IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI A.T.VARKEY, JM & DR. A.L.SAINI, AM

आयकर अपील सं./**ITA No.642/Kol/2016**

(**निर्धारण वर्ष** /Assessment Year:2012-2013)

Income Tax Officer (International Taxation), Ward, Kolkata, 2nd Floor, Room No. 215 Aayakar Bhavan Poorva, 110 Shantipalli,Kolkata-700107	Vs.	M/s Emami Paper Mills Ltd., 687, Anandapur, E.M.Bypass, Kolkata-700107
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: **AABCG 1428 Q**		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Revenue by : Shri N.B.Som, JCIT Sr. DR
Assessee by : Shri Ramesh Kumar Patodia, FCA

सुनवाई की तारीख / **Date of Hearing : 20/12/2016**

घोषणा की तारीख/**Date of Pronouncement 04/01/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2012-2013, is directed against the order passed by ld. Commissioner of Income Tax (Appeals)-22, Kolkata, in Appeal No.111/CIT(A)-22/KOL/14-13, dated 20.01.2016, which in turn arises out of an order passed by the Assessing Officer (AO) Under Section 201(1)/1A of the Income Tax Act 1961, (in short the 'Act'), dated 28.03.2013.

2. Brief facts of the case qua the assessee are that the assessee company, M/s.Emami Paper Mills Limited, hereafter called as 'deductor' has remitted some amount to a non-resident company of Poland without deducting taxes. Show cause notice u/s 201 of the Income Tax Act, 1961 was issued to the deductor. In response, the deductor company submitted

written explanations and copies of different documents in support of its claim. The deductor company had entered into an agreement / contract dated 04th March 2011 with a company namely POL-INOWEX SA of Poland for dismantling and sea-worthy packing of paper mill machinery, and stuffing of all items into containers and loading the containers on trucks which was acquired by the deductor company from HolmensBruk AB, a company from Sweden i.e. the said site was in Sweden. The payment was made to POL-INOWEX SA of Poland, without deducting any withholding taxes. The details of payments are as under:

Sl. No.	Name of the Recipient	Remittance amount (Rs.)	TDS amount (Rs.)	Date of remittance	Nature of payment as mentioned in Form No.15CA
1.	POL-INOWEX SA	76,13,180/-	0	02/11/2011	Charges for dismantling of second hand machine
2.	POL-INOWEX SA	41,06,640/-	0	18/01/2012	Charges for dismantling of second hand machine

The Assessing officer held that the payments made to the non-residents for dismantling and sea worthy packing of paper mill machinery are payments made for “fees for technical services” and is taxable under the Income Tax Act 1961, in view of the specific provisions of section 5(2) (b) read with section 9(1) (vii) (c) of the Income Tax Act 1961, as well as the provisions laid down under Article 13-4 of the DTAA between India and Poland. This way, the Assessing Officer computed the tax liability on Rs.1,17,19,820/- @ of 22.5% plus interest U/s 201(1A) at Rs. 29,53,395/-.

3. Aggrieved from the order of ld. Assessing Officer (International Taxation), the assessee filed an appeal before the ld. CIT(A), who has deleted the addition made by the Assessing Officer, by observing the followings :-

> *"4. I have carefully considered the facts on records and the submissions furnished by the appellant. The facts and circumstances of the case shows that the appellant has procured an used machinery from a Swedish company which is to be dismantled, packed and loaded in the trucks for transportation outside India. The appellant has hired a Polish company POl-INOWEX S.A. to undertake a) dismantling and sea-worthy packing of the said paper mill machinery; (b) stuffing of all items into containers and (c) loading the containers on trucks. For the services rendered by the Polish company, the appellant has paid a total amount of Rs. 1,17,19,820/- POL without deduction of TDS. The AO held that the work of dismantling and sea worthy packing of paper mill machinery is a technical job as it required highly technical skilled technicians. The AO analysed the contract between the appellant and the POL-INOWEX S.A. and came to the conclusion that the payment by the appellant are for "fees for technical services" as defined in section 9(1)(vii)(c) of the Income Tax Act as well as provisions of Article 13-4 of the DTAA between India and Poland. The AO, therefore determined the tax liability u/s 201(lA) of the Act.*
>
> *4.1 The issue that has to decided is that whether the contract between the appellant and the polish company POL is a 'works contract' or it is a 'contract for technical work". The Hon'ble Supreme Court in the case of Builders Association of India v. Union of India [1989] 73 STC 370 S.C. observed that "A works contract constitute a class of contracts in which the contractor either himself or through his employee uses certain expertise in performing the work for achieving the task contracted for. That it is in the process of achieving such a task that the contractor utilises his expertise." From the facts emerging out of the records as above, the job of the polish company as per the contract was to dismantle, match marking, packing and loading work of the used machinery in 4 months. For this purposes, POL had to arrange competent and adequate number of personnel (workers, supervisors, engineers etc.) including such skilled manpower. POL was made responsible for any damage caused in the course of the preparation, dismantling, packing, removal and transport of the equipment and machinery. Considering the work done by the POL and a perusal of the terms of the contract, I am inclined to agree with the appellant that though technical person were involved, the work done by POI is in nature of a works contract and the project is a project for*

"dismantling" simpliciter. As held by the Hon'ble Hyderabad ITAT in the case of M/s BHEL-GE-Gas Turbine Service (P) Limited (supra), the work involved in the instant case was of that of disassembly of the plant machinery, and did not involve services of technical nature.

4.2 I am also inclined to agree with the appellant that the AO should have considered the contract in totality and it is not proper to read a single sentence in a contract in isolation to reach a different inference. The Hon'ble Apex Court in the case of Vodafone International Holdings B.V. vs UOI and Anr. 341 ITR 1, had held that an agreement has to be "looked at" and not "looked through". In the instant case the AO's attempt to read the submission of the appellant that "there is minimal use of highly skill technicians" to arrive at the conclusion that the nature of services rendered by POL falls under the category of "technical services" is erroneous in facts and in law. The decision rendered by Authority of Advanced Ruling in case Alstom Transport SA, In re, 349 ITR 292 that "the basic principle in interpretation of a contract is to read it as a whole and to construe all its terms in the context of the object sought to be achieved and the purpose sought to be attained by the implementation of the contract. Reading parts of the contract as imposing distinct obligations may not be the proper way to understand a composite contract especially for installation and commissioning and delivery of a project or a system", applies to the facts of the case. The AO has to consider the contract in entirety which is nothing but an agreement for dismantling and is a composite works contract. I am also inclined to agree with the appellant that "Dismantling" would be considered as "like projects" as provided in Explanation (2) of section 9(1)(vii) of the income tax Act and the payment made by the appellant is excluded from "fees for technical services".

4.3 In view of the above discussion, it is held that the payment made by the appellant to POL is for a works contract for dismantling of plant and is excluded for "fees for technical services" u/s 9(1)(vii)(c) and is also not covered under article 13-4 of the DTAA between India and Poland. The remittances made to POL are business income of POL and the same is arising outside India. As POL has no permanent establishment in India, the same cannot be taxed in India and therefore it is held that there is no requirement to deduct tax u/s 195 of the income tax Act from the remittances made to POL. Accordingly the order passed u/s 201(1)/ (1A) is held as invalid and the ground 1 to 3 of the appeal is allowed."

4. Not being satisfied with the order of ld. CIT(A), the Revenue is in further appeal before us and has taken the following grounds of appeal :-

1. In the facts and circumstances of the case and in law, the Ld.CIT(A) erred in holding that "Dismantling" would be considered as 'like projects' as provided in Explanation (2) to section 9(1)(vii) of the I.T.Act'61 and is therefore, excluded from 'fees for technical services'.

2. In the facts and circumstances of the case and in law, the Ld.CIT(A) erred in holding that the payments to M/s. POL-INOWEX S.A. of Poland is not taxable in India as " fees for technical services" despite the fact that the job performed by POL is highly technical and skill oriented and included "provision of services of technical and other personnel" .

3. In the facts and circumstances of the case and in law, the Ld,CIT(A) erred in holding that the contract between the Polish company and the assessee is a 'Works Contract' and not contract for technical service despite the fact that the nature of work as per the "Machinery Dismantling and packaging" agreement was within the scope of "fees for technical services" as per Income Tax Act' 61 and also as per India-Poland DTAA .

4. In the facts and circumstances of the case and in law, the Ld.CIT(A) erred by relying on the decision of Hon'ble Hyderabad Tribunal in the case of M/s. Bhel GE -Gas Turbine Service (P) Ltd. to come to the conclusion that the work was not technical in nature, as the facts are different. In the case of Bhel GE -Gas Turbine Service (P) Ltd. the work involved was held as routine repair not constituting FTS ,however, in this case the work is not in the nature of routine repair.

5. In the facts and circumstances of the case the Ld.CIT(A) erred by relying on the decision in the case of Vodafone International Holding B.V.Vs. UOI and the Ruling of AAR in the case of Alstrom Transport SA, to come to the conclusion that a contract has be read as a whole, despite the fact that the Assessing Officer has held that "dismantling and sea-worthy packing of paper mill machinery" is not a project but part of a project and he has read the impugned contract as a whole and thus dissecting approach has not been adopted by the AO.

6. The Department craves leave to add or alter, amend and modify, substantiate, delete and/or revise all or any of the grounds of appeal on or before the final hearing. ,

5. Although in this appeal, the Revenue has raised six grounds of appeal, but at the time of hearing, the solitary grievance of the Revenue has been confined to the main issue that the Assessee Company had hired

a foreign company POl- INOWEX S.A. (Non-Resident Co.) to undertake a) dismantling and sea-worthy packing of the paper mill machinery; (b) stuffing of all items into containers and (c) loading the containers on trucks. For the services rendered by the POl- INOWEX S.A. (Non-Resident Co.), the Assessee Company had paid a total amount of Rs.1,17,19,820/- without deduction of TDS.

Since, in para No.5 cited above, we have summarized all six grounds raised by the Revenue therefore, we do not adjudicate each and every ground separately.

5.1 Ld. DR for the Revenue has submitted that the assessee company hired the foreign persons for dismantling the machinery and paid the fees to them for their technical services. The fee has been paid by the assessee without deducting the TDS. Dismantling requires technical knowledge and it was a contract for service therefore it does fall in the definition of “fees for technical services” hence TDS is required to be deducted. The assessee had used technical services, as the work executed by the NRI was “Dismantling of Mchineries” which requires ‘skill and technical knowledge’ a layman can not dismantle a sophisticated machinery. Therefore, TDS was required to be deducted. The Ld. CIT(A) had wrongly considered dismantling as “like projects” as provided in Explanation (2) to section 9(1)(vii) of the I.T.Act. The Ld. DR pointed out that payment to M/s POL-INOWEX SA of Poland is taxable in India, on payment basis as they rendered services in India, therefore, TDS was required to be deducted on payment of fees for technical services. No

TDS had been deducted, despite the fact that the job performed by M/s POL-INOWEX SA of Poland is highly technical and skill oriented and included 'provision of service of technical and other personnel'. The Ld. DR also pointed out that contract between M/s POL-INOWEX SA and assessee is a contract for technical services because the nature of the work as per the "Machinery Dismantling and Packaging" agreement was within the scope of fees for technical services as per the I.T.Act and also as per the India-Poland DTAA. The Ld. DR also pointed out that ld. CIT(A) wrongly relied on the decision of Hyderabad Tribunal in the case of M/s Bhel GE-Gas Turbine Service (P) Ltd. came to the conclusion that the work was not technical in nature, as the facts are different. In the case of Bhel GE -Gas Turbine Service (P) Ltd. the work involved was held as routine repair not constituting FTS , however, in this case the work is not in the nature of routine repair. The Ld. DR also pointed out that in the case of Vodafone International Holding B.V.Vs. UOI and the Ruling of AAR in the case of Alstrom Transport SA, to come to the conclusion that a contract has be read as a whole, despite the fact that the Assessing Officer has held that "dismantling and sea-worthy packing of paper mill machinery" is not a project but part of a project and he has read the impugned contract as a whole and thus dissecting approach has not been adopted by the AO. This way, the ld. DR submitted that the appeal of the Revenue should be allowed.

5.2. On the other hand, Ld. AR for the assessee has submitted that the assessee under consideration had an agreement with M/s POL-INOWEX

SA of Poland (POL) for dismantling of the plant and machinery. As per this agreement, the work executed by M/s POL-INOWEX do not require and technical and skill. The ld DR also highlighted the important terms and conditions of the agreement, which are reproduced below :-

> *"WHEREAS EMAMI, a leading player in the Indian Paper Industry, owns and operates a paper mill Unit #1 at Balasore, Orissa and Unit#2 at Kolkata, West Bengal.*
>
> *AND WHEREAS EMAMI, has procured a used Paper Machine (PM#2) from Holmens Bruk AB, Hallstavik, Sweden, and EMAMI requires the work for dismantling, match marking, packing and containerization of assets of the second hand paper machine.*
>
> *Scope of Work-Dismantling of paper mill machinery, from Holmens bruk AB, Sweden,Seaworthy packing and stuffing all items of the equipment into containers and loading the containers on trucks."*

This agreement is part and parcel of purchase of plant and machinery and it is proved from the various clauses of the said agreement that the payment was not for technical services.The Scope of work mentioned in the agreement clearly says that it is for 'Dismantling of paper mill machinery' which does not require any technical knowledge and specific skill. Apart from this, ld. AR for the assessee drew our attention to Section 9(1)(vii), Explanation 2 of the Act, which reads as under :-

> *Explanation [2].—For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries".*

The above explanation clearly says that "fees for technical services" does not include consideration for any construction, assembly, mining or like

project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries". The Ld. AR for the assessee also pointed out that the term 'like project' includes dismantling i.e. 'like projects' mean dismantling also. He has also pointed out that the assembly means dismantling also. Ld. AR also pointed out that there is a difference between 'contract of work' and 'contract of service'. In the case of assessee under consideration the agreement is for 'contract of work' which does not require any technical knowledge and specific skill. If the assessee hires a person outside India does not mean that he is paying fee for technical services. The assessee has hired the persons from outside India just to dismantle the machinery, which does not require any technical expertise and special skill. In order to support his plea, the Ld. AR, has also relied on the following judgments :-

i) Central Board of Direct Taxes, 76 TAXMAN 432 (Delhi) :

> *"**4.16** Mr. Syali is right in pointing out the qualitative differences between the subject, referred as 'work' and the subject referred as 'service'. The two words convey different ideas. In the former (i.e., 'work') the activity is predominantly physical; it is tangible. In the activity referred as 'services', the dominant feature of the activity is intellectual, or at least, mental. Certainly, 'work' also involves intellectual exercise to some extent. Even a gardener has to bestow sufficient care in doing his job; so is the case with a mason, carpenter or a builder. But the physical (tangible) aspect is more dominant than the intellectual aspect. In contrast, in the case of rendering any kind of 'service', intellectual aspect plays the dominant role. The vocation of a lawyer, doctor, architect or a Chartered Accountant (there are other similar vocations also) involves deep intellectual exercise and physical skill involved in their vocational activities is minimal. A dancer's performance no doubt involves physical movement; but all the movements are projections of the talent which is natural, or acquired by training. A surgery certainly involves physically visible and tangible work; but, inherently, it is the mental skill developed by the intellectual exercise that permeates the operation."*

i) Andrew Yule & Co. Ltd. 207 ITR 899 (CAL) :

*"**Suhas Chandra Sen, J.—**The petitioner has challenged an order passed by the Commissioner of Income-tax under section 264 of the Income-tax Act, 1961. In the order passed, the Commissioner of Income-tax has held in substance that the contract for supply of a belt vulcanizing press to the petitioner resulted in accrual of income in India to the foreign supplier on which proper tax had not been paid. The facts of the case as recorded by the Commissioner in his order are as under:*

> *"Messrs. G. Siempelkamp Gabh and Co. (Messrs. G. S. G.) had sold a belt vulcanizing press to the applicant and had also entered into a separate contract for its erection in India. Messrs. G. S. G. had been paid DM 80,000 as per contract for this job and the bill submitted by it for DM 73,714 has been taken on record. As per agreement, the taxes, if any, were to be borne by the applicant. However, at the time of remittance of the above amount, tax was demanded under section 195. The present petition is in respect of this demand".*

On behalf of the petitioner, Dr. Pal has contended that there is no question of invoking section 9 in this case as the issue is concluded by the Agreement for Avoidance of Double Taxation between India and the Federal German Republic which was notified on September 13, 1960 (see [1960] 40 ITR (St.) 21). Moreover, it has been contended that the approach of the Commissioner is erroneous. The entire responsibility for the construction of a machine was upon the German firm. The German technicians had rendered some service in India for the purpose of setting up the plant and making the plant workable. That service was in connection with and pursuant to the contract to sell a belt vulcanizing press. Therefore, such service cannot be treated as "labour or personal services" as mentioned in article 3 of the Agreement for Avoidance of Double Taxation.

In my judgment, the writ petition must succeed. The supplier has a permanent establishment in Germany where the press was manufactured. Certain services were rendered in connection with the setting up of that press in India. This cannot be treated as personal service in any way even if the agreement for rendering service was embodied in a separate agreement."

The writ petition, therefore, succeeds. Rule is made absolute. There will be an order as prayed for in terms of prayers (a) and (b) of the petition. The refund must be given within a period of 3 (three) months from the date of communication of this order."

ii) Gujarat Pipavav Port Ltd., 67 taxmann.com 370 (Mumbai Trib) :

***5.4** Now, we would like to take up the issue of SPC dated 29.10.2005(Pg.464-471 of the PB).If the services rendered by the*

supplier are examined it becomes clear that such services are inextricably connected to the sales of cranes. We want to clarify that it is true for other SPC.s. also. Settled law,governing such contracts, stipulate that if services are intrinsically connected to the sale of goods same cannot be treated as FIS or FTS and they would constitute part of business income. The Hon'ble Apex Court in the case of Ishikawajma-Harima Heavy Industries Ltd. v. DIT [2007] 288 ITR 408/158 Taxman 259 has upheld the above principle. The Hon'ble Calcutta High Court in the matter of Andrew Yule & Co. Ltd. v. CIT [1994] 207 ITR 899 (Cal.) has also dealt with the identical issue. In that matter a German Company had supplied certain machinery to the Indian assessee and had rendered certain services in setting up of the machinery. Considering those facts, the Hon'ble Court held that services rendered in setting up of machine could not be treated as personal service even if the agreement for rendering the services was embodied in a separate agreement, that the German Company had no PE in India, that in view of the Indo-German DTAA no income had accrued in India, that there was no liability to deduct tax at source. Finally, we would like to refer to the order of the Special Bench of the Chennai Tribuanl, delivered in the case of ITO v. Prasad Production Ltd. [2010] 125 ITD 263. In that matter the assessee had purchased Considering the above, we hold that the FAA was not justified in holding that services rendered in pursuance of the purchase agreement can be taxed as FIS/FTS.

iii) Bhel-GE-Gas Turbine Servicing (P) Ltd., 24 taxmann.com 25(Hyd):

***16.** The above activities involve assembly, disassembly, inspection, reporting and evaluation. CIT(A) examined every activity enlisted above and came to the conclusion that none of the above works involve services of technical nature. The discussion given by the CIT(A) in para 5.4.2 is relevant. We agree with the same considering the settled legal position that routine maintenance repairs are not FTS as held by the Delhi Bench of the Tribunal in the case of Lufthansa Cargo India (P.) Ltd. (supra). For the purpose of completeness of this order, we reproduce below the relevant praragraph of the said decision in the context of the questions raised in the said decision-*

> *"In conclusion, Technik carried out the repair work in the normal course of its business in Germany, without any involvement or participation of the assessee's personnel. The overhaul repairs involved were routine maintenance repairs. It cannot therefore be said that Technik rendered any managerial, technical or consultancy service to the assessee. In this view of the matter, we hold that the payments made by the assessee to non-residents workshops outside India do not constitute payment of fees for managerial, consultancy or Technical services as defined in Explanation 2 to section 9(1)(vii). The assessee succeeds on this ground."*

Regarding the decision of the Hyderabad in the case of Mannesmann Demag Lauchhammer (supra) which involves deputing of technicians to India for supervision of repairs to be carried out at the plant and machinery purchased by the NMDC, we find that the said decision is distinguishable on facts. Such deputation, whether deputation or supervision, is absent in both instant cases as well as the case before it, as observed by the Delhi Bench of the Tribunal in the cited case. The relevant para of the order of the Tribunal in that case reads as follows-

> *"We find that in Demag's case, the foreign company rendered 'technical consultancy' by way deputing a technician to India for supervising repairs to be carried out on the plant and machinery purchased by National Mineral Development Corporation. It is not the repair work per se which has been held to be technical services but it is the provision of the consultant technician deputed to India for supervising the repairs which has been treated as consultancy services. The foreign technician stayed on in India for 44 days to advise and supervise repair work which was obviously carried out by the engineers and workers of the Indian Company. Thus, the nature of services rendered by the foreign company was consultancy of technical nature through the provision of its technician deputed to India. Our conclusion is supported by the decision of Andhra Pradesh high court in the same case reported in 238 ITR 861, wherein Hon'ble High Court affirming the aforesaid decision of the Tribunal held that the Explanation 2 has expanded the scope of Section 9(1)(vii)(b) by providing that the services of technical or other personnel would be taxable. It has been repeatedly stated by the assessee that no foreign Technician was ever deputed of India. The lower authorities and the DR have not pointed out any instance of a technician having been assigned of India. This decision therefore is of no assistance to the Revenue."*

Thus, the above decisions of the Tribunal are relevant for the proposition that the routine repairs do not constitute 'FTS' as they are merely repair works and not technical services. Technical repairs are different from 'technical services'. Thus, the payments made for 'technical services' alone attract the provisions of S.9(1)(vii) and its Explanation 2. Further, it is also a settled issue at the level of the Tribunal that every consideration made for rendering of services do not constitute income within the meaning of S.9(1)(viii) of the Act and for considering the same, first of all the said consideration is for the FTS. Therefore, considering the above, decision of Delhi Bench of the Tribunal, which explained the scope of the provisions, we are of the view that the impugned orders of the CIT(A), for the years under consideration, on this aspect of the matter, do not call for interference. Accordingly, the grounds raised in these appeals of the revenue are dismissed.

> ***17.*** *Without prejudice, the assessee raised the issue of non-applicability of the provisions of S.201 to the assessment years 2001-02 and 2002-03 and the said argument was never raised or discussed by the lower authorities. Since the impugned order of the assessing officer was passed prior to the amendment to the provisions of S.201 by the Finance Act, 2008 with retrospective effect from 1.4.2003, to be fair, the Revenue normally deserves fresh opportunity to be heard on this issue. Instead of setting aside this issue to the files of the lower authorities, considering the alternative nature of the argument, and also considering the fact, we have already granted relief to the assessee as per discussion in the preceding paragraphs of this order on merits, we dismiss the alternate argument of Ld Counsel holding the adjudication of this issue becomes an academic exercise. Therefore, the same are dismissed as academic.*

5.3. Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the assessee, as the proposition canvassed by ld. AR for the assessee are supported by various judgments of Hon'ble High Courts and Tribunals. The Ld. AR for the assessee, has pointed out that there is a difference between 'Contract of work and 'Contract of service'. The two words convey different ideas. In the 'Contract of work' the activity is predominantly physical; it is tangible. In the activity referred as 'Contract of service', the dominant feature of the activity is intellectual, or at least, mental. Certainly, 'Contract of work' also involves intellectual exercise to some extent. Even a gardener has to bestow sufficient care in doing his job; so is the case with a mason, carpenter or a builder. But the physical (tangible) aspect is more dominant than the intellectual aspect. In contrast, in the case of rendering any kind of 'service', intellectual aspect plays the dominant role. In the case under consideration, the scope of work mentioned in the agreement clearly explains that it is 'contract of

work' to dismantle the machinery, therefore, it is not a 'contract of service' hence payment by the assessee is not for technical services, therefore, the assessee company is not liable to deduct TDS.

5.4 Considering the factual position and precedents cited by ld. AR for the assessee, we are of the view that dismantling of machinery does not require any technical services, therefore, the present case does not fall in the ambit of fees for technical services and the assessee company does not require to deduct TDS. Therefore, we do not find any infirmity in the order passed by ld. CIT(A). Hence, we do not hesitate to confirm the order passed by ld. CIT(A). Accordingly, we confirm the order passed by ld. CIT(A).

6. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 07/01/2017

Sd/-	**Sd/-**
(A.T.VARKEY)	**(DR. A.L.SAINI)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

कोलकाता /Kolkata; दिनांक Dated 04/01/2017

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-ITO(International Taxation, Wd Kol
2. प्रत्यर्थी / The Respondent.-M/s Emami Paper Mills Ltd
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता