INTERNATIONAL TAX DIGEST (July 2026)

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I. PERMANENT ESTABLISHMENT

<u>Supervisory PE</u>

1. **Bechte Ltd. vs. ACIT, IT [2026] 188 taxmann.com 987 (Delhi - Trib.) [28-07-2026] - IT Appeal No. 1977 (Delhi) of 2025 - [AY 2022-23]**

   Where assessee, a UK company, rendered engineering, procurement support and technical advisory services to its AE from outside India and no employee visited India under service agreement effective from 1-1-2020, no PE could be said to exist in India and, therefore, receipts could not be taxed as business income under section 44DA.

   Assessee, UK company, rendered engineering, procurement support and technical advisory services to its AE from outside India and claimed that no employee visited India under service agreement effective from 1-1-2020. AO proposed to tax receipts only as FTS, however DRP, relying on findings for earlier years, held that assessee had PE in India and directed taxation of receipts as business income under section 44DA. Tribunal ruled that in absence of any employee visiting India pursuant to new agreement, no PE could be said to exist in India and, therefore, receipts could not be taxed as business income under section 44DA. ***[Ernst & Young (EMEIA) Services Limited Asstt. CIT. International Taxation [2026] 184 taxmann.com 671 (Delhi - Trib.) followed]***

<u>Offshore principal-to-principal sales do not create a DAPE or Fixed Place PE in India</u>

1. **Audi AG vs. Dy. CIT, IT [2026] 187 taxmann.com 996 (Mumbai - Trib.) [10-06-2026] - IT Appeal No. 6741 (MUM.) of 2025 - [AY 2023-24]**

   Where assessee, a German automobile manufacturer entered into supply and importer agreements with SAVWIPL, a legally independent company responsible for Indian market, SAVWIPL did not constitute assessee's PE in India since cars were manufactured outside India and sold to SAVWIPL on a principal-to-principal basis through offshore sales; consequently, no business profits from such sales were taxable in India. [India-Germany DTAA]

   Assessee, a German automobile manufacturer, had entered into a supply agreement and an importer agreement with group entities, which were subsequently amalgamated into Skoda Auto Volkswagen India Pvt. Ltd. (SAVWIPL), a legally independent Indian company exclusively responsible for Indian market. AO held that SAVWIPL constituted both a Fixed Place PE and a Dependent Agent PE of assessee in India under Article 5 of the DTAA and attributed about Rs. 51.03 crores as business income taxable in India, which was upheld by DRP. Tribunal ruled that since cars were manufactured outside India and sold to SAVWIPL on a principal-to-principal basis, with offshore sales constituting a separate and independent activity, SAVWIPL could not be regarded as assessee's PE in India and no business profits from such offshore sales were taxable in India under section 9 or Article 5 of the DTAA. ***[Audi AG v. DDIT ITA No.6880/Mum/2016 dated 16-12-2019 followed]***

DAPE

1. **UPS Asia Group Pte. Ltd. vs. ACIT (IT) [2026] 187 taxmann.com 990 (Mumbai - Trib.) [24-06-2026] - IT Appeal No. 1363 (Mum) of 2025 - [AY 2022-23]**

   Where assessee, a Singapore-based company engaged in supply chain management and logistics, was treated by AO as having a business connection and agency PE in India, since in earlier years it was held that assessee did not have business connection or PE in India, following that view, such determination and consequent addition to income was not sustainable- Further, since Indian AE had been remunerated at arm's length price and no transfer pricing adjustment had been made in respect of alleged DAPE, no further attribution of revenues or profits to alleged business connection or PE in India was warranted. [India–Singapore DTAA]

   Assessee, a Singapore-incorporated company engaged in supply chain management, freight forwarding and logistics services, filed its return declaring about Rs. 30.86 lakhs. Its India-related activities involved an Indian AE. The Case was selected for scrutiny, and AO issued a draft assessment proposing to assess total income at about Rs. 4.44 crores, holding that assessee had a Business Connection under Section 9(1)(i) and that its Indian AE constituted a DAPE in India under Article 5 of the DTAA. It was noted that Tribunal in assessee's own case for earlier assessment years had held that assessee did not have a business connection in India under section 9(1)(i) and that its Indian associated enterprise did not constitute a PE in India under Article 5 of the DTAA. Further, it was noted that Indian AE had been remunerated at arm's length price and no adjustment had been made by TPO in case of the alleged DAPE. Tribunal thus ruled that on facts, no further attribution of revenues/profits to alleged Business Connection/PE in India was warranted Following aforesaid order, impugned order passed by AO was to be set aside. ***[UPS Asia Group Pte. Ltd. v. Asst. CIT (International Taxation) IT Appeal No. 4797 (Mum) of 2023, dated 28-10-2024 followed]***

Mere holding -subsidiary relationship does not result in PE

1. **ACIT (IT) vs. Mckinsey & Company Lme Ltd. [2026] 186 taxmann.com 1256 (Mumbai - Trib.) [20-05-2026] - [TS-933-ITAT-2026(Mum)] - IT Appeal NO. 1818 (MUM.) of 2024 - [AY 2018-2019]**

Where assessee, a UK based company, providing advisory support services to Indian AEs, was alleged by revenue to have a PE in India based on holding-subsidiary relationship but no cogent evidence substantiating such PE was brought on record, plea to tax receipts as business profits under Article 7 of the DTAA was to be rejected. [India – UK DTAA]

Assessee, a UK based company, rendered advisory support (borrowed services) to its Indian AE. It filed a revised return declaring Nil income, claiming treaty benefits and asserting that receipts were business income with no PE in India under Article 5 of India-UK DTAA. AO rejected assessee's plea and treated both borrowed services and reimbursements as FTS taxable in India under Article 13 of the DTAA. Revenue contended that assessee had a PE in India under Article 5 based on holding-subsidiary relationship and that income should be taxed as Business Profits under Article 7. Tribunal ruled that since Revenue had failed to bring on record any cogent material or evidence to substantiate that assessee had a PE in India, plea to tax receipts as business profits under Article 7 of DTAA was rejected. ***[Asstt. CIT v. Mckinsey & Company Lme Ltd. IT Appeal No. 2759 (Mum.) of 2023 followed]***

II. BUISNESS PROFITS

<u>No TDS on foreign remittances by Indian Branch to HO</u>

1. **United Airlines Inc. vs. ACIT (IT) [2026] 188 taxmann.com 345 (Delhi) [08-07-2026] - W.P.(C) No. 8966 of 2026 – [FY 2026-27]**

   Where assessee, an Indian branch office of a U.S. company, made remittances to its U.S. Head Office and Competent Authority declined to issue a certificate under section 195(2) holding that no tax was deductible since there was no payer-payee relationship, no adverse action could be taken against assessee in respect of such remittances merely for non-deduction of tax at source

   Assessee, an Indian branch office of a U.S. company, made remittances to its U.S. Head Office and applied under section 195(2) for a certificate authorising non-deduction of tax at source. Competent Authority declined to issue certificate, holding that remittances by a branch office to its Head Office did not involve a payer-payee relationship and, therefore, section 195 was inapplicable. The High Court disposed of the writ petition filed by the assessee holding that in such circumstances, no certificate under section 195(2) was required to be issued and, once Competent Authority itself had held that tax was not required to be deducted, no action prejudicial to assessee could be taken for non-deduction of tax on such remittances.

<u>Business development expenses treated as head office expenditure</u>

1. **Sheladia Associates INC vs. ACIT (IT) [2026] 187 taxmann.com 172 (Hyderabad - Trib.) [03-06-2026] - [TS-877-ITAT-2026(HYD)] - IT Appeal No. 574 (Hyd) of 2026 - [AY 2023-24]**

   Assessee, a US company with PE in India, claimed Technical Support and Business Development expenses as direct project costs but Assessing Officer treated them as Head Office expenditure under Section 44C- Matter was remanded to AO to verify whether said expenses fell within the definition of HO expenditure and if so, to compute the admissible deduction u/s 44C

   Assessee, a US company, operated in India through a branch office and five project offices constituting a PE. It claimed Backstopping Technical Support and Business Development expenses as direct project costs for Indian operations.AO treated these as Head Office expenditure under Section 44C and disallowed entire amounts. Tribunal ruled that once expenditure falls within nature of Head Office expenditure under Section 44C, statutory limitation applies even if incurred wholly for Indian operations. Therefore, matter was remanded to AO to verify whether subject expenses fell within meaning of 'Head Office expenditure' as defined in Explanation to Section 44C and, if so, to compute deduction admissible within statutory limits prescribed under Section 44C. ***[DIT (IT) v. American Express Bank Ltd. [2025] 181 taxmann.com 433/484 ITR 137/[2026] 308 Taxman 246 (SC) followed, Sheladia Associates Inc. v. ACIT (Int. Taxn) IT Appeal No. 423 (Hyd.) of 2023, dated 16-10-2024, Sheladia Associates INC v. ADIT (Int. Taxn) IT Appeal No.537 (Hyd.) of 2023, dated 21-06-2024 distinguished]***

<u>Head office expenses incurred outside India claimed as attributable to Indian Branch</u>

1. **DDIT(IT) vs. American Express Bank Ltd. [2026] 187 taxmann.com 866 (Mumbai - Trib.) [17-06-2026] - IT Appeal Nos. 3487 & 3508 (Mum) of 2004 - [AY and 1999-2000]**

   Where direct head office expenses incurred outside India were claimed as attributable to an Indian branch, such expenses must be examined to determine if they constitute 'head office expenditure' under Explanation to section 44C, requiring a detailed factual analysis – Matter remanded

   Assessee, a non-resident banking company with a Mumbai branch as its PE. AO observed debits of direct head office expenses claimed as attributable to the assessee claimed these were direct expenses allowable under section 37(1). The AO applied section 44C, noting the expenses included salary, travel, other employee-related and relocation expenses. Tribunal ruled that direct head office expenses incurred outside India and claimed as attributable to Indian branch required examination to determine whether they qualified as 'head office expenditure' under Explanation to section 44C, involving detailed factual analysis of nature of expenditure. Since AO had not undertaken such exercise, matter was remanded for de novo adjudication. ***[DIT (IT)-I, Mumbai v. American Express Bank Ltd. [2025] 181 taxmann.com 433/[2026] 484 ITR 137/308 Taxman 246 (SC) followed]***

NRI desk expenses incurred by overseas branches constitutes HO expenditure u/s 44C

1. **Bank of America vs. ACIT [2026] 188 taxmann.com 1061 (Mumbai - Trib.) [22-07-2026] - [TS-1135-ITAT-2026(Mum)] - IT Appeal Nos. 8681, 9162 (Mum.) of 2004 & 2284, 2283 (Mum.) of 2005 - [AY 1999-2000 and 2001-02]**

   Where assessee, a foreign bank with a PE in India, claimed deduction for NRI desk expenses incurred by overseas branches for soliciting NRI deposits, such expenses constituted head office expenditure and fell within purview of section 44C, not eligible for separate deduction under section 37(1).

   Assessee, a foreign bank headquartered in USA with a PE in India, claimed deduction of overseas-branch expenses incurred for Indian operations, including NRI desk expenses for soliciting NRI deposits. AO found that assessee claimed Rs. 2.28 crores as NRI desk expenses incurred by overseas branches on salary, travel, other employee-related and relocation costs, treated them as general and administrative, and brought them within section 44C, refusing a separate allowance under section 37(1). Commissioner (Appeals) directed allowance of these expenses under section 37(1) holding them outside scope of section 44C. Tribunal ruled that expenses incurred by overseas branches on NRI desks soliciting NRI deposits were to be treated as 'head office expenditure' under section 44C rather than allowable as a separate deduction under section 37. ***[Director of Income-tax (IT)-I, Mumbai v. American Express Bank Ltd. [2025] 181 taxmann.com 433/[2026] 484 ITR 137/308 Taxman 246 (SC) followed]***

Overseas / branch cost including data processing treated as HO expenditure u/s 44C

1. **Bank of America vs. ACIT [2026] 188 taxmann.com 1061 (Mumbai - Trib.) [22-07-2026] - [TS-1135-ITAT-2026(Mum)] - IT Appeal Nos. 8681, 9162 (Mum.) of 2004 & 2284, 2283 (Mum.) of 2005 - [AY 1999-2000 and 2001-02]**

   Where assessee, a foreign bank with Indian PE, claimed deduction for overseas-branch costs including data processing and branch expenses which were treated by revenue as head office expenditure under Section 44C, matter was remanded to verify if expenditures fulfilled tripartite test for 'head office expenditure' as per Supreme Court ruling in American Express Bank Ltd.

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Assessee, a foreign bank with Indian PE, claimed deduction of overseas-branch costs incurred for Indian operations, including data processing charges and other branch expenses. For AY 1999-2000, AO treated data processing cost of about Rs. 7.21 crores as general and administrative expenses covered by Section 44C and restricted deduction accordingly; assessee claimed such costs were not general administration and sought allowance outside Section 44C. For AY 2001-02, AO disallowed overseas-branch expenditure attributable to Indian operations of about Rs. 7.14 crores by invoking Section 44C and Section 40(a)(i) for non-deduction under Section 195. Tribunal ruled that in view of Supreme Court's decision in ***American Express Bank Ltd***, matter was remanded to AO to verify whether impugned expenditures satisfied tripartite test necessary to qualify as 'head office expenditure' under Explanation to Section 44C. ***[Director of Income-tax (IT)-I, Mumbai v. American Express Bank Ltd. [2025] 181 taxmann.com 433/[2026] 484 ITR 137/308 Taxman 246 (SC) followed]***

Deduction u/s 36(1) (viia) to be given effect prior to computing restriction u/s 44C

1. **Bank of America vs. ACIT [2026] 188 taxmann.com 1061 (Mumbai - Trib.) [22-07-2026] - [TS-1135-ITAT-2026(Mum)] - IT Appeal Nos. 8681, 9162 (Mum.) of 2004 & 2284, 2283 (Mum.) of 2005 - [AY 1999-2000 and 2001-02]**

   Where assessee, a foreign bank with Indian PE claimed deduction for head office expenditure under section 44C and for provision for bad debts under section 36(1) (viia), deduction under section 36(1) (viia) is to be given effect prior to computing restriction under section 44C, since it is not expressly excluded from 'adjusted total income', and computation of head office expenditure restriction should follow such sequence.

   Assessee, a foreign bank with Indian PE, claimed deduction under section 36(1) (viia) and also deduction of head office expenditure subject to section 44C. For AY 1999-2000, AO computed deduction under section 44C and thereafter worked out other deductions, including section 36(1) (viia). CIT(A) directed that deduction under section 36(1) (viia) be computed on gross total income and before computing restriction under section 44C. Revenue challenged these directions. Tribunal ruled that deduction under section 36(1) (viia) has not been expressly excluded for computation of 'adjusted total income' as per Explanation to section 44C and thus, effect of deduction under section 36(1) (viia) has to be given prior to computation of deduction under section 44C. Therefore, computation under section 44C should be made after giving effect to deduction under section 36(1) (viia).

III. SHIPPING PROFITS

Inland Haulage Charges

1. **Dy. CIT vs. COSCO Container Lines [2026] 187 taxmann.com 1132 (Mumbai - Trib.) [30-06-2026] - [TS-972-ITAT-2026(Mum)] - IT Appeal No.9380 (Mum) of 2025 - [AY 2020-21]**

   Where assessee, a Chinese shipping company, received Inland Haulage Charges (IHC) in connection with transportation of cargo in international traffic, since such charges formed an integral part of international shipping operations, income was covered by Article 8 of the DTAA and was not taxable in India. [India-China DTAA]

   Assessee, non-resident corporate entity of China, was engaged in shipping business in international waters and carried out transportation activity in India through its agent, COSCO. Assessee received Inland Haulage Charges (IHC) and claimed profit as exempt under Article 8 of the DTAA. AO held that Article 8(1) exempted only profits from operation of ships in international traffic. He, thus, treated IHC as a separate inland activity and taxed IHC-related profit as business profits under Article 7 read with Article 5, attributing it to PE. Commissioner (Appeals) held that IHC was part of composite activity of transportation of goods in international traffic and was covered by Article 8(1) of the DTAA. In case similar to assessee, Tribunal while examining dispute held that entire IHC of was in connection with transport of containers either discharged or loadable at Indian ports for purpose of delivery through international waters and should be considered as integral part of income from shipping operations. Tribunal ruled by following aforesaid view and IHC received by assessee would be covered under Article 8 of the DTAA and not taxable in India. ***[CMA CGM SA India Bulls Finance Centre Tower v. Dy. CIT, International Taxation IT Appeal No. 6095 (Mum.) of 2018, dated 30-12-2019 and DCIT (Int. Taxation) v. A.P. Moller Maersk AS [2018] 90 taxmann.com 326 (Mumbai) followed]***

IV. DIVIDENDS

Refund of DDT more than rate under DTAA – Allowed

1. **SGS India (P.) Ltd. vs. CIT(Appeals) [2026] 187 taxmann.com 1125 (Mumbai - Trib.) [30-06-2026] - [TS-975-ITAT-2026(Mum)] - IT Appeal Nos. 1054, 1055, 1056, 1057 & 1067 (Mum) of 2026 - [AY 2009-10 to 2012-13]**

   Assessee distributed dividends to its overseas shareholders who were tax residents of Switzerland and paid DDT under section 115-O at 16.99 per cent, rate of tax on such dividends could not exceed 10 per cent as prescribed under

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article 10(2) of the DTAA and assessee was entitled to refund of DDT paid in excess of such rate. [India-Switzerland DTAA]

Assessee, a resident corporate entity and an affiliate company of SGS Group incorporated in Switzerland, distributed dividends to its overseas shareholders who were tax residents of Switzerland and paid Dividend Distribution Tax (DDT) under section 115-O. Assessee claimed refund of a part of DDT paid contending that, under article 10 of the DTAA, rate of tax on dividend was 10 per cent. It was found that High Court in ***Colorcon Asia (P.) Ltd. v. Jt. CIT [2025] 181 taxmann.com 301/[2026] 486 ITR 476 (Bom.)*** had held that DDT payable under section 115-O could not exceed rate of tax on dividend prescribed under applicable DTAA if such rate was lower than rate prescribed under section 115-O. Tribunal ruled in favour of the assessee by following decision of High Court and directed that DDT paid by assessee in excess of 10 per cent of rate of dividend prescribed under article 10(2) of the DTAA was liable to be refunded.***[Colorcon Asia (P.) Ltd. v. Jt. CIT [2025] 181 taxmann.com 301/[2026] 486 ITR 476 (Bombay) followed]***

<u>Refund of DDT more than rate under DTAA – Remanded</u>

1. **ESAB India Ltd. vs. Dy. CIT [2026] 187 taxmann.com 1075 (Chennai - Trib.) [19-05-2026] - [TS-801-ITAT-2026(CHNY)] - IT APPEAL NO. 2353 AND 2645 (CHNY) OF 2025 - [AY 17-18]**

   Where assessee claimed that DTAA rates should apply to dividend distribution tax under section 115-O on dividends paid to non-resident shareholders, matter was to be remanded to Assessing Officer for decision in accordance with Supreme Court's final decision on issue. [India – UK DTAA & India Netherlands DTAA]

   Assessee paid DDT under section 115-O on dividends paid to non-resident shareholders in United Kingdom and Netherlands and claimed that lower DTAA rates should apply. In view of stay granted by Supreme Court in ***Jt. CIT v. Colorcon Asia (P.) Ltd. [2026] 186 taxmann.com 774 (SC)*** on issue and since lower authorities had not considered assessee's contention, matter was remanded by the Tribunal to AO for decision in accordance with final decision of Supreme Court. **[*National Thermal Power Co. Ltd. v. CIT* [1998] 97 Taxman 358/229 ITR 383 (SC) *followed*]**

2. **Denso Haryana (P.) Ltd. vs. J/ACIT [2026] 188 taxmann.com 988 (Delhi - Trib.) [28-07-2026] - IT Appeal Nos. 1250 (Delhi) of 2023 and 5389 & 6690 (Delhi) of 2019 - [AY 2013-14, 2014-15 and 2015-16]**

   Where assessee, a domestic company, claimed benefit of lower DDT rate under India-Japan DTAA on dividends paid to its Japanese shareholder, but relief was denied since DTAA was not considered applicable to DDT under section 115O, matter was remanded to the Assessing Officer and was to be kept pending to await Supreme Court's final decision on this issue. [India-Japan DTAA]

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Assessee, an Indian company, distributed dividends to its shareholder AE in Japan and paid DDT under section 115O. Assessee claimed that levy should be restricted to 10 % treaty rate under Article 10 of the DTAA read with section 90, seeking refund of excess DDT. Commissioner (Appeals) denied relief relying on Special Bench ruling that DTAA benefit does not extend to DDT paid by domestic company under section 115O. It was noted that High Court in ***Colorcon Asia (P.) Ltd. v. Jt. CIT [2025] 181 taxmann.com 301/ [2026] 486 ITR 476 (Bombay)*** had reversed Special Bench ruling and held that DDT was covered by DTAA and rate should be restricted to 10 %. Tribunal ruled that since Supreme Court had admitted SLP against High Court's decision and directed all High Courts to stay similar matters, issue was to be restored to AO to await final outcome of Supreme Court's decision.

3. **Akzo Novel India Ltd. vs. Dy. CIT [2026] 187 taxmann.com 194 (Kolkata - Trib.) [03-06-2026] - IT Appeal Nos. 140 (Kol) of 2019 and others - [AY 2014-15, 2018-19 and 2020-21]**

   Where assessee paid DDT on dividends to foreign shareholders in UK and Netherlands but claimed applicability of more beneficial tax rates under relevant DTAAs by virtue of section 90(2), issue of entitlement to lower DTAA tax rate required fresh adjudication since it was not examined earlier. [India-Netherlands DTAA & India-UK DTAA]

   Assessee-company declared dividend to its foreign shareholders resident in UK and Netherlands and paid DDT at statutory rate under section 115-O. Assessee claimed that DDT was tax on dividend income of shareholder and not on income of company and, therefore, by virtue of section 90(2), it was entitled to apply more beneficial provisions of applicable DTAAs and rate of tax on dividend should not exceed rate prescribed under relevant treaty provisions, including article 10 of India-Netherlands DTAA (MFN clause) and article 11 of India-UK DTAA. Therefore, treaty rate was to be applied to dividend distribution and excess DDT paid by assessee was to be refunded to assessee. However, since this issue was not examined by Assessing Officer, same was to be restored to Assessing Officer for adjudication. ***[Jute Corpn. of India Ltd. v. CIT [1990] 53 Taxman 85/ [1991] 187 ITR 688 (SC), National Thermal Power Co. Ltd. v. CIT [1998] 97 Taxman 358/229 ITR 383 (SC), CIT v. Britannia Industries Ltd. [2017] 83 taxmann.com 365/396 ITR 677 (Cal) and Giesecke & Devrient (India) (P) Ltd. v. Addl. CIT [2020] 120 taxmann.com 338 (Delhi-Trib), Colorcon Asia (P.) Ltd. v. Jt. CIT [2025] 181 taxmann.com 301/[2026] 486 ITR 476 (Bom) followed]***

V. INTEREST

Interest on NOSTRO account received by Indian branch /PE from HO of Foreign Bank - not taxable in the hands of Indian PE

1. **DDIT(IT) vs. American Express Bank Ltd. [2026] 187 taxmann.com 866 (Mumbai - Trib.) [17-06-2026] - IT Appeal Nos. 3487 & 3508 (Mum) of 2004 - [AY and 1999-2000]**

   Where Indian PE of a foreign bank received and paid interest on NOSTRO accounts to its Head Office and overseas branches, such interest could not be taxed in India under domestic law in the hands of the PE by applying doctrine of mutuality.

   Assessee, a non-resident banking company headquartered in the USA, carried on banking business in India through its Mumbai branch, a PE. Assessee had received interest from its overseas head office and branches and had also paid certain interest to overseas head office and branches. The assessee has not offered the interest received from overseas head office and branches as 'income', it has not claimed the interest paid to overseas head office and branches as 'expenditure'. AO taxed the interest received and allowed deduction of the interest paid. Tribunal ruled that interest received from and paid to Head Office and overseas branches was not taxable at hands of Indian PE under domestic law applying doctrine of mutuality. ***[Director of Income-tax (IT) v. Credit Agricole Indosuez [2016] 69 taxmann.com 285/ [2015] 377 ITR 102 (Bombay) and Sumitomo Mitsui Banking Corpn. v. Deputy DIT (IT) followed]***

2. **ACIT vs. Barclays Bank PLC [2026] 187 taxmann.com 963 (Mumbai - Trib.) [23-06-2026] - [TS-937-ITAT-2026(Mum)] - IT Appeal Nos. 308 & 383 (Mum) of 2001 - [AY 1997-98]**

   Where Indian branches of UK bank (assessee) earned interest on Nostro accounts and placements with Head Office and overseas branches, such interest was not taxable in India under section 9 due to principle of mutuality and self-to-self transactions.

   Assessee, a non-resident banking company was incorporated in the UK with branches in India at Mumbai and New Delhi constituting its PE. Indian branches received interest on Nostro accounts and on placements of funds with the Head Office/overseas branches. The assessee did not offer such interest to tax. AO observed from the assessee's balance sheet that deposits/borrowings of the Indian branches were generated in India and deployed to Nostro accounts/overseas placements with the Head Office/overseas branches and held that the conditions of section 9(1)(v)(c) were satisfied. Tribunal ruled that interest earned by Indian branches on Nostro accounts and placements with Head Office and overseas branches was not chargeable to tax in India under section 9, applying principle of mutuality/self-to-self. ***[DIT (IT) v. Credit Agricole Indosuez [2016] 69 taxmann.com 285/[2015] 377 ITR 102***

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(Bombay) (para 10), Sumitomo Mitsui Banking Corporation v. Dy. DIT (IT) [2012] 19 taxmann.com 364/136 ITD 66 (Mumbai) followed]

3. **Bank of Nova Scotia vs. ACIT [2026] 187 taxmann.com 997 (Mumbai - Trib.) [25-06-2026] - [TS-1154-ITAT-2026(Mum)] - IT Appeal Nos. 3159 and 7217 (Mum) of 2004 and others - [AY 1999-2000 to 2001-2002]**

   Where Indian branch of foreign bank received interest from its head office or overseas branches, such interest was not chargeable to tax in India due to application of mutuality principle under domestic law, and corresponding interest paid to head office or overseas branches was not allowable as deduction. [India-Canada DTAA]

   Assessee, a foreign bank with Indian branches, maintained NOSTRO accounts with its Head Office and overseas branches. During the relevant years, it received interest on balances maintained with the HO/overseas branches and also paid interest on funds placed by the HO/overseas branches with the Indian branch. In its computation of income, the assessee excluded the interest received and added back the interest paid, consistently treating both as transactions with itself and therefore tax neutral. AO held that the Indian branch constituted a distinct PE under Article 7 of the DTAA. He taxed the interest received from the HO/overseas branches under sections 9(1)(i) and 9(1)(v). He, further, disallowed the deduction of interest paid to the HO under section 40(a)(i) for failure to deduct tax at source. Tribunal ruled that by applying doctrine of mutuality under domestic law, (a) interest received by Indian branch from its head office/overseas branches was not chargeable to tax, and (b) corresponding interest paid to head office/overseas branches was not allowable as deduction. ***[Sumitomo Mitsui Banking Corpn. v. Deputy DIT (IT) [2012] 19 taxmann.com 364/136 ITD 66 (Mumbai) (SB), Asstt. DIT (International Taxation) v. Credit Agricole Indosuez [2013] 33 taxmann.com 441(Mumbai) and DDIT v. American Express Bank Ltd. [IT Appeal No. 3487 (Mum) of 2004, dated 17.06.2026] followed]***

4. **Barclays Bank PLC vs. ACIT [2026] 187 taxmann.com 1131 (Mumbai - Trib.) [30-06-2026] - IT Appeal Nos. 5514 and 5199 (Mum) OF 2001 and others - [AY 1998-99 to 2000-2001]**

   Indian branches of a UK bank received interest from Nostro accounts and placements with Head Office or overseas branches, such interest was not taxable in India as payments between branch and Head Office constitute payments to self and do not give rise to income

   Assessee, a non-resident banking company having Indian branches constituting its PE, received interest from Nostro accounts and placements with head office and overseas branches. Tribunal ruled that interest received by Indian branches from Nostro accounts and placements with head office and overseas branches was not taxable in India as payments to self were not income. ***[DIT (IT) v. Credit Agricole Indosuez [2016] 69 taxmann.com 285/ [2015] 377 ITR 102 (Bombay) and Sumitomo Mitsui Banking Corpn. v. Dy. DIT (IT) [2012] 19 taxmann.com 364/136 ITD 66 (Mumbai) (SB) followed]***

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<u>Interest earned by Indian branch /PE of foreign bank from foreign third-party banks; -not deemed to accrue or arise in India</u>

1. **ACIT vs. Barclays Bank PLC [2026] 187 taxmann.com 963 (Mumbai - Trib.) [23-06-2026] - [TS-937-ITAT-2026(Mum)] - IT Appeal Nos. 308 & 383 (Mum) of 2001 - [AY 1997-98]**

   Where assessee a UK-based non-resident banking company with Indian branches constituting a PE, earned interest from third-party overseas banks, such interest was not deemed to accrue or arise in India within section 9 nor taxable as business profits, as specific provision for interest overrides general deeming clause.

   Assessee, a non-resident banking company incorporated in UK, had branches in India at Mumbai and New Delhi constituting its PE. Besides interest from Head Office/overseas branches, Indian branches also received interest from other overseas (third-party) banks. Tribunal ruled that interest earned by Indian branches from other overseas (third-party) banks was not deemed to accrue or arise in India within meaning of section 9, nor otherwise taxable under its general deeming clause when a specific clause for interest exists. ***[Credit Agricole Indosuez v. Jt. CIT [2007] 14 SOT 246 (Mumbai), Assam Fronter Tea Co. Ltd. v. ITO [1994] 49 ITD 412 (Calcutta) followed]***

2. **Bank of Nova Scotia vs. ACIT [2026] 187 taxmann.com 997 (Mumbai - Trib.) [25-06-2026] - [TS-1154-ITAT-2026(Mum)] - IT Appeal Nos. 3159 and 7217 (Mum) of 2004 and others - [AY 1999-2000 to 2001-2002]**

   Assessee, a non-resident bank having Indian branches, earned interest on overseas placements of funds with non-resident banks, such interest was not taxable in India on a deemed accrual basis under section 9(1)(v)(c), though taxability on actual accrual under section 5 was subject to further factual verification.

   Assessee, a non-resident bank carrying on banking business in India through its branches, earned interest on funds placed with third-party non-resident banks outside India. Assessee claimed exemption on ground that such interest neither accrued nor was deemed to accrue or arise in India. AO rejected claim, holding that overseas placements were made out of deposits mobilised by Indian branches and, thus, interest emanated from assessee's Indian operations. Tribunal ruled that in absence of requisite material available on record to support stand taken by either side, matter in so far as accrual of interest income under section 5 was set-aside to file of AO. It was noted that 'such person' as referred in provisions of section 9(1)(v)(c) had to be read and understood to mean non - resident who was liable to pay interest and not to assessee who was in receipt of such interest income as so wrongly construed and understood by Assessing officer. Since it was not case of revenue that money so borrowed had been used by such non-residents bank for their banking operations in India, interest income on funds lend to overseas branches of non-resident banks were

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not held to be deemed to accrue or arise in India in terms of section 9(1)(v). ***[Assam Frontier Tea Co. Ltd. v. ITO [1994] 49 ITD 412 (Calcutta) followed]***

3. **Barclays Bank PLC vs. ACIT [2026] 187 taxmann.com 1131 (Mumbai - Trib.) [30-06-2026] - IT Appeal Nos. 5514 and 5199 (Mum) OF 2001 and others - [AY 1998-99 to 2000-2001]**

   Where assessee, a non-resident banking company with Indian branches constituting its PE, received interest from placements with other overseas banks, and department neither alleged nor established that non-resident payer banks had used borrowed funds for any business carried on in India, such interest did not fall within section 9(1)(v)(c) and was not taxable in India

   Assessee, a non-resident banking company, had Indian branches constituting its PE - It received interest in A.Y. 1998-99 from placements with other overseas (third-party) banks and claimed it was not taxable in India, stating that payer banks had not carried on any business in India and conditions of section 9(1)(v)(c) were not satisfied. AO taxed said interest under section 9(1)(v)(c) and, alternatively, under section 9(1)(i). Commissioner (Appeals) sustained taxability under section 9(1)(v)(c). For A.Ys. 1999-2000 and 2000-01, identical additions were made and contested. Tribunal ruled that interest paid by other overseas banks to Indian branches of assessee did not fall within ambit of section 9(1)(v)(c), since department neither alleged nor established that such non-resident banks had used debt incurred or money borrowed for any business or profession carried on in India and, consequently, general provision under section 9(1)(i) could not be invoked where a specific provision under section 9(1)(v) governed taxation of interest. Therefore, interest received by Indian branches from other overseas (third-party) banks was not taxable in India ***[Credit Agricole Indosuez v. Jt. CIT [2007] 14 SOT 246 (Mumbai) and Assam Fronter Tea Co. Ltd. v. ITO [1994] 49 ITD 412 (Calcutta) followed]***

<u>Tax refund interest not effectively connected with PE taxable at treaty rate as per article 11(2)</u>

1. **UPS Asia Group Pte. Ltd. vs. ACIT (IT) [2026] 187 taxmann.com 990 (Mumbai - Trib.) [24-06-2026] - IT Appeal No. 1363 (Mum) of 2025 - [AY 2022-23]**

   Interest income from income-tax refund received by Singapore resident was not effectively connected with any PE in India either on basis of asset or activity test, such interest was to be taxed in India as per article 11(2) of India-Singapore DTAA. [India-Singapore DTAA]

   Assessee, a Singapore based company, was engaged in business of supply chain management, freight forwarding and logistics services. Assessee received interest on income tax refund which was offered to tax @ 15% of India-Singapore Tax Treaty - AO held that interest received on Income-tax refund was taxable at normal rates i.e. taxable @ 40% along with applicable surcharge and cess. Tribunal ruled that such interest being not effectively connected with PE either on basis of asset test or

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activities test, interest on income-tax refund was taxable at treaty rate of 15 % under the DTAA and not under normal provisions of Act. ***[UPS Asia Group Pte. Ltd. v. Asst. CIT (International Taxation) IT Appeal No. 4797 (Mum) of 2023, dated 28-10-2024 followed]***

Section 14A does not apply to income taxable at concessional rates under section 115A

1. **Barclays Bank PLC vs. ACIT [2026] 187 taxmann.com 1131 (Mumbai - Trib.) [30-06-2026] - IT Appeal Nos. 5514 and 5199 (Mum) OF 2001 and others - [AY 1998-99 to 2000-2001]**

   Assessee, a non-resident banking company with Indian branches, paid tax at prescribed rate on interest earned on FCNR(B) deposits without claiming exemption, disallowance of related expenditure under section 14A was not permissible as income was not claimed exempt

   Assessee, a non-resident banking company with Indian branches, paid tax at 20 per cent on interest earned on FCNR(B) deposits by applying section 115A, while AO invoked section 14A to disallow expenditure attributable to such interest income. Tribunal ruled that since assessee had not claimed said interest income to be exempt but had merely claimed beneficial rate of tax under section 115A, disallowance of expenditure could not be made by invoking section 14A. ***[Bank of Nova Scotia v. Asstt. DIT (International Taxation) [2024] 160 taxmann.com 10 (Mumbai - Trib.) and South Indian Bank Ltd. v. CIT [2021] 130 taxmann.com 178/283 Taxman 178/438 ITR 1 (SC) followed]***

2. **DDIT(IT) vs. American Express Bank Ltd. [2026] 187 taxmann.com 866 (Mumbai - Trib.) [17-06-2026] - IT Appeal Nos. 3487 & 3508 (Mum) of 2004 - [AY and 1999-2000]**

   Where assessee carried on a composite business earning incomes not chargeable to tax, taxable at special rates and taxable at regular rates, section 14A applied only to expenditure relating to income not chargeable to tax and not to income taxable at special rates under section 115A, therefore expenditure attributable to interest on foreign currency loans was allowable as deduction against other taxable income

   Assessee was a non-resident banking company headquartered in the USA, carrying on banking business in India through its Mumbai branch which constituted its PE. AO observed that income taxable under Section 115A (1) was to be taxed on a gross basis and that expenditure incurred in relation to such income was not allowable as deduction u/s 14 A. Thus, disallowance was made. Tribunal ruled that where assessee was carrying on one composite business earning incomes which were either not at all chargeable to tax, or chargeable to tax at a lower rate, or chargeable to tax at regular rates, what was inhibited by section 14A was deduction of expenditure incurred in relation to income not chargeable to tax and not income chargeable to tax at a lower rate. Therefore, expenditure attributable to income taxable at special rates under section 115A (interest on foreign currency loans) could not be denied as deduction and was allowed against other taxable income. ***[DIT (IT) -I v. American Express Bank Ltd. [2015] 62 taxmann.com 349/235 Taxman 85 (Bombay) and Bank of Nova Scotia v. Asstt. DIT (International Taxation) [2024] 160 taxmann.com 10 (Mumbai - Trib.) followed]***

TDS on interest not chargeable to tax in India; can only be claimed by deductee not deductor

1. **Bank of America vs. ACIT [2026] 188 taxmann.com 1061 (Mumbai - Trib.) [22-07-2026] - [TS-1135-ITAT-2026(Mum)] - IT Appeal Nos. 8681, 9162 (Mum.) of 2004 & 2284, 2283 (Mum.) of 2005 - [AY 1999-2000 and 2001-02]**

   Where assessee, a foreign bank with Indian PE, paid interest to its overseas branches and deducted tax at source even though such interest was not chargeable to tax in India, no TDS was required under section 195, but once tax was deducted and deposited, credit or refund could be claimed only by deductee and not by deductor. [India – USA DTAA]

   Assessee, a foreign bank with an Indian PE, paid interest to its overseas branches (including Singapore branch) and deducted tax at source of about Rs. 5.42 crores on gross interest, seeking credit/refund of this TDS in its assessment, since such interest was not chargeable to tax in India, no TDS was required to be deducted under section 195, however, once deduction of tax was made and deposited with exchequer, it could only be claimed as deduction or by way of refund by deductee and not by deductor. ***[Sumitomo Mitsui Banking Corpn. v. Deputy DIT (IT), Range-2(1), Mumbai [2012] 19 taxmann.com 364/145 TTJ 649/136 ITD 66/16 ITR(T) 116 (Mumbai) followed]***

VI. FEES FOR TECHNICAL SERVICES/ ROYALTY

Software

1. **Cloudera Inc. vs. ACIT, IT [2026] 187 taxmann.com 1074 (Delhi - Trib.) [29-06-2026] - [TS-962-ITAT-2026(DEL)] - IT Appeal Nos. 917, 3387 (Delhi) of 2023 and1185 (Delhi) of 2025 - [AY 2020-21, 2021-22 and 2022-23]**

   Where assessee, a USA-based company, supplied software subscriptions granting only non-transferable and limited access rights to Indian customers under ESMA without any transfer of technology, subscription receipts did not constitute fees for technical/included services or royalty and were not taxable in India under Act or the DTAA. [India-USA DTAA]

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Assessee, a USA-based company was engaged in providing data software solutions, supplied software subscriptions (including subscription support services) to Indian customers. It claimed that consideration received therefrom was not taxable in India. AO treated such receipts as consideration for provision of technical and consultancy services taxable as FTS under Act and the DTAA. Tribunal was noted that under Enterprise Subscription Master Agreement (ESMA), customers were provided only non-transferable access to and use of software products for their own business purposes. Since there was no transfer of technology to customers, subscription receipts were not in nature of fees for technical/included services or royalty and, therefore, were not taxable in India. ***[Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC) /AIRONLINE 2021 SC 102. followed]***

2. **SFDC Ireland ltd vs. Dy. CIT [2026] 188 taxmann.com 583 (Delhi - Trib.) [17-07-2026] - [TS-1079-ITAT-2026(DEL)] - IT Appeal No. 2137 (Delhi) of 2023 - [AY 2020-21]**

   Assessee, an Irish company, received revenue from Indian customers from sale of software, SaaS, support and related services, and Assessing Officer sought to tax receipts as FTS without examining, whether automated services satisfied requirements of 'technical services' under India-Ireland DTAA, matter was to be remanded for fresh adjudication. [India-Ireland DTAA]

   Assessee, an Irish company, was engaged in business of distributing non-customized Tableau software and providing SaaS to customers, including in India. It received Rs. 73.42 crores from Indian customers on account of sale of shrink-wrapped/off-the-shelf/electronically downloadable software, SaaS, support/maintenance, training and partner fees. Assessee claimed that said receipts were not taxable in India as these were sales of copyrighted articles and standard facilities, with no grant of any right to use copyright. AO, relying inter alia upon decision of Supreme Court in ***CIT v. Kotak Securities Ltd. [2016] 67 taxmann.com 356/239 Taxman 139*** held that services/solutions, training and support constituted FTS taxable under article 12 and that absence of human intervention was not decisive where technical services were rendered through automated processes. Tribunal ruled that since issue had not been examined by AO/DRP in light of observations of Supreme Court in *Kotak Securities Ltd.(supra)* as to whether automated services rendered by assessee satisfied requirements of 'technical services' under article 12(3)(b) of the DTAA, matter was to be remanded to AO for fresh adjudication. ***[DIT v. Infrasoft Ltd. [2013] 39 taxmann.com 88/ [2014] 220 Taxman 273 (Delhi) (para 7.4) distinguished]***

IT Services

1. **Lloyd's Register of Shipping vs. Dy. CIT (IT) [2026] 187 taxmann.com 130 (Mumbai - Trib.) [29-05-2026] - [TS-792-ITAT-2026(Mum)] - IT APPEAL NOS.1456, 1458 & 1459 (MUM) OF 2024 - [AY 2011-12 AND 2013-14]**

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Where IT recharge fees received by a UK entity from Indian group entities merely related to standard IT support and recharge of common facility costs and did not result in making available any technical knowledge, skill, know-how or process, same could not be characterized as FTS under Article 13 and, in absence of a permanent establishment in India, were not taxable in India; further, concessional rate under section 115A could not be denied merely for want of separate approval from Central Government [India – UK DTAA]

Assessee, a UK based company, received IT recharge fees from its Indian group entities and offered same to tax at concessional rate prescribed under section 115A.AO treated receipts as FTS under Article 13 of the DTAA and denied concessional rate under section 115A on ground that underlying agreement had not been approved by Central Government. Commissioner (Appeals) upheld action of AO. It was noted that impugned payments did not fall within any category requiring prior approval under Foreign Exchange Management (Current Account Transactions) Rules, 2000 and were covered by general approval available thereunder. Tribunal ruled that concessional rate prescribed under section 115A could not be denied merely for want of separate approval from Central Government. Further, since impugned payments merely related to standard IT support and recharge of common facility costs and did not result in making available any technical knowledge, skill, know-how or process to assessee, same could not be characterized as FTS under Article 13 of India–UK DTAA. Therefore, IT recharge fees were not taxable in India in absence of a permanent establishment of assessee in India. ***[Gemological Institute International v. Asstt. CIT (International Taxation) [2021] 132 taxmann.com 256/ [2022] 192 ITD 83 (Mumbai - Trib.) followed]***

<u>Engineering, procurement, technical advisory services</u>

1. **Bechte Ltd. vs. ACIT, IT [2026] 188 taxmann.com 987 (Delhi - Trib.) [28-07-2026] - IT Appeal No. 1977 (Delhi) of 2025 - [AY 2022-23]**

   Where assessee, a UK company, received consideration for engineering, procurement and technical advisory services from its AE, same receipts could not be taxed simultaneously as business income under section 44DA and as FTS; in absence of PE, section 44DA was inapplicable and matter was remanded to examine whether the "make available" condition under the DTAA was satisfied. [India – UK DTAA]

   Assessee, a UK company, claimed that receipts from engineering, procurement support and technical advisory services rendered to its AE were not taxable in India as the services did not "make available" any technical knowledge, experience, skill or know-how under the India–UK DTAA. AO proposed to tax the receipts as FTS, while DRP directed their substantive taxation as business income under section 44DA and, protectively, as FTS. Tribunal held that the same receipts could not simultaneously be taxed substantively as business income under section 44DA and protectively as FTS. Since the assessee had no PE in India, business income could not be brought to tax

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under section 44DA. As regards taxability as FTS, Tribunal observed that the available material was insufficient to determine whether the "make available" condition was satisfied and held that a holistic examination of the service agreements and the nature of services was necessary. Accordingly, the matter was remanded to the AO/DRP for fresh adjudication. ***[Ernst & Young (EMEIA) Services Limited Asstt. CIT. International Taxation [2026] 184 taxmann.com 671 (Delhi - Trib.) followed]***

Web hosting services

1. **Dy. CIT, IT vs. ZOHO Corporation [2026] 187 taxmann.com 467 (Chennai - Trib.) [01-06-2026] - [TS-847-ITAT-2026(CHNY)] - IT Appeal Nos.1841, 1843, 1844, 1845, 1846 (Chny.) of 2025 - [AY 2013-14 to 2015-16, 2017-18 and 2018-19]**

   Where assessee, a US company, provided web hosting services through data centres located outside India and customer neither possessed nor controlled servers or equipment nor acquired any right to use them, receipts from such services could not be characterised as royalty or FTS under section 9(1)(vi) or article 12 of the DTAA; further, Explanations 4 to 6 to section 9(1)(vi) could not be imported into DTAA in absence of a corresponding treaty amendment. [India – USA DTAA]

   Assessee, a company incorporated in and tax resident of USA, was engaged in providing web hosting services through data centres located outside India and received consideration from its Indian affiliate towards provision of such services. AO treated such receipts as royalty under section 9(1)(vi) and, alternatively, as FTS under article 12 of the DTAA on ground that web hosting services involved use of servers and related equipment maintained by assessee. Further it was the contention of the AO was that after insertion of Explanations 4 to 6 to section 9(1)(*vi*), the expression "royalty" has acquired an expanded meaning even under the DTAA. The Tribunal noted that assessee merely provided standard web hosting facilities comprising server space, internet connectivity and related infrastructure support, and agreement did not confer any possessory rights, control or dominion over servers or equipment to customer. Further, Indian affiliate had neither physical access nor operational control over servers maintained by assessee and merely availed a standard web hosting facility. Since assessee rendered web hosting services through standard automated facilities without conferring any right to use equipment, process or intellectual property upon customer, receipts from such services could not be characterised as royalty. Relying on the Supreme Court judgement in *Engineering Analysis* it held that unilateral amendments introduced through Explanations 4 to 6 to section 9(1)(vi) could not be imported into article 12 of the DTAA in absence of a corresponding treaty amendment. Accordingly, the appeal was dismissed. ***[CIT v. Urban Ladder Home Decor Solutions (P.) Ltd. [2025] 171 taxmann.com 549/304 Taxman 155/475 ITR 518 (Karn.) (para 9), DIT v. New Skies Satellite BV [2016] 68 taxmann.com 8/238 Taxman 577/382 ITR 114 (Delhi), Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC) and Cognizant Technology Solutions India (P.) Ltd. v. CIT [2025] 180***

taxmann.com 822 (Mad.) followed, Verizon Communications Singapore Pte Ltd. v. ITO (Int. Tax.) [2013] 39 taxmann.com 70/ [2014] 224 Taxman 237 (Mag.)/361 ITR 575 (Mad.) distinguished.]

Management/business support services

1. **Alstom (Shared Services) Philippines Inc. vs. Dy. CIT, IT [2026] 187 taxmann.com 960 (Delhi - Trib.) [24-06-2026] - [TS-967-ITAT-2026(DEL)] - IT Appeal Nos. 2014 and 2015 (DEL) OF 2025 – [AY 2018-19]**

   Where assessee, a Philippines resident, provided only routine back-office business support services to its Indian affiliate without sharing scientific or commercial data, payment received did not constitute royalty but business income. [India–Philippines DTAA]

   Assessee, a resident of Philippines, entered into a Master Service Agreement with its Indian affiliate (BTIN) to provide back-office administrative/business support services including finance, accounting, procurement, treasury, HR and related support. For relevant year, it received about Rs. 2.32 crores from BTIN. Assessee maintained that no drawings, manuals, processes or proprietary information were furnished to BTIN, and the DTAA contains no FTS article, and it had no PE in India. However, AO in draft assessment presumed that, in rendering services, assessee furnished drawings, documents, methods and other information with usage rights retained by it, and treated consideration as royalty taxable in India under section 9(1)(vi). Tribunal ruled that since services provided by assessee were in nature of routine support services for administration of business and no scientific or commercial data was shared by assessee, payments received in lieu of rendering support services were not in nature of royalty. Further, in absence of FTS article in the DTAA, consideration received by assessee for providing business support services to its Indian affiliate would fall as 'business profits' under Article 7 and, in absence of PE in India, would not be chargeable to tax in India. ***[Bangkok Glass Industry Co. Ltd. v. ACIT [2013] 34 taxmann.com 77/215 Taxman 116 (Madras) followed]***

2. **Tech Data (Singapore) Pte. Ltd. vs. Dy. CIT, IT [2026] 187 taxmann.com 1126 (Mumbai - Trib.) [30-06-2026] - IT Appeal No. 1829 (Mum) of 2025 - [AY 2022-23]**

   Where assessee, a Singapore-resident company, provided management/business support services to its Indian subsidiary and treated receipts as non-taxable business income in absence of a PE in India, following earlier Tribunal decisions, such receipts could not be taxed t as FTS under Article 12(4)(b) of the DTAA [India-Singapore DTAA]

   Assessee, a Singapore-resident company, entered into an agreement with its Indian subsidiary to provide management/business support services. Assessee treated consideration as business receipts and, having no PE in India, did not offer about Rs. 42.16 lakhs to tax in India.AO examined nature of receipts and held that services were managerial, technical or consultancy in nature and, therefore, consideration qualified as FTS under Article 12(4) of the DTAA. Tribunal followed its ruling in earlier assessment years wherein the said receipts were held to be not taxable as FTS under article 12(4). It was held that the said services rendered were operational management / providing support system and neither any technical knowhow had been made available nor was there any development and transfer of technical plan or technical design. ***[Tech Data (Singapore) Pte Ltd. v. Dy. CIT [2026] 187 taxmann.com 717 (Mumbai - Trib.) followed]***

3. **Jefferies Singapore Ltd. vs. Dy. CIT (IT) [2026] 188 taxmann.com 522 (Mumbai - Trib.) [15-07-2026] - IT Appeal Nos. 2757, 2758, 2759, 2760, 2761 (Mum.) of 2024 - [AY 2014-15 to 2018-19]**

   Where assessee, a Singapore resident provided research management support services to its Indian group company on a year-on-year basis and Indian entity remained dependent on assessee for such services, 'make available' conditions under Article 12(4) of India-Singapore DTAA were not satisfied; consequently, fees were not taxable as FTS and, in absence of a PE in India, were also not chargeable to tax as business income. [India-Singapore DTAA]

   Assessee, a Singapore resident, entered into an intra-group support services agreement with its Indian group company, JIPL, to oversee and review its research activities and ensure that they were in line with group's global standards. AO held consideration received for such research management support services to be taxable as FTS under article 12(4) of the DTAA and section 9(1)(vii). Tribunal noted that assessee had continued to render identical services year after year. It ruled that since JIPL remained dependent upon assessee for such services and was not enabled to perform them independently, conditions under article 12(4)(b) and (c) of DTAA were not fulfilled and receipts could not be treated as FTS. Consequently, receipts constituted business income and, in absence of a PE in India, were not chargeable to tax in India

4. **ACIT (IT) vs. Mckinsey & Company Lme Ltd. [2026] 186 taxmann.com 1256 (Mumbai - Trib.) [20-05-2026] - [TS-933-ITAT-2026(Mum)] - IT Appeal NO. 1818 (MUM.) of 2024 - [AY 2018-2019]**

   Assessee, a UK based company, received consideration for rendering borrowed services to its Indian AE, since revenue failed to establish that such services satisfied "make available" requirement under Article 13(4) of the DTAA, receipts were not taxable in India as fees for technical service. [India – UK DTAA]

   Assessee, a UK based company, rendered advisory support (borrowed services) to its Indian AE. It received consideration for such services. AO treated borrowed services as FTS taxable in India under Article 13, invoking Article 13 of the DTAA. Tribunal noted that in assessee's own case for earlier assessment years, coordinate bench had held that fee received for 'borrowed services' was not in nature of Fee for Technical Services. Furthermore, assessee had placed on record Mutually Agreed Procedure (MAP) Resolutions passed in case of group companies wherein Competent Authorities reached a consensus that 'borrowed services' were not in nature of FTS. Tribunal ruled that since revenue had failed to bring on record any material to show that services

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rendered by assessee satisfied 'make available' requirement contained in Article 13(4) of Tax Treaty, receipt for 'borrowed services' were not liable to be taxed in India as FTS under Article 13(1)/ (2) of Tax Treaty. ***[Asstt. CIT v. Mckinsey & Company Lme Ltd. IT Appeal No. 2759 (Mum.) of 2023 followed]***

Project related services w.r.t technical support, supervision & marketing

1. **Sheladia Associates INC vs. ACIT (IT) [2026] 187 taxmann.com 172 (Hyderabad - Trib.) [03-06-2026] - [TS-877-ITAT-2026(HYD)] - IT Appeal No. 574 (Hyd) of 2026 - [AY 2023-24]**

   Where assessee, a US company operating in India through a PE, made cost-to-cost reimbursements to its Head Office for technical, managerial, and project-related services without withholding tax, and failed to demonstrate no technical knowledge was made available, such payments were deemed fees for included services under Article 12 of the DTAA and taxable in India, obligating TDS deduction under Section 195 and attracting disallowance under Section 40(a)(i) on non-deduction. [India – USA DTAA]

   Assessee, a US company, operated in India through a PE. It made cost-to-cost reimbursements to its Head Office for a designated team providing technical support, project supervision, coordination, and bidding/marketing functions for Indian operations, without deducting tax at source. It claimed there was no income element as payments were pure reimbursements and, alternatively, that Article 12 of the DTAA was not attracted as no technical knowledge or skill was made available. AO treated payments as FTS chargeable to tax in India, held that tax was deductible under Section 195, and disallowed amounts under Section 40(a)(i). Tribunal ruled that merely because a payment is styled as a reimbursement does not, by itself, determine its taxability. Further the tribunal opined that it is not nomenclature but real nature and substance of transaction that is required to be examined. Since assessee company had failed to place sufficient material demonstrating that no technical knowledge or expertise was made available to Indian PE and nature of services involving project design, supervision, monitoring, and technical support indicated continuous transfer of technical expertise and managerial inputs to Indian operations, payments made by Indian PE to US Head Office were chargeable to tax in India as fees for included services under Article 12 of the DTAA. Accordingly, tax was deductible under section 195, and the disallowance under section 40(a)(i) for failure to withhold tax was upheld.

Consultancy Services

1. **Cloudera Inc. vs. ACIT, IT [2026] 187 taxmann.com 1074 (Delhi - Trib.) [29-06-2026] - [TS-962-ITAT-2026(DEL)] - IT Appeal Nos. 917, 3387 (Delhi) of 2023 and1185 (Delhi) of 2025 - [AY 2020-21, 2021-22 and 2022-23]**

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Where professional services rendered by assessee involved specialized and customer-specific consultation services and were not merely ancillary to software subscriptions, receipts therefrom were taxable as fees for technical/included services under Act and article 12 of the DTAA. [India-USA DTAA]

Assessee, a USA-based company was engaged in providing data software solutions, supplied software subscriptions. It received consideration towards professional services in addition to software subscription receipts. Assessee contended that such services primarily related to migration support, troubleshooting and enabling efficient use of software. The AO taxed the same as FTS. Tribunal noted that only certain customers had availed such services and payments varied substantially, indicating specialized and customer-specific consultation services. It concluded that receipts from supply of professional services were liable to tax as fees for technical/included services under Act as well as article 12 of the DTAA.

Commission for foreign business support services not taxable in India

1. **Ajay Sharma vs. ITO [2026] 188 taxmann.com 77 (Delhi - Trib.) [29-06-2026] - [TS-963-ITAT-2026(DEL)] - IT Appeal Nos. 2772, 3770 and 3771 (DEL) of 2024 - [AY 2013-14 and 2014-15]**

   Where assessee paid commission to a Swedish intermediary for procuring export orders and follow-up services rendered entirely outside India, such payments constituted commission income not chargeable to tax in India, thus there was no obligation to deduct tax at source under Section 195.

   Assessee, a manufacturer-exporter of readymade garments, exported mainly to a Swedish buyer, Rabalder. Orders were routed through a Swedish national, Belinda Sandell, acting as an overseas sourcing/intermediary agent who procured orders, conveyed buyer specifications (sizes, materials, designs, etc.), and followed up on invoice clearance and payments. Assessee paid commission at 10% for services performed outside India and did not withhold tax under Section 195. AO, noting email exchanges between assessee and agent, treated services as technical/consultancy under Section 9(1)(vii)(b), held that tax was deductible under Section 195, and disallowed commission under Section 40(a)(i) for non-deduction. Tribunal ruled that since services rendered by agent were in nature of procuring export orders and follow up of payments, which were rendered outside India, payments made by assessee to agent were in nature of commission and not chargeable to tax in India. therefore, assessee had no obligation to deduct tax at source under Section 195 on such payments and disallowance under Section 40(a)(i) was deleted.

<u>TDS u/s 195 not warranted on pure reimbursements of salaries of seconded employees, travel expenses, IT/software costs as the same could not be treated as FTS</u>

1. **Horiba India (P.) Ltd. vs. Assessment Unit, NFAC, ITD [2026] 187 taxmann.com 872 (Delhi - Trib.) [19-06-2026] - [TS-939-ITAT-2026(DEL)] - IT Appeal No. 3383 (Del) of 2024 - [AY 2020-21]**

   Where assessee reimbursed group affiliates towards IT/software costs, salaries of seconded employees and travel expenses, such payments were pure reimbursements without any profit element and tax had already been deducted under section 192 on salaries of seconded employees, leaving no sum chargeable to tax in hands of non-resident recipients; consequently, no tax was deductible under section 195 and disallowance under section 40(a)(i) was unsustainable

   Assessee-company, engaged in trading/manufacturing of pollution control equipment, environmental analysers, medical instruments and providing marketing support services, made cost-to-cost reimbursements to its group affiliates towards (i) IT infrastructure and common software, (ii) salaries of seconded employees, and (iii) travel expenses. AO disallowed reimbursements under section 40(a)(i) for failure to deduct tax at source under section 195 by treating them as FTS. It was noted that payments were pure reimbursements without any profit element and that tax had already been deducted under section 192 on salaries paid to seconded employees. Tribunal ruled that since there was no sum chargeable to tax in hands of non-resident recipients, assessee was under no obligation to deduct tax at source under section 195 and disallowance under section 40(a)(i) was deleted.

<u>No tax on pure reimbursements without profit element</u>

1. **ACIT (IT) vs. Mckinsey & Company Lme Ltd. [2026] 186 taxmann.com 1256 (Mumbai - Trib.) [20-05-2026] - [TS-933-ITAT-2026(Mum)] - IT Appeal NO. 1818 (MUM.) of 2024 - [AY 2018-2019]**

   Where assessee, a UK based company, received reimbursement of expenses from Indian entities without any profit element, such reimbursements were not chargeable to tax in India as FTS under Article 13 of the DTAA. [India – UK DTAA]

   Assessee, a UK based company, rendered advisory support (borrowed services) to its Indian AE. It received certain consideration towards reimbursement of expenses. Assessee claimed it as non-taxable reimbursement without any profit element in its revised return declaring Nil income. AO treated reimbursement as FTS taxable in India under Article 13 of the DTAA. Commissioner (appeals) deleted reimbursement addition holding that reimbursements did not have any element of profit. Tribunal ruled that since it had already been concluded that 'borrowed services' provided by assessee did not qualify as FTS in terms of Article 13(4) of Tax Treaty, no interference was warranted with order passed by Commissioner (Appeals) deleting addition made in respect of reimbursement of expenses. ***[Asstt. CIT v. Mckinsey & Company Lme Ltd. IT Appeal No. 2759 (Mum.) of 2023 followed]***

UK law firm's receipts taxable partner-wise under applicable DTAAs

1. **Herbert Smith Freehills LLP vs. CIT (Appeals)-43 [2026] 187 taxmann.com 916 (Delhi - Trib.) [22-06-2026] - [TS-920-ITAT-2026(DEL)] -IT Appeal Nos. 2281 (DEL) OF 2019, 2352 (DEL) OF 2022 and 3209 (DEL) OF 2023 - [AY 2015-16, 2018-19 and 2021-22]**

   UK tax-transparent partnership law firm provided legal services to Indian clients and its partners were residents of multiple countries, taxability of Indian receipts attributable to non-UK partners had to be determined partner-wise under applicable DTAAs since treaty entitlement depended on each partner's country of residence and professional/legal services did not constitute FTS under section 9(1)(vii). [India–UK DTAA & India–Germany DTAA]

   Assessee, a UK-resident fiscally transparent partnership firm of solicitors rendering legal services worldwide, operated primarily from outside India with intermittent India visits and earned revenue from Indian legal engagements. It claimed exemption under India–UK DTAA in respect of UK-resident partners' share, claimed that shares attributable to non-UK resident partners were not taxable in India under their respective DTAAs, and offered Germany partners' share to tax under India–Germany DTAA. AO accepted non-taxability of UK partners' share and tax offered in respect of Germany partners' share, but treated shares attributable to remaining non-UK resident partners (Australia, France, Belgium, China and Japan), aggregating to 14.253 per cent of receipts, as FTS under section 9(1)(vii).Tribunal ruled that since partnership firms in UK are tax transparent, partners of a UK partnership firm who are not residents of UK would be subject to tax on their respective share of profits in State of their residence and, accordingly, DTAA of each partner's country of residence would have to be examined. Thus, professional/legal services rendered by law firms do not fall within meaning of FTS under section 9(1)(vii). Therefore, taxability of receipts attributable to non-UK resident partners was required to be examined with reference to applicable DTAA of each partner's country of residence and the matter was accordingly restored to the file of the AO.

Surcharge/Health & Education Cess

1. **SFDC Ireland ltd vs. Dy. CIT [2026] 188 taxmann.com 583 (Delhi - Trib.) [17-07-2026] - [TS-1079-ITAT-2026(DEL)] - IT Appeal No. 2137 (Delhi) of 2023 - [AY 2020-21]**

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Tax chargeable on FTS @10 per cent under Article 12 of the DTAA is inclusive of surcharge and education cess by virtue of Article 2. [India-Ireland DTAA]

Assessee, an Irish company, was engaged in business of distributing non-customized Tableau software and providing SaaS to customers, including in India. Tribunal ruled that where assessee raised a without-prejudice ground that, if any portion of receipts was held taxable as FTS, tax was chargeable at beneficial treaty rate of 10 per cent under article 12 of the DTAA and such treaty rate was inclusive of surcharge and education cess by virtue of article 2, AO was directed to apply beneficial treaty rate of 10 per cent while giving effect to Tribunal's order if receipts in dispute were ultimately held taxable.

Automatic route under RBI/FEMA satisfies approval requirement under section 115A(1)(b)

1. **Gemological Institute International vs. Dy. CIT (IT) [2026] 187 taxmann.com 822 (Mumbai - Trib.) [19-06-2026] - [TS-914-ITAT-2026(Mum)] - IT Appeal No. 1290 (MUM) OF 2025 - [AY 2016-17]**

   Where assessee, a USA-based company, received training and technical fees and remittances were permissible under applicable RBI/FEMA framework without requiring any separate approval from Central Government, conditions prescribed under section 115A(1)(b) stood satisfied and receipts were taxable at 10 per cent, and not at 15 per cent under the DTAA, since expression 'approved by Central Government' could not be interpreted so as to import a requirement not contemplated under governing regulations. [India-USA DTAA]

   The assessee, a US company, received training and technical fees taxable as FTS and offered the income to tax at 10% under section 115A(1)(b), being more beneficial than the 15% rate under Article 12 of the DTAA. The AO denied the benefit on the ground that the agreement with the Indian concern lacked Central Government approval. It was noted that under the applicable RBI/FEMA framework, prior approval was not required as the remittances were permitted under the automatic route. The Tribunal held that the assessee could not be expected to obtain an approval not contemplated by the governing regulations and that the expression "approved by the Central Government" in section 115A(1)(b) must be interpreted pragmatically. Since the regulatory framework itself permitted the transaction under the automatic route, the conditions of section 115A(1)(b) stood satisfied. Accordingly, the assessee was entitled to the concessional tax rate of 10% under section 115A(1)(b) read with section 90(2), instead of 15% under Article 12 of the DTAA.

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VII. CAPITAL GAINS

Forex hedge gains arising from investments retain capital gains character

1. **Citicorp Investment Bank (Singapore) Ltd. vs. ACIT (IT) [2026] 188 taxmann.com 369 (Mumbai - Trib.) [08-07-2026] - IT Appeal No. 9147 (Mum) of 2025 - [AY 2023-24]**

   Where assessee, a Singapore-based FPI, entered into forward foreign exchange contracts solely to hedge currency risk arising from its investments in Indian debt securities, forward contracts were not independent speculative transactions but were intrinsically linked to underlying capital assets, thus, gains arising on their cancellation/early settlement retained character of capital gains and could not be taxed as 'Income from Other Sources'. [India-Singapore DTAA]

   Assessee, a Singapore based company and a Category-I Foreign Portfolio Investor (FPI) was engaged in investment in permissible Indian debt securities. In relevant assessment year, it entered into forward foreign exchange contracts to hedge foreign exchange exposure arising from such investments. Assessee earned gains on cancellation/early settlement of these contracts, which it claimed as exempt capital gains under Article 13(5) of the DTAA. AO rejected claim, holding that assessee had not established an inextricable link between forwards and underlying investments. He, thus, treated gain as taxable under 'Income from Other Sources'. Tribunal noted that RBI framework permitted an FPI to hedge foreign exchange exposure only to extent such exposure arose from underlying securities. Tribunal ruled that, nature of regulatory regime demonstrated that such forward contracts were not independent speculative transactions but were entered into only as a protective mechanism against foreign exchange risk attached to underlying debt investments. Thus, character of gain arising on cancellation of forward foreign exchange contracts had to be determined having regard to character of underlying asset/transaction. Since underlying debt securities held by assessee as an FPI were capital assets, gain arising on cancellation/early settlement of forward foreign exchange contracts entered into by assessee for hedging foreign exchange exposure in respect of its underlying debt investments was liable to be treated on capital account and could not be brought to tax under head 'Income from Other Sources'. ***[Citicorp Investment Bank (Singapore) Ltd. v. Dy. DIT (International Taxation) [2012] 24 taxmann.com 211/54 SOT 119 (Mum-Trib) followed]***

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VIII. INDEPENDENT PERSONAL SERVICES

<u>Marketing, business development and advisory services</u>

1. **Raj Ajudhianath Kaul vs. ITO [2026] 187 taxmann.com 880 (Mumbai - Trib.) [19-06-2026] - IT Appeal Nos. 1061 & 1916 (MUM) of 2025 - [AY 2018-19 and 2019-20]**

   Where assessee, a German tax-resident individual, rendered marketing, business development and advisory services to Indian companies without having any fixed base in India, receipts derived from such independent professional services based on personal expertise and business knowledge were taxable only in Germany under article 14 of the DTAA and not as FTS under article 12 [India-Germany DTAA]

   Assessee, a German tax-resident individual, earned receipts from PIL, SIL and TCL for rendering marketing, business development and related advisory support services. Assessee claimed that services were rendered outside India, consideration was received in Germany, and receipts were not taxable in India under the DTAA.AO, however, treated services as technical/consultancy services and taxed receipts in India as FTS under section 9(1)(vii) read with article 12 of DTAA. It was noted that assessee did not have any fixed base regularly available in India and his stay in India during relevant year did not exceed prescribed threshold. Tribunal ruled that receipts earned by assessee in his individual capacity, based on his personal expertise, market experience and business knowledge, constituted income from independent professional services under article 14 and not FTS contemplated under article 12. Therefore, such receipts were taxable only in Germany under article 14 of the DTAA. ***[National Thermal Power Co. Ltd. v. CIT [1998] 97 Taxman 358/229 ITR 383 (SC) followed]***

IX. NON-DISCRIMINATION

<u>Article 26 of India–USA DTAA does not bar section 40(a)(i) disallowance</u>

1. **Sheladia Associates INC vs. ACIT (IT) [2026] 187 taxmann.com 172 (Hyderabad - Trib.) [03-06-2026] - [TS-877-ITAT-2026(HYD)] - IT Appeal No. 574 (Hyd) of 2026 - [AY 2023-24]**

   Article 26 (Non-discrimination) of India-USA DTAA does not preclude disallowance made under Section 40(a)(i) on account of non-deduction of tax under Section 195 on payments to a non-resident. [India – USA DTAA]

   Assessee, a US company, operated in India through a PE. It made cost-to-cost reimbursements to its Head Office for a designated team providing technical support,

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project supervision, coordination, and bidding/marketing functions for Indian operations, without deducting tax at source.AO made disallowance u/s 40(a)(i) Assessee placed reliance on Article 26 (Non-discrimination) of the DTAA Tribunal held that the disallowance under section 40(a)(i) did not violate the non-discrimination clause under Article 26 of the India–USA DTAA, as the provision is based on the residential status of the payee and the failure to comply with withholding tax obligations, and not on the nationality of the taxpayer. Accordingly, assessee's plea under Article 26 was rejected.

X. FOREIGN TAX CREDIT

Foreign tax credit not claimed in return of Income

1. **Akzo Novel India Ltd. vs. Dy. CIT [2026] 187 taxmann.com 194 (Kolkata - Trib.) [03-06-2026] - IT Appeal Nos. 140 (Kol) of 2019 and others - [AY 2014-15, 2018-19 and 2020-21]**

   Assessee claimed FTC for taxes paid in Sri Lanka though not claimed in return, matter was remanded to AO to verify and allow credit if otherwise admissible.

   Assessee had paid tax through branch office in Sri Lanka though not claimed in the return of income. It claimed FTC which was in turn denied by the AO on the ground that the same was not an additional claim but fresh claim which could be considered only in the revised return of income. The DRP agreed with the AO. The Tribunal held that assessee was legally entitled to credit in respect of foreign taxes paid by its Sri Lanka branch, though not claimed in return of income. In rejecting such legitimate claim, tax authorities acted in a hyper-technical manner. Credit was to be allowed after verification at level of AO. Accordingly, the issue was restored to the AO.

Delay in filing form 67

1. **Ketan Kanchan Srivastava vs. ACIT [2026] 187 taxmann.com 851 (Allahabad - Trib.) [08-06-2026] - IT Appeal No. 2 (ALLD.) of 2023 - [AY 2020-21]**

   Where assessee claimed foreign tax credit but filed Form 67 belatedly due to reasonable cause of being stranded abroad during COVID-19, he could not be denied foreign tax credit on this ground as filing of Form 67 is a directory and not a mandatory requirement.

   Assessee–individual, an employee of Nokia Solutions & Networks, was in Finland during the year. He filed his return of income claiming FTC under section 90. Form 67 to support the FTC was filed after the due date prescribed under section 139(1). CPC processed the return under section 143(1) and rejected the FTC claim on the ground

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that Form 67 had not been filed within the prescribed time. Assessee file rectification application to claim the FTC which was rejected. Tribunal ruled that filing of Form 67 is not a mandatory precondition for allowing FTC under section 90 read with Rule 128, but a directory requirement. The assessee had filed Form 67 belatedly due to reasonable cause of being stranded abroad during COVID-19 pandemic. Thus, he was not to be denied FTC. It further held that recourse to section 154 was permissible to rectify denial of FTC as issue was not debatable. ***[Deepak Shimoga Padmaraju v. Asstt. DIT/ITO [2024] 162 taxmann.com 96/206 ITD 803 (Bangalore - Trib.), Vinodkumar Lakshmipathi v. CIT (Appeals) NFAC, Delhi [2022] 145 taxmann.com 235 (Bangalore - Trib.), Ms. Brinda Rama Krishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 (Bangalore - Trib.) followed]***

2. **Ultimate Fashion Maker Ltd. vs. ITO (CPC) [2026] 188 taxmann.com 344 (Delhi - Trib.) [10-07-2026] - IT Appeal No. 756 (DEL) OF 2026 - [AY 2019-20]**

   Where assessee claimed foreign tax credit in respect of dividend income from a Uzbekistan company but filed Form 67 after filing return and before processing by CPC, requirement to file Form 67 was held to be directory not mandatory, thus assessee was entitled to foreign tax credit under section 90 read with Article 10 of India–Uzbekistan DTAA. [India–Uzbekistan DTAA]

   Assessee filed its return of income declaring income of about Rs. 98.32 lakhs after set-off, including income from other sources of about Rs. 3.05 crores comprising dividend income of about Rs. 2.92 crores from an Uzbekistan company on which tax was deducted at source. It claimed FTC under section 90 read with Article 10 of the DTAA but did not file Form 67 along with return; Form 67 was subsequently furnished on 30-01-2021. Return was processed electronically by CPC and an intimation under section 143(1)/154 was issued disallowing claim of FTC. Tribunal ruled that filing of Form 67 is a directory requirement and is not a mandatory requirement and since Form 67 was filed after filing return but before processing, assessee was entitled to foreign tax credit.

3. **Reliance Retail Ltd. vs. ACIT [2026] 188 taxmann.com 120 (Mumbai - Trib.) [19-06-2026] IT Appeal Nos. 8742 & 8850 (Mum.) of 2025 - [AY 2020-21]**

   Where assessee made a legitimate claim for Foreign Tax Credit, such claim could not be denied merely due to delay in filing Form No. 67 under Rule 128 of Income-tax Rules, 1962.

   Assessee a retail company claimed Foreign Tax Credit (FTC) for AY 2020-21. Form 67 was not filed before the due date prescribed for filing the return of income. Commissioner (Appeals) disallowed the claim of FTC on the ground that Form 67 had not been filed before the due date. Tribunal ruled that a legitimate claim of Foreign Tax Credit cannot be denied merely on account of delay in filing Form No. 67 under Rule 128 of the Income-tax Rules, 1962. Accordingly, the matter was remitted back to the file of the JAO for the limited purpose of verification of the relevant records and claim of the assessee was to be allowed in accordance with law. ***[Asstt. CIT v. Reliance Retail Ltd. [2025] 175 taxmann.com 206 (Mumbai - Trib.) ITA No. 4251/Mum/2024 and C.O. No. 194/Mum/2024 (A.Y. 2018-19) followed]***

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4. **Jean Christophe Pierre Andre Letellier vs. AO / DCIT [2026] 187 taxmann.com 271 (Mumbai - Trib.) [18-05-2026] - [TS-812-ITAT-2026(Mum)] - IT APPEAL NO. 701 (MUM) OF 2024 - [AY 2018-19]**

   Where assessee, a French citizen resident in India, paid tax in France on rental income from immovable property situated therein and same income was also brought to tax in India, FTC could not be denied merely due to delayed filing of Form 67 when foreign tax payment and claim were otherwise verifiable, and assessee was entitled to credit subject to verification of tax paid and income details. [India – France DTAA]

   Assessee, an individual and a French citizen, was resident and ordinarily resident in India. He disclosed two immovable properties in France one of which was let out yielding rental income and was later sold, and rentals were received through foreign bank accounts. He explained that rental income was taxable in France under Article 6 of the DTAA, tax was paid in France, and accordingly he did not offer rental income in India and did not furnish Form 67 within due date under Rule 128. AO relying on CBDT Circular No. 91/2008, held that Article 6 of the India-France DTAA merely permitted France to tax the rental income but did not exclude India's taxing rights. While acknowledging tax payment in France, AO denied FTC on sole ground that Form 67 prescribed under Rule 128(9) was not furnished within due date under section 139(1). It was noted that tax paid in France was stated to be Rs.2.08 lakhs, whereas FTC claimed in India was Rs.1.72 lakhs, being Indian tax attributable to rental income brought to tax by AO. Tribunal ruled that filing of Form 67 was directory and not mandatory Since rental income had been brought to tax in India and same income had already suffered tax in France, FTC could not be denied merely because Form 67 was filed belatedly, when claim was otherwise verifiable. Thus, assessee was entitled to FTC in respect of taxes paid in France on rental income from immovable property situated in France, subject to verification of quantum of foreign tax paid, identity of income, and corresponding Indian tax attributable to such income. ***[Ms. Brinda Ramakrishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 (Bangalore - Trib.), Power and Energy Consultants India (P.) Ltd. v. ITO [2024] 159 taxmann.com 645 (Delhi - Trib.) followed]***

<u>FTC not to be denied solely for want of tax authority certificate - if alternate proofs are produced</u>

1. **Suntec Business Solutions (P.) Ltd. vs. Dy. CIT [2026] 188 taxmann.com 244 (Chennai - Trib.) [03-07-2026] - IT Appeal No.2510 (Chny) of 2024 - [AY 2020-21]**

   Assessee claimed foreign tax credit in respect of taxes paid in multiple countries and furnished Form 67 along with supporting evidence such as payment acknowledgements, denial of credit solely for want of a tax authority certificate was incorrect since Rule 128(8) does not mandate such exclusive evidence, permitting alternative proofs

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Assessee claimed Foreign Tax Credit (FTC) of about Rs.98.29 lakhs under Sections 90/90A in respect of taxes paid in USA, UK and Singapore, supported by Form 67 and computations showing foreign income and taxes paid. Assessee stated that taxes were paid directly to foreign treasuries. AO denied FTC on ground that a tax payment certificate from concerned foreign tax authorities was not furnished. Tribunal ruled that Rule 128(8) of Income-tax Rules prescribes documentary requirements for claiming FTC and contemplates furnishing of Form 67 along with a certificate or statement specifying nature of income and amount of tax deducted or paid. Further, clause (ii) of Rule 128(8) recognizes three alternative modes of evidencing payment of foreign taxes, namely, a certificate from foreign tax authority, a certificate from person responsible for deduction of tax, or a statement signed by assessee accompanied by prescribed evidences such as acknowledgement of online payment, bank counterfoil, challan, or proof of deduction. Thus, Rule itself does not mandate that only a certificate issued by foreign tax authority can establish payment of foreign taxes. Rule expressly permits assessee to substantiate payment through a self-certified statement accompanied by evidence of payment. Therefore, interpretation adopted by AO and DRP, requiring production of a tax authority certificate as sole admissible evidence, was contrary to plain language of Rule 128(8). Since assessee had substantially complied with requirements of Rule 128 by furnishing Form 67 together with supporting evidence of payment of foreign taxes, FTC claim could not be denied merely because a certificate from foreign tax authority was not produced. Therefore, matter was restored to file of AO for limited purpose of verification of evidence already furnished by assessee regarding payment of taxes in respective foreign jurisdictions and computation of eligible credit in accordance with applicable DTAA provisions.

<u>Material additional evidence for claim of FTC requires fresh examination</u>

1. **IPCA Laboratories Ltd. vs. Dy. CIT [2026] 187 taxmann.com 968 (Mumbai - Trib.) [23-06-2026] - IT Appeal Nos. 4233, 4234, 4235, 4236, 4237, 5191, 5192, 5193, 5194 and 5056 (MUM) of 2025 - [AY 2013-14, 2015-16 to 2018-19]**

   Assessee claimed foreign tax credit for taxes withheld in Colombia and later furnished an income and expenditure statement specifically for Colombian operations, such additional evidence, having a direct and material bearing on computation of attributable income and foreign tax credit, must be admitted and matter re-examined accordingly.

   Assessee a pharmaceutical company claimed FTC of about Rs. 41.73 lakhs in respect of taxes withheld in Colombia on sales of about Rs. 8.30 crores.AO, in absence of a separate Colombia profit and loss account, attributed income to Colombian operations by applying assessee's overall net profit margin (about 3.85 per cent) to Colombian turnover, computed income of about Rs. 31.96 lakhs, and restricted FTC to corresponding Indian tax (about Rs. 6.35 lakhs), disallowing balance. Assessee filed an income and expenditure statement for Colombian operations as additional evidence and sought recomputation of FTC on that basis. Tribunal ruled that additional evidence furnished by assessee went to root of matter and had a direct bearing on determination of income attributable to Colombian operations. Therefore, additional evidence was to be admitted, and matter was restored to file of AO for a fresh examination.

XI. OTHERS

Equalization levy

1. **Cloudera Inc. vs. ACIT, IT [2026] 187 taxmann.com 1074 (Delhi - Trib.) [29-06-2026] - [TS-962-ITAT-2026(DEL)] - IT Appeal Nos. 917, 3387 (Delhi) of 2023 and1185 (Delhi) of 2025 - [AY 2020-21, 2021-22 and 2022-23]**

   Where assessee, a non-resident, had paid Equalisation Levy on receipts and a portion of such receipts was subsequently held taxable as fees for technical/included services, proportionate refund of Equalisation Levy paid on such taxable receipts was allowable to assessee

   Assessee, a USA-based company, was engaged in providing data software solutions, supplied software subscriptions. It claimed that it had paid Equalisation Levy on receipts aggregating to Rs. 59.68 crores and, therefore, such receipts were exempt under section 10(50). Alternatively, assessee sought refund of Equalisation Levy corresponding to any portion of receipts that was ultimately held taxable as FTS/FIS/royalty. Tribunal ruled that since receipts of Rs. 3.05 crores from professional services were held taxable as FTS/FIS, proportionate amount of Equalisation Levy paid thereon was liable to be refunded to assessee.

Interest not leviable u/s 234B if income is already subject to TDS

1. **Lloyd's Register of Shipping vs. Dy. CIT (IT) [2026] 187 taxmann.com 130 (Mumbai - Trib.) [29-05-2026] - [TS-792-ITAT-2026(Mum)] - IT APPEAL NOS.1456, 1458 & 1459 (MUM) OF 2024 - [AY 2011-12 AND 2013-14]**

   Where income of a non-resident was subject to deduction of tax at source, no interest under section 234B was leviable; accordingly, levy for assessment year 2011-12 was liable to be deleted, while issue for assessment years 2012-13 and 2013-14 was liable to be reconsidered in accordance with law

   Assessee, a non-resident company. AO levied interest under section 234B on the income assessed in the hands of the assessee. The Tribunal held that the issue regarding levy of interest under section 234B in cases where the income of a non-resident is subject to deduction of tax at source is no longer res integra. The Supreme Court in ***DIT v. Mitsubishi Corporation [2021] 130 taxmann.com 276/283 Taxman 273/438 ITR 174 (SC)*** held that the amendment made to section 209 by the Finance

Act, 2012 is prospective in operation and applicable only from assessment year 2012-13 onwards. Thus, the Tribunal ruled that where income of a non-resident was subject to deduction of tax at source, no interest under section 234B was leviable for AY 2011-12, while for assessment years 2012-13 and 2013-14, it remanded the matter to AO for reconsideration in accordance with law. ***[DIT v. Mitsubishi Corporation [2021] 130 taxmann.com 276/283 Taxman 273/438 ITR 174 (SC) followed]***

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