आयकर अपीलीय अधिकरण, मुंबई पीठें, मुंबई
INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCHES, MUMBAI

BENCH: I

BEFORE SMT. BEENA PILLAI, HON'BLE JUDICIAL MEMBER
AND SHRI ARUN KHODPIA, HON'BLE ACCOUNTANT MEMBER

ITA 3228/MUM/2023 (**निर्धारण वर्ष**/Assessment Year: **2020-21**)		
CORNERSTONE ONDEMAND INTERNATIONAL LIMITED 14 TH FLOOR, THE RUBY, 29 SENAPATI BAPAT MARG, DADAR WEST., -400028, MAHARASHTRA	**Vs.**	**ASSISTANT COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-2(1)(1)** ASSISTANT COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-2(1)(1), 17 TH FLOOR, AIR INDIA BUILDING, NARIMAN POINT. -400021, MAHARASHTRA
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**
PAN of Assessee**:**		**AAHCC3361N**
अपीलार्थी द्वारा/Appellant represented by:		**Shri Hiten Thakkar, AR**
प्रत्यर्थी द्वारा/Respondent represented by:		**Shri Sridhar G. Menon (SR DR)**

ITA 4558/MUM/2023 (**निर्धारण वर्ष**/Assessment Year: **2021-22**)		
CORNERSTONE ONDEMAND INTERNATIONAL LIMITED 14 TH FLOOR, THE RUBY, 29 SENAPATI BAPAT MARG, DADAR WEST. MUMBAI, -400028, MAHARASHTRA	**Vs.**	**ASSISTANT COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-2(1)(1)** ASSISTANT COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-2(1)(1), 17 TH FLOOR, AIR INDIA BUILDING, NARIMAN POINT. -400021, MAHARASHTRA
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**
PAN of Assessee**:**		**AAHCC3361N**

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अपीलार्थी द्वारा/Appellant represented by:	**Shri Hiten Thakkar, AR**
प्रत्यर्थी द्वारा/Respondent represented by:	**Shri Sridhar G. Menon (SR DR)**

ITA 2128/MUM/2025 (**निर्धारण वर्ष**/Assessment Year: **2022-23**)		
CORNERSTONE ONDEMAND INTERNATIONAL LIMITED 14TH FLOOR, THE RUBY 29, SENAPATI BAPAT MARG, DADAR (WEST), MUMBAI-400028, MAHARASHTRA	**Vs.**	**ASSISTANT COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) 2(1)(1)** 604, 6TH FLOOR, C-41 TO C-43 G BLOCK KAUTILYA BHAVAN, BANDRA KURLA COMPLEX BANDRA EAST MUMBAI-400051, MAHARASHTRA
अपीलार्थी Appellant		प्रत्यर्थी **Respondent**
PAN of Assessee**:**		**AAHCC3361N**
अपीलार्थी द्वारा/Appellant represented by:		**Shri Hiten Thakkar, AR**
प्रत्यर्थी द्वारा/Respondent represented by:		**Shri Sridhar G. Menon (SR DR)**

सुनवाई की तारीख / Date of conclusion of hearing:	**21-Jul-2026**
घोषणा की तारीख / Date of pronouncement:	**16.10.2026**

आदेश / ORDER

PER SMT. BEENA PILLAI, JUDICIAL MEMBER:

The present appeals are filed by the assessee against the final assessment orders passed by the Ld.AO u/s. 143(3) r.w.s. 144C(13) of the Act, for A.Ys. 2020-21, 2021-22 and 2022-23 vide orders dated 13/07/2023, 16/10/2023 and 14/01/2025 respectively.

Since the issues arising in all three appeals are common and the underlying facts being similar, the appeals were heard together and

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are being disposed of by way of common order. It is noted that the assessee has raised substantially identical grounds on merits for all the three assessment years.

2. For the sake of convenience, the facts and figures pertaining to A.Y. 2020-21 are referred to as under. For the sake of convenience, the grounds raised for A.Y. 2020-21 are reproduced hereunder:-

> *"Based on the facts and the circumstances of the case, Cornerstone Ondemand International Limited (hereinafter referred to as the 'Appellant') respectfully craves leave to prefer an appeal under Section 253 of the Income-tax Act, 1961 ('Act') against the order passed by the Deputy Commissioner of Income-tax (International Taxation) Circle 2(1)(1) ('Learned AO') dated 13 July 2023, received vide e-mail on 14 July 2023 ('Final Assessment Order') in pursuance of the directions issued by Dispute Resolution Panel ('Learned DRP'), Mumbai dated 27 June 2023 ('DRP Directions') on the following grounds which are independent and without prejudice to each other:*
> *On the facts and in the circumstances of the case and in law, the Learned AO and Learned DRP has-*
>
> *General ground*
>
> 1. *erred in passing the Final Assessment Order dated 13 July 2023 under Section 143(3) read with Section 144C(13) of the Act which is bad in law, considering, the same is passed beyond the time limit provided under Section 153 of the Act.*
> 2. *erred in not following the directions of Learned DRP and hence, the impugned Final Assessment Order dated 13 July 2023 passed under section 143(3) rws 144C(13) of the Act is bad in law.*
> 3. *erred in assessing the total income for AY 2020-21 at INR 2,27,20,560 instead of INR NIL as reported in the return of income filed by the Appellant.*
> 4. *erred in concluding the assessment proceeding which was invalid on account of non-issuance of a valid notice under section 143(2) of the Act by the Learned AO, being a pre-requisite to the completion of assessment proceedings.*
> 5. *based the assessment on findings, which are erroneous in law, contrary to facts and which are entirely based on conjectures and surmises and a failure to consider relevant materials.*
>
> *Permanent Establishment*
>
> 6. *erred in holding that the Appellant has a dependent agent Permanent Establishment ('PE') under Article 5(5) of India-UK Tax Treaty without appreciating that no on ground sales / marketing activity was undertaken by Cornerstone Ondemand India Private Limited ('CSOD India').*
>
> *Attribution*

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7. *erred in applying Learned DRP directions in the case of Cornerstone Ondemand Limited to the Appellant by attributing 30% of the total receipts on an ad-hoc basis as taxable income without appreciating that the two are separate entities and that Cornerstone Ondemand Limited did not file an appeal merely to avoid protracted litigation and buy peace of mind.*
8. *erred in not following the principles of Explanation (a) to Section 9(1)(i) of the Act which provides that taxable profits of a foreign company in India should be restricted to such part of income as is reasonably attributable to business operations carried out in India.*
9. *erred in computing the taxable income without taking into consideration the functions performed, assets used, and risks assumed of the PE as required under Article 7(2) of the India-UK tax treaty for determining profits attributable to the PE.*
10. *erred in considering and attributing ad-hoc 30% of the revenues from India to be taxable in India without considering the fact that the remuneration to CSOD India for its collection function is at an arm's length price which has been accepted by the Indian tax authorities and hence, further attribution in India is not warranted.*

Interest under Section 234A, 234B, 234C and 234D of the Act

11. *erred in levying interest under Sections 234A, 234B, 234C and 234D of the Act on the tax demand computed based on the above.*

Penalty proceedings

12. *erred in initiating penalty proceedings under Section 270A(2) read with Section 274 of the Act.*

On the facts and in the circumstances of the case and in law, the Learned DRP has-

General ground

13. *erred in stating that the action of questioning on the jurisdiction of National Faceless Assessment Centre ('NaFAC') was not brought to the notice of the Learned AO / DRP by the Appellant without appreciating that the same was brought to the notice of the Learned AO upon receipt of the notice under section 143(2) of the Act.*

Permanent Establishment

14. *erred in holding that the Appellant has fixed place PE or service PE under Article 5(2)(f) or 5(2)(k) of India-UK Tax Treaty respectively, without appreciating that there was neither any fixed place of business in India nor any sales activities were undertaken in India by the employees/ staff of CSOD India.*

Attribution

15. *erred in not following the global financial statements and the global margin of the Appellant which merit de minimis attribution, and in*

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not appreciating that the Appellant is a foreign company which is not required to maintain any books of accounts in India.

16. *erred in simply relying upon the Learned DRP directions issued in the case of Cornerstone Ondemand Limited without appreciating the material placed on record in Appellant's own case.*

The Appellant craves leave to add, alter, omit or substitute any ground at any time before or at the time of the appeal, to enable accordance with law."

3. Brief facts of the case are as under:-

The assessee is a company incorporated and registered in the United Kingdom and is engaged in development of cloud-based learning and talent-management software products. Cornerstone Ondemand Services India Private Limited ("CSOD India") is an Indian company belonging to the same group and is stated to be a sister concern of the assessee. CSOD India provides support services in connection with development of software, including coding, quality testing and research relating to software. It also acts as distributor/reseller of software products purchased from the assessee and sold to customers in India under an agreement dated 01/04/2017. It has been submitted that, CSOD India is remunerated at cost plus 17% for the support services rendered to the assessee and earns a margin of 5% on software products sold by it to customers in India.

3.1. In respect of sale of software products in India, the assessee enters into agreements with customers containing the terms relating, to grant of licence, pricing, payment terms, implementation and after-sale technical support. It is submitted that the CSOD India is also a party to such agreement for the limited purpose referred to in clause 6 thereof. According to the

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assessee, under the said arrangement CSOD India acts as reseller/distributor; it receives the purchase order from the Indian customer, raises invoice and collects the corresponding payment.

3.2. For A.Y. 2020-21, the assessee filed its return of income declaring "Nil" income chargeable to tax in India. The return was selected for scrutiny. During the course of assessment proceedings, the assessee furnished details from time to time as called for. On 01/09/2022, the Ld.AO issued a show-cause notice requiring the assessee to explain why CSOD India should not be treated as its Dependent Agent Permanent Establishment ("DAPE") under Article 5(4) of the India-UK DTAA and as to why 30% of the receipts should not be attributed to the DAPE.

3.3. The assessee, vide letter dated 08/09/2022, opposed the proposal. It was submitted that CSOD India did not have authority to conclude contracts on behalf of the assessee and did not secure orders for the assessee. Without prejudice thereto, it was contended that CSOD India had already been remunerated at arm's length and its return of income is accepted without any transfer-pricing adjustment and, therefore, no further income could be attributed to the alleged DAPE.

3.4. The Ld.AO in the draft assessment order, treated CSOD India as a DAPE of the assessee. The Ld.AO observed that in the earlier assessment year, assessee's sister concern was in the same business and was receiving same type of income from CSOD India. The assessing officer therein held CSOD India to be DAPE of the assessee's sister concern and attributed 30% of profits of the total receipts in India as taxable profits attributable to the Indian PE which was upheld by the DRP. The Ld.AO further noted that the

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assessee's sister concern did not file any appeal to this Tribunal and accepted the decision.

3.5. The Ld.AO thus proceeded on the basis that the relationship between the assessee and CSOD India was that of principal and agent and that CSOD India represented the assessee and is authorised to enter into a contract or binding obligation on behalf of the assesse. It has been observed by the Ld.AO that no new agreement has been entered into by the assesse with CSOD India/ end customers. It is observed by the Ld.AO that pursuant to a tripartite agreement, all agreements wherein assessee's sister concern was a party were transitioned to the assesse.

3.6. The Ld.AO observed that CSOD India is same as it was during the earlier years wherein the sister concern was providing the solutions and that there is no change in the intercompany service agreement. The Ld.AO thus observed that CSOD India has authority to conclude contract. The Ld.AO further observed that CSOD India identified customers in India and undertook marketing of the assessee's cloud-based software. It was observed that CSOD India raised invoices and collected payments for the assessee and thus these activities demonstrated that CSOD India habitually secured orders wholly or almost wholly for the assessee. On this basis, the Ld. AO attributed 30% of the software sales of Rs.7,57,35,200/-, amounting to Rs.2,27,20,560/-, to CSOD India being the alleged DAPE.

On receipt of the draft assessment order dated 30/09/2022, the assesse filed objection before the DRP.

4. The DRP, after considering the submissions of the assesse upheld the view of the Ld.AO regarding existence of DAPE and the

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attribution of 30%. In addition to the above, the DRP recorded that CSOD India constituted a fixed place PE under Article 5(2)(f), since it acted as reseller of software products, recorded purchases and sales in its books, paid indirect taxes, raised invoices and received payment from customers and, according to the DRP, its premises consequently operated as a selling place/sales outlet of the assessee.

4.1. The DRP further held that as the employees of CSOD India undertook sales, collection, remittance and other operations for the assessee and, therefore, the assessee also had a service PE under Article 5(2)(k).

4.2. Further referring to the MLI the DRP observed that, although the MLI provisions were not applicable for the relevant year, the "spirit" thereof supported its conclusion.

5. On receipt of the DRP direction dated 27/06/2023, the Ld.AO passed the final assessment order being the impugned order for the year under consideration was passed on 13/07/2023, determining the total income at Rs.2,27,20,560/- as against Nil income returned by the assessee.

Aggrieved by the final assessment order, the assessee is in appeal before this *Tribunal*.

6. Ground No. 1- challenges the assessment on the ground of limitation.

We note that the subsequent statutory amendment clarifies the legislative intent that the limitation prescribed under section 153 governs the stage of passing the draft assessment order, whereas the time limit for passing the final assessment order pursuant to the directions of the DRP is governed by section 144C of the Act.

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Accordingly, where the amendment applies retrospectively to the assessment proceedings under consideration, the final assessment order cannot be held to be barred by limitation merely because it was passed beyond the time limit prescribed under section 153.

Accordingly, this ground raised by the assesse stands dismissed as infructuous.

7. Ground no.2 relate to the issue that the Ld.AO while passing the final assessment order did not follow the DRP direction.

In this respect, no submissions were made by the Ld.AR in support of this ground either during the course of hearing before us or in the written submissions subsequently filed by the assessee. However, having regard to the nature of the grievance raised, we have perused the directions issued by the DRP and the final assessment order dated 13/07/2023 passed by the Ld.AO.

7.1. On such examination, we do not find any specific instance of non-compliance with the directions of the DRP that would warrant interference by this *Tribunal*. In the absence of any demonstrated deviation from the directions issued by the DRP, we find no merit in the ground raised by the assessee.

Accordingly, Ground No.2 raised by the assesse stands dismissed.

8. Ground Nos 3-16 relate to the addition made in the hands of the assesse as Dependent Agent Permanent Establishment and profit attribution @ 30%

The Ld.AR submitted that CSOD India is an independent contractor and not an agent of the assessee. Reference was made to clause 10.3 of the agreement between the assessee and CSOD India, which provides that the parties shall remain independent

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contractors and that nothing contained therein shall constitute them as principal and agent. The said clause further provides that neither party is authorised to enter into any contract or binding obligation on behalf of the other.

8.1. The Ld.AR further referred to clause 6 of the customer agreement to submit that CSOD India is merely an authorised reseller of the software products. Under the said arrangement, the customer places the purchase order on CSOD India based on which an invoice is raised by CSOD India. The customer thereafter makes payment to CSOD India. Reference was also made to clause 15(m) of the agreement to submit that neither party has authority to make or accept any offer or representation on behalf of the other.

8.2. It was further submitted that the accounting treatment in the books of CSOD India is consistent with a principal-to-principal reseller arrangement, since software purchased from the assessee is recorded under the head "purchases" and the corresponding supplies to Indian customers are recorded as "sales". The Ld.AR submitted that CSOD India did not have any sales or marketing department or employees carrying out sales/marketing activities on behalf of the assessee. It was submitted that, during assessment proceedings, the assessee furnished list of employees on the payroll of CSOD India demonstrating that they were engaged in support-service functions.

8.3. It was further submitted that the Ld.AO issued summons u/s.131 to CSOD India requiring it to furnish details of new customers to whom products were sold during the relevant year. CSOD India, vide its reply dated 19/09/2022, furnished the customer details and, according to the assessee, the same

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demonstrated that no new customer was acquired by CSOD India during the year. The assessee also contended that though the Ld.AO referred to Yes Bank as a new customer, the agreement with Yes Bank was entered into during F.Y.2018-19.

8.4. On the expression "habitually secures orders", reliance was placed on the decision of *Hon'ble Delhi Tribunal* in case of *ITOCHU Corporation v. ACIT (International Taxation), Circle-2(1)(1), New Delhi,* reported in *(2025) 170 taxmann.com 302,* wherein the *Tribunal* examined whether the Indian entity had substantive involvement in negotiation and securing of orders. Reliance was *Hon'ble Delhi Tribunal* in case of *Krones Aktiengesellschaft v. DCIT (International Taxation),* reported in *(2023) 148 taxmann.com 451*, for the proposition concerning the ingredients necessary for treating an Indian entity as "habitually securing" orders for the foreign enterprise.

8.5. On the basis of the aforesaid material, the Ld.AR submitted that CSOD India neither had authority to negotiate or conclude contracts on behalf of the assessee nor habitually secured orders for it and, therefore, the conditions for constitution of DAPE were not satisfied.

8.6. The Ld.DR submitted that the relationship between the assessee and CSOD India was in substance one of principal and agent; that CSOD India identified Indian customers and undertook marketing of the assessee's software and that it raised invoices and collected payments. He thus submitted that these activities demonstrated that CSOD India habitually secured orders wholly or almost wholly for the assessee.

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9. In respect of alleged to be Fixed place PE and service PE the Ld.AR submitted that the DRP erred in holding that CSOD India constituted a fixed place PE of the assessee under Article 5(2)(f) of the India-UK DTAA. It was submitted that the very facts relied upon by the DRP, namely that CSOD India purchases the software from the assessee, records the same as purchases in its books, sells the products to Indian customers, raises invoices, pays indirect taxes and collects payments, support the assessee's contention that the transactions are on a principal-to-principal basis.

9.1. It was submitted that, for Article 5(2)(f) to apply, the Department had to demonstrate that the premises of CSOD India were at the disposal of, or available for use by, the assessee as a sales outlet or for receiving or soliciting orders. According to the Ld.AR, there is no clause in the agreement granting the assessee any right to use the premises of CSOD India and no material was brought on record by the authorities below to establish such right or disposal. It was further submitted that the assessee had no presence or place of business of its own in India.

9.2. As regards the finding of service PE under Article 5(2)(k), the Ld.AR submitted that the employees of CSOD India performed activities in connection with CSOD India's own distribution business and did not render services on behalf of the assessee. It was submitted that the assessee itself was engaged in sale of software products and had not rendered any services to a person in India. It was further submitted that none of the assessee's employees or other personnel visited India during the relevant year and, therefore, the basic conditions prescribed in Article 5(2)(k) were not satisfied.

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9.3. Reference was also made to Article 5(6) of the India-UK DTAA to contend that the mere fact that one company controls, or is controlled by, another company carrying on business in the other Contracting State does not by itself result in either company constituting a PE of the other. The Ld.AR further submitted that existence of PE is a fact-specific enquiry which has to be undertaken separately for each assessment year and that orders passed for earlier years cannot *ipso facto* be applied to subsequent year. Reliance in this regard was placed on the decisions of *Hon'ble Delhi Tribunal* in case of *National Petroleum Construction Co. v. Dy.CIT, Circle-2(2)(2), (Intl.Tax), New Delhi,* reported in *(2019) 112 taxmann.com 364 and decision of Grid Solutions OY (Ltd.) v. ACIT, reported in (2025) 170 taxmann.com 498.* It was further submitted that the burden of establishing existence of a PE rests on the Revenue. In support, reliance was placed on the decision of *Hon'ble Supreme Court* in case of *ADIT v. E-Funds IT Solution Inc.,* reported in *(2017) 86 taxmann.com 240.*

9.4. The Ld.DR on the contrary submitted that CSOD India acted as reseller of software products, recorded purchase and sale of such products, paid indirect taxes, raised invoices upon end customers and received payments therefrom. On this basis, the Ld. DRP treated the premises of CSOD India as the assessee's selling place/sales outlet and held that the assessee had a fixed place PE under Article 5(2)(f). The Ld.DR further submitted that the employees of CSOD India undertook sales, collections, remittances and other operations in India for the assessee and, on that basis, held that a service PE existed under Article 5(2)(k).

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10. In respect of Applicability of the MLI the Ld.AR submitted that the reliance placed by the Ld. DRP upon the Multilateral Instrument ("MLI") was misplaced. Insofar as A.Y. 2020-21 is concerned, it was submitted that the MLI amendments became applicable only from A.Y. 2021-22 and could not be invoked for assessment year 2020-21.

10.1. It was submitted that the amendments relied on by the DRP concern Article 5(3) dealing with specified exclusions from the scope of fixed place PE, whereas the assessee was not claiming any such exclusion and, therefore, such amendments had no bearing on the controversy in hand. The Ld.AR also contended that the MLI provisions could not be relied on in the absence of a separate notification u/s.90(1) incorporating the same into the relevant DTAA. Reliance was placed on the decision of *co-ordinate bench of this Tribunal* in case of *Sky High Appeal XLIII Leasing Company Ltd. v. ACIT (Intl.Tax),* reported in *(2025) 177 taxmann.com 579, Sky High XXXIV Leasing Company Ltd. v. ACIT (Intl.Tax.)* reported in *(2026) 186 taxmann.com 231,* and decision of *Hon'ble Delhi Tribunal* in case of *Kosi Aviation Leasing Ltd. v. ACIT,* reported in *(2025) 179 taxmann.com 166.*

10.2. The Ld.DR on the contrary submitted that even though the MLI provisions were not applicable for the relevant year, the "spirit" thereof could be taken into account in considering the existence of PE.

11. In respect of attribution of profits, the Ld.AR without prejudice to his contention regarding no PE existed in India, submitted that no further profits could in any event be attributed to the alleged PE since admittedly CSOD India is remunerated at arm's length. It was

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reiterated that CSOD India was remunerated at cost plus 17% in respect of support services and earned 5% margin on software products sold to Indian customers. According to the Ld.AR, the income offered by CSOD India was accepted by the department without any transfer-pricing adjustment. It was therefore submitted that once the Indian associated enterprise was remunerated at arm's length for the functions performed, assets employed and risks assumed, no further attribution could be made in the hands of the foreign enterprise.

11.1. Reliance in this regard was placed on the decision of *Hon'ble Delhi High Court* in case of *Adobe Systems Incorporated v. ADIT,* reported in *(2016) 69 taxmann.com 228.* Reliance was also placed on the decision of *Hon'ble Supreme Court* in case of *DIT (Intl. Tax), Mumbai v. Morgan Stanley & Co. Inc.,* reported in *(2007) 292 ITR 416 (SC),* wherein *Hon'ble Court* dealt with attribution of profits to a PE having regard to the arm's-length principle and the functions and risks captured by the transfer-pricing exercise.

11.2. The Ld.AR also relied on the decision of Hon'ble Coordinate bench of this Tribunal in case of *MFE Formwork Technology Sdn. Bhd. v. CIT (Intl.Tax.),* in *ITA No.890/Mum/2022, vide order dated 30/08/2022,* for the proposition that, where the dependent agent has been remunerated at arm's length and no transfer-pricing adjustment has been made, and that no further attribution in the hands of the non-resident is not warranted. Reliance was also placed on the decision of coordinate bench of this *Tribunal* in case of *ADIT v. Asia Today Ltd.,* reported in *(2021) 124 taxmann.com 1,* for the proposition that, where the arm's-length remuneration of

the dependent agent stands accepted, further attribution to the DAPE cannot be made merely on account of existence of DAPE.

11.3. The Ld.AR further submitted that the attribution of 30% of the Indian receipts was purely *ad hoc* and was adopted by following the DRP directions of the earlier years in the case of another group entity, namely Cornerstone Ondemand Limited. It was submitted that the earlier group entity did not challenge those orders merely because the tax demand was comparatively small and in order to avoid prolonged litigation and to buy peace of mind.

11.4. The Ld. AR submitted that the business was realigned and was being carried on by the present assessee from A.Y. 2020-21 and, therefore, the acceptance of the orders in the case of another group company for earlier years could not operate as an estoppel against the present assessee. The assessee reiterated that existence of PE as well as attribution of profits is required to be examined independently for each assessment year on the material pertaining to that year.

11.5. The Ld.AR also contended that the attribution adopted by the authorities below did not follow the transfer-pricing principles contained in Chapter X of the Act. It was submitted that attribution under Article 7 requires examination of the functions performed, assets employed and risks assumed and that an arbitrary percentage of gross receipts could not substitute such an exercise. In support of this contention, reliance was once again placed on the decision of *Hon'ble Supreme Court* in case of *DIT v. Morgan Stanley & Co. Inc. (supra),* particularly the principle that profits attributable to a PE are required to be determined on an arm's-

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length basis having regard to the PE as a distinct and separate enterprise.

11.6. The Ld.DR on the contrary submitted that, since CSOD India constituted a PE of the assessee and performed functions relating to identification of customers, marketing, invoicing, collection and related activities in India, a portion of the receipts from Indian sales was required to be attributed to India. The Ld.AO thus correctly attributed 30% of the sales of software products amounting to Rs.7,57,35,200/-, i.e., Rs.2,27,20,560/-, as income attributable to the alleged PE. The DRP sustained the said percentage, substantially following the approach adopted in the earlier years.

We have perused the submissions advanced by both sides in light of records placed before us.

12. The issue arising in Ground Nos.3 to 16 is whether CSOD India constitutes a Permanent Establishment (PE) of the assessee in India, either in the nature of a dependent agent PE under Article 5(4), a fixed place PE under Article 5(2)(f), or a service PE under Article 5(2)(k) of the India–UK DTAA, and, if so, the profits, if any, attributable thereto.

12.1. The Ld.AR contended that the relationship between the assessee and CSOD India is on a principal-to-principal basis. In support of this contention, reliance was placed on clauses 10.3 and 15(m) of the agreement, the recording of purchases and sales in the books of CSOD India, and the absence of sales or marketing personnel on its payroll. Per contra, the Ld.DR submitted that CSOD India, in substance, identifies customers, markets the

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assessee's software, raises invoices and collects payments, and thereby habitually secures orders wholly or almost wholly for the assessee.

12.2. We find that the authorities below have not examined these competing contentions with reference to the actual terms of the contractual arrangements and the functions performed by CSOD India during the year under consideration. The determination of the existence of a PE requires an examination of the substance of the arrangement and the actual conduct of the parties, rather than merely the nomenclature employed in the agreements or the manner in which the transactions are recorded in the books of account.

12.3. In this regard, we notice that the assessee enters into agreements directly with Indian customers, setting out the terms governing the grant of licence, pricing, payment, implementation and after-sales technical support. CSOD India is also a party to such agreements, statedly for the limited purpose contemplated under clause 6 thereof. We further notice that CSOD India receives purchase orders, raises invoices in its own name, collects payments and records the transactions as purchases and sales in its books of account. According to the assessee, these features are consistent with a reseller arrangement conducted on a principal-to-principal basis.

12.4. However, these circumstances, considered individually, may not be conclusive of the true nature of the relationship. It is necessary to examine, inter alia, who determines the price charged to the customers, who bears the credit risk, which entity assumes

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the contractual obligations towards the customers, and which entity is ultimately responsible for the performance of the obligations under the customer agreements. These aspects would assist in determining whether CSOD India acts as an independent reseller on its own account or performs functions that may bring the arrangement within the scope of Article 5(4) of the India–UK DTAA.

12.5. The Ld.AR has contended that CSOD India did not acquire any new customers during the year and that the agreement with Yes Bank had been entered into during F.Y. 2018-19. These assertions, being matters of fact bearing upon the nature and extent of CSOD India's activities during the relevant period, require verification before a conclusion can be drawn as to whether CSOD India habitually secured orders for the assessee within the meaning of Article 5(4) of the India–UK DTAA.

12.6. We further notice that the authorities below have substantially followed the directions of the Ld. DRP in the earlier years in the case of Cornerstone OnDemand Limited, another entity of the same group, wherein CSOD India was treated as a DAPE and profit attribution at 30% was accepted. The Ld. AR submitted that the orders passed in the case of the said group entity were accepted to buy peace and that, with effect from A.Y. 2020-21, the business was realigned and carried on by the present assessee.

12.7. In our considered view, the acceptance of an assessment order or a direction by another entity of the group does not, by itself, operate as an estoppel against the present assessee. The

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existence of a PE must be determined in accordance with the applicable treaty provisions and the facts and circumstances prevailing during the relevant assessment year. At the same time, the nature of the relationship between CSOD India and Cornerstone OnDemand Limited in the earlier years, as well as the circumstances surrounding the stated realignment of the business, constitute relevant factual considerations. It is, therefore, necessary to ascertain whether the realignment brought about any substantive change in the contractual arrangements, the functions performed by CSOD India, the manner in which customer orders were procured and processed, and the risks assumed by the respective entities. The earlier assessments cannot, by themselves, determine the outcome for the year under consideration; equally, the claim of realignment requires examination with reference to the underlying documents and actual conduct of the parties.

12.8. We notice that the DRP relied substantially upon the activities of CSOD India relating to purchase and sale of software, invoicing and collection of payments. These are also the circumstances relied upon by the assessee in support of its contention that CSOD India operates as an independent reseller. The existence of a fixed place PE or a service PE, however, requires an independent examination of the relevant treaty conditions and cannot be inferred merely from the activities relied upon for determining the existence of a DAPE.

12.9. For the purposes of Article 5(2)(f), it is necessary to examine whether any premises in India were at the disposal of the assessee and were used for the purposes contemplated under the said

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provision, including as a sales outlet or for receiving or soliciting orders, as alleged by the Revenue. Similarly, the applicability of Article 5(2)(k) requires examination of whether the assessee furnished services in India through its employees or other personnel and whether the specific conditions prescribed under the said provision stand satisfied. The mere existence of an Indian subsidiary or associated enterprise, or the performance of activities by such entity, would not, without further examination, establish the existence of either form of PE.

12.10. As held by *Hon'ble Supreme Court* in case of *ADIT v. E-Funds IT Solution Inc. (supra)*, the burden of establishing the existence of a PE rests upon the Revenue. In the present case, since the findings concerning the nature of the relationship between the assessee and CSOD India are interlinked with the examination of the activities undertaken in India, we deem it appropriate that the issue relating to the existence of a fixed place PE and a service PE also be examined afresh in the light of the applicable treaty provisions and the observations made hereinabove.

12.11. Insofar as the reliance placed by the DRP on the Multilateral Instrument (MLI) is concerned, the Ld.DR fairly conceded that the relevant MLI provisions are not applicable to A.Y. 2020-21. We, therefore, hold that neither the provisions of the MLI nor its underlying spirit or purpose can be invoked to determine the existence of a PE for the assessment year under consideration. The issue must be adjudicated strictly in accordance with the provisions of Article 5 of the India–UK DTAA applicable to the relevant assessment year.

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12.12. We also notice that the Ld.AO attributed 30% of the receipts from the sale of software products, amounting to Rs.2,27,20,560/-, by following the approach adopted in the earlier years, without undertaking a specific analysis of the functions performed, assets employed and risks assumed in India during the year under consideration.

12.13. In this context, we consider it relevant to clarify that the question whether an agent is of independent status and the question whether the profits of a PE are adequately represented by the remuneration paid to an associated enterprise are distinct inquiries. The acceptance of the arm's-length remuneration of CSOD India, without any transfer pricing adjustment, does not, by itself, determine the existence or otherwise of a PE. In particular, the arm's-length nature of the remuneration cannot substitute for an examination of the conditions prescribed under Article 5 of the India–UK DTAA.

12.14. However, the remuneration paid to CSOD India assumes significance at the stage of profit attribution, if a PE is found to exist. *Hon'ble Supreme Court* in case of *DIT v. Morgan Stanley & Co. Inc. (supra)* recognised that, where the Indian associated enterprise has been remunerated at arm's length and such remuneration takes into account all the functions performed and risks undertaken on behalf of the foreign enterprise, no further profits may be attributable to the PE. The applicability of this principle in the present case would depend upon the functions actually performed by CSOD India, the assets employed, the risks assumed

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and the extent to which these elements have been adequately captured in its transfer pricing analysis and remuneration.

12.15. We notice that the remuneration of CSOD India, comprising a cost-plus mark-up of 17% for support services and a margin of 5% on the sale of software products, has been accepted without any transfer pricing adjustment. Nevertheless, the mere acceptance of such margins does not, in itself, establish that all the functions and risks relevant to the attribution exercise have been adequately remunerated. It is, therefore, necessary to examine the functional profile of CSOD India and determine whether the remuneration received by it fully captures the functions performed and risks assumed that are relevant to the alleged PE. If the remuneration is found to adequately reflect all such functions and risks, the implications of the principle laid down in Morgan Stanley shall be duly considered. Any attribution, if warranted, must be supported by a reasoned analysis and cannot be made on an ad hoc basis.

12.16. In view of the foregoing discussion, we deem it appropriate to remit this issue to the file of the Ld.AO for fresh examination and adjudication in accordance with law, subject to the following directions:

(i) The Ld.AO shall examine the true nature of the relationship between the assessee and CSOD India with reference to the relevant agreements, including the customer agreements and clause 6 thereof, and the actual conduct of the parties. In particular, the Ld.AO shall examine who determines the prices charged to customers, who bears the credit risk, which

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entity assumes the contractual obligations towards the customers, and which entity is responsible for performance under the customer agreements.

(ii) The Ld.AO shall verify the customer details furnished by CSOD India in response to the summons issued under section 131 of the Act and examine the contention that no new customers were acquired during the relevant year, including the facts relating to the agreement with Yes Bank. The examination shall be directed towards ascertaining the actual role of CSOD India in soliciting, negotiating, securing and processing customer orders and whether the requirements of Article 5(4) of the India–UK DTAA are satisfied.

(iii) The Ld.AO shall examine the nature of the relationship between CSOD India and Cornerstone OnDemand Limited in the earlier years and verify the assessee's claim that the business was realigned with effect from A.Y. 2020-21. The examination shall ascertain whether the alleged realignment resulted in any substantive change in the contractual arrangements, functions performed, assets employed and risks assumed by the respective entities.

(iv) The Ld.AO shall independently examine the applicability of Article 5(2)(f) and Article 5(2)(k) of the India–UK DTAA, having regard to the requirements of the respective provisions and the evidence on record. The finding on the existence of a PE shall be recorded with reference to the applicable treaty provisions and the facts established for the year under

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consideration, without importing the amendments introduced through the MLI.

(v) If the Ld.AO concludes that a PE exists, the attribution of profits shall be undertaken by examining the functions performed, assets employed and risks assumed in India. The Ld.AO shall also examine whether the remuneration received by CSOD India on account of support services and software sales adequately captures the functions performed and risks assumed that are relevant to the alleged PE, and shall consider the principle laid down by the *Hon'ble Supreme Court* in case of *DIT v. Morgan Stanley & Co. Inc. (supra)*. Any profits attributable to the PE shall be determined on a reasoned basis, in accordance with law, and not by adopting an ad hoc percentage merely on the basis of the approach followed in the earlier years.

12.17. The assessee shall furnish the relevant agreements, customer details, functional analysis, transfer pricing documentation and such other material as may be necessary for the aforesaid examination. The Ld.AO shall afford the assessee a reasonable opportunity of being heard and shall pass a speaking order dealing with the material contentions raised by the assessee.

Accordingly, Ground Nos.3 to 16 raised by the assesse are allowed for statistical purposes.

13. Ground No. 3 and Ground No. 5

Ground No. 3 concerning determination of total income and **Ground No. 5** being a general challenge to the findings adopted by

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the lower authorities are interconnected with the substantive grounds concerning existence of PE and attribution of income and may accordingly be considered along with the findings on the aforesaid issues. These grounds therefore do not require adjudication.

14. Ground No.11 Levy of interest and **Ground No. 12** in respect of Initiation of penalty proceedings u/s.270A(2) r.w.s. 274 of the Act are consequential in nature and therefore do not require any adjudication.

In the result, appeal filed by the assesse stands allowed for statistical purposes

Order pronounced in the open court on 16.10.2026.

Sd/-	**Sd/-**
ARUN KHODPIA	**BEENA PILLAI**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai
Dated: 16.10.2026
Shamik Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai

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