into force of

equalization levy. Effectively, the contention was that the incorporation of Zoho USA, the availing of advertising services by Zoho USA from Google USA, payments made by Zoho USA in respect thereof and the reimbursement of such costs by Zoho India were not devices to circumvent, evade or avoid equalisation levy.

(iii) The Report of the Committee on Taxation of E-Commerce titled "Proposal for Equalisation Levy on Specified Transactions", which was submitted in February 2016, suggested and recommended, at paragraph 135 thereof, that reimbursement of expenses of the nature mentioned in the earlier entries in paragraph 135 should be made subject to equalization levy. Thereafter, specified services were defined in paragraph 193 of the report as including "reimbursement of expenses of the nature that are included in any of the above". In spite of said recommendation by the Committee, the Finance Act did not include reimbursement within the scope of specified service, thereby indicating the legislative intent to not tax reimbursement by a resident.

(iv) Statements elicited during the survey operation have no probative value. In support of this proposition, the judgment of the *Kerala High Court in Paul Mathews & Sons v. Commissioner of Income-Tax, 263 ITR 101 (Kerala),* particularly paragraph 11 thereof was relied on. The judgment of the Hon'ble Supreme Court in *Commissioner of Income-tax Salem v. S.Khader Khan Son, [2012] 25 Taxmann.com 413 (SC),* dismissing the civil appeal and the judgment of the Division Bench of this Court in *Commissioner of Income-Tax v. S.*

Khadar Khan Son, [2008] 300 ITR 157 (Mad.), were also relied on. The Division Bench of this Court compared and contrasted the power exercisable under Section 132(4) of the I-T Act with the power exercisable under Section 133A thereof. This Court specifically held that the authorised officer is not empowered to take a sworn statement under Section 133A and, therefore, statements in course of survey do not have any evidentiary value.

(v) The corporate veil cannot be lifted unless an entity is incorporated with the intention of committing a fraud or for purposes of tax evasion. In the case at hand, Zoho USA was incorporated much prior to the introduction of equalization levy. Therefore, the corporate veil cannot be pierced or lifted.

7. The contentions of Mr.Ramana Kumar, in response, may be summarised as under:

(i) Services were provided under the Google AdWords Program by Google USA to Zoho India. Zoho USA was merely the ostensible recipient of services, whereas the real recipient of services was Zoho India.

(ii) The survey unearthed strong evidence of the complete involvement of employees of Zoho India in the selection of AdWords, in the preparation of invoices for and on behalf of Zoho USA and in the operation of the bank account of Zoho USA.

(iii) Therefore, the reimbursement to Zoho USA by the petitioner was not *bona fide*. It was a subterfuge to evade payment of equalization levy. A

substance over form approach was endorsed by the Supreme Court in *Hyatt International Southwest Asia Ltd. v. Additional Director of Income Tax, Civil Appeal No. 9766 of 2025, Judgment dated 24.07.2025 (Hyatt International)* and *The Authority for Advance Rulings v. Tiger Global International III Holdings, Civil Appeal No.262 of 2026, Judgment dated 15.01.2026 (Tiger Global).*

(iv) The corporate veil may be lifted if there is tax evasion or circumvention. The judgment of the Hon'ble Supreme Court in *Juggilal Kamlapat v. Commissioner of Income-tax, [1969] 73 ITR 702 (SC)*, the judgment of this Court in *G.V.Films v. S.Priya Darshan, [2007] 163 Taxmann 74 (Madras)* and the judgment of the House of Lords in *Fire Stone Tyre and Rubber v. Lewellin, [1958 33 ITR 741 (HL),* were relied on in support of this proposition.

(v) Each assessment year is a distinct unit for assessment. In support of this proposition, the judgments of the Hon'ble Supreme Court in *Radhasoami Satsang v. Commisioner of Income-tax, [1992] 60 Taxmann 248 (SC)* and *C.K.Gangadharan v. Commissioner of Income-tax, [2008] 172 Taxman 87 (SC)*, were relied on.

8. By way of a brief rejoinder, Mr.Balaji referred to the judgments of the Hon'ble Supreme Court regarding lifting or piercing of the corporate veil in *Vodafone International Holdings BV v. Union of India, (2012) 6 SCC OnLine SC 77* (*Vodafone International)* and to the judgment in *Balwant Rai Saluja and*

another v. Air India Limited, [2014] SCC OnLine SC 638 (*Balwant Rai Saluja*). He also relied on the judgments of the Hon'ble Supreme Court in *AV Fernandez v. The State of Kerala, 1957 (4) TMI 46, Commissioner of Sales Tax (AV Fernandez), U.P. v. Modi Sugar Mills Ltd, 1960 (10) TMI 65 and Union of India v. M/s.Playworld Electronics India P Ltd (SC), (1989) 3 SCC 181,* for the proposition that tax statutes should be strictly construed.

Discussion, analysis and conclusions

9. Equalization levy was introduced in the Finance Act, 2016. Section 165, which is the charging section, reads as under:

> *"**165.** (1) On and from the date of commencement of this Chapter, **there shall be charged an equalisation levy at the rate of six per cent of the amount of consideration for any specified service received or receivable by a person, being a non-resident from-***
>
> *(i) **a person resident in India and carrying on business or profession; or***
>
> ***(ii) a non-resident having a permanent establishment in India**.*
>
> *(2) The equalisation levy under sub-section (1) shall not be charged, where-*
>
> *(a) the non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment,*

(b) the aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person resident in India and carrying on business or profession, or from a non-resident having a permanent establishment in India, does not exceed one lakh rupees, or

(c) where the payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.

[(3) The provisions of this section shall not apply to any consideration for any specified service received or receivable by a person on or after the 1st day of April, 2025.]"

10. From the text of Section 165, the following conclusions emerge:

(i) Equalization levy is charged on the consideration received or receivable by a non-resident from either a person resident in India and carrying on business or profession or a non-resident having a permanent establishment in India.

(ii) Such consideration should have been received for a specified service. This, in turn, leads to the definition of specified service. "Specified service" is defined as under in Explanation (i) to Section 164. In relevant part, the provision reads as under:

"Explanation.- For the purposes of this clause, "online sale of goods" and "online provision of services" shall include one or more of the following online activities, namely:-

"(i) "specified service" means online advertisement, any

provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf."

11. In this case, Google USA provided online advertising services to Zoho USA. Undoubtedly, the nature of service qualifies as a specified service as per the definition. Such service has, however, been provided by a non-resident (Google USA) to a non-resident (Zoho USA). Hence, on a textual reading of Sections 165 and 164, equalization levy cannot be imposed on the petitioner unless reimbursement also falls within the scope of specified service. I turn to this aspect next.

12. Therefore, the next question that falls for consideration is whether reimbursing Zoho USA for expenses incurred in relation to online advertising services provided by Google USA would attract equalization levy. The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India formed the Committee on Taxation of E-Commerce (the E-Commerce Taxation Committee). Said Committee submitted a report in February 2016 titled "Proposal for Equalization Levy on Specified Transactions". At paragraphs 134 and 135, the E-Commerce Taxation Committee set out the categories of payments suggested for imposition of equalization levy. Said paragraphs are set out below:

"134. After detailed analysis, the Committee suggests that the following categories of payments may be subjected to "Equalization Levy' at this stage:

135. Any sum paid or payable or credited as a consideration for any of the following:

(i) online advertising or any services, rights or use of software for online advertising, including advertising on radio & television;

(ii) digital advertising space;

(iii) designing, creating, hosting or maintenance of website;

(iv) digital space for website, advertising, e-mails, online computing, blogs, online content, online data or any other online facility;

(v) any provision, facility or service for uploading, storing or distribution of digital content;

(vi) online collection or processing of data related to online users in India;

(vii) any facility or service for online sale of goods or services or collecting online payments;

(viii) development or maintenance of participative online networks;

(ix) use or right to use or download online music, online movies, online games, online books or online software, without a right to make and distribute any copies thereof;

(x) online news, online search, online maps or global positioning system applications;

(xi) online software applications accessed or downloaded through internet or telecommunication networks;

(xii) online software computing facility of any kind for any

purpose; and

(xiii) reimbursement of expenses of a nature that are included in any of the above;

Explanation - For the purposes of above, 'online' means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network."

(emphasis added)

13. At paragraph 137, the E-Commerce Taxation Committee expressly recognized the possibility of payments being made by a third party outside India, which is subsequently reimbursed by an Indian entity. In relevant part, the Committee recorded as under in this regard:

"***137. ….****Similarly, to prevent the possibility of avoiding the Equalization Levy by having the payment made by a third party outside India, which is subsequently reimbursed by the actual user, with a claim that no Equalization Levy is payable on reimbursements, it may need to be clarified that the Equalization Levy will be also payable on any payments made by a payer in India for reimbursements of expenses incurred by a third party outside India in respect of services covered under this levy. Lastly, it would need to be clarified that the Equalization Levy will become applicable once a payment is credited or paid-whoever is earlier, to the beneficial owner in the books of accounts, irrespective of when and how the actual payment is made."*

14. Eventually, at paragraph 193, the recommendations of the E-Commerce Taxation Committee included the following definitions of specified services:

"193. Specified services may be defined as following:

(i) ***online advertising or any services, rights or use of software for online advertising, including advertising on radio & television,***

(ii) digital advertising space

(iii) designing, creating, hosting or maintenance of website

(iv) digital space for website, advertising, e-mails, online computing, blogs, online content, online data or any other online facility

(v) any provision, facility or service for uploading, storing or distribution of digital content

(vi) online collection or processing of data related to online users in India

(vii) any facility or service for online sale of goods or services or collecting online payments

(viii) development or maintenance of participative online networks

(ix) use or right to use or download online music, online movies, online games, online books or online software, without a right to make and distribute any copies thereof

(x) online news, online search, online mops or global positioning system applications

(xi) online software applications accessed or downloaded through internet or telecommunication networks

(xii) online software computing facility of any kind for any purpose

(xiii) reimbursement of expenses of a nature that are included in any of the above*".*

[emphasis added]

15. If the specific recommendations of the E-Commerce Taxation Committee had been accepted in respect of taxation of reimbursement of online advertising services, there is little doubt that equalisation levy could have been imposed on Zoho India for the reimbursement of the consideration paid by Zoho USA to Google USA. In spite of the above concerns and specific recommendations of the E-Commerce Taxation Committee, the Finance Act, 2016, did not include reimbursement of expenses of the nature mentioned in clauses (i) to (xii) of paragraph 135 of the Report within the scope of specified service. Hence, on the ground that the petitioner reimbursed Zoho USA for costs incurred in availing of advertising services from Google, USA, equalization levy cannot be imposed. The reliance by the revenue on *Hyatt International* and *Tiger Global* in support of a substance over form approach cannot be countenanced. Both the said judgments dealt with Double Taxation Avoidance Agreements and the General Anti-Avoidance Rules incorporated in that context, and cannot be applied out of context to this case.

16. On this aspect, it is instructive to recall the words of the Supreme Court in *AV Fernandez* enunciating the classical rule that "if, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax may be imposed by inference or analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter." Equally pertinent are the observations in *Murarilal Mahabir Prasad v. B R Vad*, (1975) 2 SCC 736, where the Supreme Court held as under:

> *"29. […] There is no equity about a tax in the sense that a provision by which a tax is imposed has to be construed strictly, regardless of the hardship that such a construction may cause either to the treasury or to the taxpayer. If the subject falls squarely within the letter of law he must be taxed, howsoever inequitable the consequences may appear to the judicial mind. If the Revenue seeking to tax cannot bring the subject within the letter of law, the subject is free no matter that such a construction may cause serious prejudice to the Revenue. In other words, though what is called equitable construction may be admissible in relation to other statutes or other provisions of a taxing statute, such a construction is not admissible in the interpretation of a charging or taxing provision of a taxing statute."*

17. Whether such equalization levy may nonetheless be imposed by resorting to piercing or lifting the corporate veil remains to be considered. *In Vodafone International,* the Hon'ble Supreme Court considered the

circumstances in which the corporate veil may be pierced. Paragraphs 72 and 79 of the judgment are set out below:

"72. The approach of both the corporate and tax laws, particularly in the matter of corporate taxation, generally is founded on the above mentioned separate entity principle i.e. treat a company as a separate person. The Income Tax Act, 1961, in the matter of corporate taxation, is founded on the principle of the independence of companies and other entities subject to income tax. Companies and other entities are viewed as economic entities with legal independence vis-à-vis their shareholders/participants. It is fairly well accepted that a subsidiary and its parent are totally distinct taxpayers. Consequently, the entities subject to income tax are taxed on profits derived by them on stand-alone basis, irrespective of their actual degree of economic independence and regardless of whether profits are reserved or distributed to the shareholders / participants. Furthermore, shareholders/participants that are subject to (personal or corporate) income tax are generally taxed on profits derived in consideration of their shareholding/participations, such as capital gains. Nowadays, it is fairly well settled that for tax treaty purposes a subsidiary and its parent are also totally separate and distinct taxpayers.

....

79. When it comes to taxation of a holding structure, at the threshold, the burden is on the Revenue to allege and establish abuse, in the sense of tax avoidance in the creation and/or use of such structure(s). In the application of a judicial anti-avoidance

rule, the Revenue may invoke the "substance over form" principle or "piercing the corporate veil" test only after it is able to establish on the basis of the facts and circumstances surrounding the transaction that the impugned transaction is a sham or tax avoidant. To give an example, if a structure is used for circular trading or round tripping or to pay bribes then such transactions, though having a legal form, should be discarded by applying the test of fiscal nullity. Similarly, in a case where the Revenue finds that in a holding structure an entity which has no commercial/business substance has been interposed only to avoid tax then in such cases applying the test of fiscal nullity it would be open to the Revenue to discard such interpositioning of that entity. However, this has to be done at the threshold."

18. Said doctrine was also considered in *Balwant Rai Saluja*, wherein it was held as under:

"70. The doctrine of "piercing the corporate veil" stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders with its own legal rights and obligations. It seeks to disregard the separate personality of the company and attribute the acts of the company to those who are allegedly in direct control of its operation. The starting point of this doctrine was discussed in the celebrated case of Salomon v. Salomon & Co. Ltd. Lord Halsbury LC, negating the applicability of this doctrine to the facts of the case, stated that: (AC pp. 30 & 31)

"[a company] must be treated like any other independent

person with its rights and liabilities [legally] appropriate to itself... whatever may have been the ideas or schemes of those who brought it into existence."

Most of the cases subsequent to Salomon case, attributed the doctrine of piercing the veil to the fact that the company was a "sham" or a "façade". However, there was yet to be any clarity on applicability of the said doctrine.

71. In recent times, the law has been crystallised around the six principles formulated by Munby, J. in Ben Hashem v. All Shayif, The six principles, as found at paras 159-64 of the case are as follows:

(i) Ownership and control of a company were not enough to justify piercing the corporate veil;

(ii) The court cannot pierce the corporate veil, even in the absence of third-party interests in the company, merely because it is thought to be necessary in the interests of justice;

(iii) The corporate veil can be pierced only if there is some impropriety;

(iv) The impropriety in question must be linked to the use of the company structure to avoid or conceal liability;

(v) To justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and

(vi) The company may be a "façade" even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the

relevant transactions. The court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done."

As can be seen from the principles set out at paragraph 71 of *Balwant Rai Saluja*, a precondition for piercing the corporate veil is impropriety, i.e the misuse of the company as a device or facade to conceal a wrongdoing.

19. In the case at hand, the documents on record evince that Zoho USA was in existence from at least July 2010 inasmuch as said entity entered into the Google advertising service agreement on July 23, 2010. The petitioner has placed on record invoices issued by Google from 2011 to 2016, evidence of payments made by Zoho USA and evidence of reimbursement by Zoho India to Zoho USA of such expenses in 2014, 2015 and 2016.

20. These documents clearly disclose that Google USA was providing services to Zoho USA much prior to the introduction of equalization levy. Upon providing such services, Google USA raised invoices on Zoho USA. Even in the period prior to the introduction of equalisation levy, after making payments to Google USA, Zoho USA requested for and received reimbursement from the petitioner / Zoho India. This practice was continued after the introduction of equalisation levy. This evidence clearly leads to the conclusion that Zoho USA was not set up for purposes of evading liability in relation to equalization levy.

Significantly, the above documents also establish that the petitioner was in the practice of reimbursing advertising expenses incurred by Zoho USA for the Google AdWords Program much prior to the introduction of equalization levy.

21. The rationale underlying the reimbursement by the petitioner of costs incurred by Zoho USA towards advertising services provided by Google USA is easy to discern. Zoho USA appears to be functioning as a re-seller of products developed by the petitioner in a particular geography. The US subsidiary markets such products in the geographical territory assigned to it and receives a sales margin as consideration/commission. Hence, all expenses incurred by it for marketing the products of the petitioner in the USA are reimbursed by the petitioner. In the facts and circumstances outlined above and corroborated by the documents on record, the methodology adopted by the petitioner cannot be construed as a device for purposes of evading equalization levy. Zoho USA cannot, consequently, be deemed as a facade for the commission of an impropriety. Consequently, the facts and circumstances do not justify piercing the corporate veil, as per principles formulated in this regard, and endorsed by the Hon'ble Supreme Court in *Vodafone International and Balwant Rai Saluja*.

22. The revenue relied on statements recorded in course of survey under Section 133A of the I-T Act. The Division Bench of this Court in *Khader Khan*

Son compared and contrasted the power under Section 132 (4) of the I-T Act with that under Section 133A. In relevant part, the following finding was entered:

> *"From the foregoing discussion, the following principles can be culled out:*
>
> *(1) An admission is an extremely important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of account do not correctly disclose the correct state of facts, vide decision of the apex court in Pulkngode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18;*
>
> *(ii) In contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand whatever statement is recorded under section 133A of the Income-tax Act is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under low, vide Paul Mathews and Sons CIT [2003] 263 ITR 101 (Ker);*
>
> *(iii) The expression "such other materials or Information as are available with the Assessing Officer" contained in section 158BB of the Income-tax Act, 1961, would include the materials gathered during the survey operation under section 133A, vide CIT v. G. K. Senniappan (2006) 284 ITR 220 (Mad);*

(iv) The material or information found in the course of survey proceeding could not be a basis for making any addition in the block assessment, vide decision of this court in T. C (A) No. 2620 of 2006 (between CIT v. S. Ajit Kumar (2008) 300 ITR 152 (Mad.)

(v) Finally, the word "may" used in section 133A(3)(iii) of the Act, viz., "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act, as already extracted above, makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by itself.

For all these reasons, particularly, when the Commissioner and the Tribunal followed the circular of the Central Board of Direct Taxes dated March 10, 2003, extracted above, for arriving at the conclusion that the materials collected and the statement, obtained under section 133A would not automatically bind upon the assessees we do not see any reason to interfere with the order of the Tribunal."

Given the position of law, statements recorded in course of survey cannot be relied on to fix liability on the petitioner. In the impugned order, the Deputy Commissioner of Income-Tax relied on statements recorded in course of survey.

23. After relying on the survey, in relevant part, the following findings were recorded in the impugned order at paragraphs 6 and 7 thereof:

" 6. The most important part is the process of making the actual

payment. After logging into the Zoho account on Google Adwords, one can go to the Billing and Payments section, wherein a month-wise invoice amount is uploaded by Google. This invoice is also accessed by the Finance Team of ZCPL in India. Shri Krishna Prasad of the Finance Department submitted that once this invoice amount was determined, the payment was from Zoho US's bank accounts. However, the Survey Team found that these Bank accounts opened in the name of Zoho US, were accessed only by Krishna Prasad and his team members and remitted the payments to Google....

....

From the above details gathered during the Survey, it is clear that in substance, ZCPL was making all the payments to Google for its Adwords, thereby qualifying these payments as applicable for Equalisation Levy. Hence, from the above, it can be seen that the payments made by ZCPL to Zoho US for making payments to Google is squarely applicable for chargeability to tax as Services covered by Equalization Levy. But, ZCPL reiterated its representations that these payments were only reimbursements and Equalisation Levy was not applicable, whereas it was proven that these payments were actually made from India by ZCPL employees who had access to Zoho US Bank accounts. And, that is exactly, why ZCPL had computed the specified services chargeable as Equalisation Levy and paid the Equalisation Levy including interest and filed its statement of specified services in Form I on 02.11.2017. The assessee's claim that the impugned transaction relating to Google was not paid directly by it to Google and merely a reimbursement to Zoho US, is entirely contrary to the facts mentioned aforesaid.

24. Apart from the legal position that statements recorded in a survey lack probative value as per judgments discussed earlier, it is noticeable that there is a factual finding that payments to Google USA were made from the bank accounts of Zoho USA, albeit operated by persons from Zoho India's office. This cannot be treated as payment by Zoho India and, as a corollary, would not qualify as payment made by a resident to a non-resident for a specified service as per Sections 164 and 165 of the Finance Act 2016. In other words, it supports the assertion of the petitioner that it was a reimbursement by Zoho India.

25. In the factual context of a reimbursement, under extant law, equalisation levy cannot be imposed unless the corporate veil of Zoho USA were to be pierced. The impugned order contains no discussion or finding thereon and, in any case, for reasons discussed earlier, the facts and circumstances outlined above do not justify piercing or lifting the veil. Even assuming that the survey evidence may be relied on, mere control and active involvement of the holding entity in the affairs of the subsidiary, in the absence of evidence of impropriety, are insufficient to justify piercing the corporate veil as per principles discussed above.

26. The conclusion that follows from the above discussion is that the impugned order cannot be sustained. In view of the finding that equalisation

levy cannot be imposed on the petitioner as per applicable law, the petitioner is entitled to refund of amounts deposited / paid as equalisation levy in the financial years 2016-17 and 2017-18. The petitioner sought refund of sums of Rs.20,17,02,840/- and Rs.36,93,98,921/- in respect of financial years 2016-17 and 2017-18, respectively. Notwithstanding the conclusion that equalisation levy is not payable in respect of reimbursement, the amounts claimed as refund by the petitioner should be verified. Hence, the writ petition is disposed of by setting aside the impugned order dated 12.10.2021 and directing reconsideration of the refund claim of the petitioner for financial years 2016-17 and 2017-18 in light of this order. After providing a reasonable opportunity to the petitioner, after verification, refund of the appropriate amount shall be made within three months from the date of receipt of a copy of this order. No costs.

01-06-2026

Neutral Citation: Yes/No
KAL

SENTHILKUMAR RAMAMOORTHY, J.

KAL

To

The Deputy commissioner of Income Tax
Circle 2 (2), International Taxation Room No.410,
4th floor, Tower- I, BSNL Building, No.16,
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Pre-delivery order made in

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