INTERNATIONAL TAX DIGEST (June 2026)

Dr. Sunil Moti Lala, Advocate*, CA, LL. B, Ph.D.

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* Assisted by Harshvardhan Lunavat, B.A. L.L.B

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	Unsubstantiated Reimbursements Without Section 195(2) Approval Attract TDS	**1**	**25**
	Draft Assessment order (accompanied by demand notices) -Quashed	**1**	**26**
	No Penalty where the addition is based on interpretation & application of law qua characterisation of income	**1**	**26**
	TOTAL	**38**	**27**

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I. PERMANENT ESTABLISHMENT

<u>Fixed Place PE/DAPE</u>

1. **ACIT vs. G.E. POWER SP Z.O.O [2026] 187 taxmann.com 45 (SC) [26-05-2026] - SLP (CIVIL) Diary No. 22398 of 2026 - [AY 2013-14 to 2017-18]**

   SLP dismissed: reopening notice alleging DAPE/fixed place PE quashed as AO's recorded reasons disclosed no tangible material for belief that PE existed.

   Assessee, a US company was engaged in business of manufacturing, sales, marketing of power generation equipment and technical support services. A survey u/s. 133A was conducted upon assessee's sister concern in India, namely, 'GPIL'. On basis of same, AO noted that assessee had a PE in India in form of a DAPE and Fixed Place PE. He also noted that post survey operations, it was found that assessee had made certain supplies to Indian entities, however, no tax was deducted on payments made by Indian entity for said supplies. On basis of same, reopening notice was issued against assessee. High court noted that a plain reading of reasons as recorded by AO clearly indicated that there was no tangible material for forming a belief that assessee had a dependent PE or a Fixed Place PE in India during relevant assessment years. High Court held that, on facts, reopening notice issued against assessee was unjustified and same was set aside. Since no case for interference was made with impugned order of High Court, SLP was dismissed ***[SLP dismissed against Ge Steam Power Systems v. ACIT [2026] 185 taxmann.com 914 (Delhi)]***

<u>Fixed Place PE/DAPE /Service PE</u>

1. **CIT, (IT)-2 vs. Gemological Institute of America Inc. [2026] 187 taxmann.com 693 (Bombay) [16-06-2026] - IT APPEAL (L) NO. 21874 OF 2022- [AY 2010-11 and 2011-12 to 2017-18]**

   Where assessee, a US company engaged in grading and certification of gems, received diamonds for grading from GIA India only when GIA India exceeded its own grading capacity and such transactions were independent inter-company transactions, GIA India being a separate legal entity carrying on its own business could not be treated as a permanent establishment of assessee in India under article 5 [India-US DTAA]

   Assessee, a US company, was engaged in business of grading/certification of gems and its Indian subsidiary, GIA India, was engaged in grading diamonds in India. GIA India was an independent and separate legal entity rendering grading services to its clients up to a particular capacity and, where diamonds to be graded exceeded such capacity, it forwarded them for grading to assessee or other GIA group entities

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depending upon service requirements; thus, such transactions were independent inter-company transactions and did not establish that GIA India carried on assessee's business in India. Further, premises of GIA India were not at disposal of assessee; services rendered by GIA India were rendered on its own account and forwarding of diamonds exceeding its grading capacity to assessee or other group entities constituted independent inter-company transactions; and GIA India neither habitually concluded contracts nor habitually secured orders for assessee. Therefore, GIA India could not be termed as a PE of assessee in India, as it clearly (a) did not have a fixed place of business in India; (b) was not a service PE as contemplated under article 5 of the DTAA; and (c) was not an agency PE within meaning of article 5 of the DTAA. ***[Order of Income Tax Appellate Tribunal, Mumbai dated 21-6- 2019 (AY 2010-2011), Order of Income Tax Appellate Tribunal, Mumbai dated 17-1-2022 (AY 2017-2018) and Gemological Institute of America Inc. v. Addl. CIT (Int. Tax.) [2021] 127 taxmann.com 167/189 ITD 254 (Mumbai - Trib.) affirmed, Pr. CIT v. EYGBS (India) (P.) Ltd [2025] 180 taxmann.com 681 (Karnataka) followed, Kishinchand Chellaram v. CIT [1962] 46 ITR 640 (SC) distinguished]***

Fixed Place PE /Supervisory PE/ Installation PE

1. **Imax Corporation vs. ACIT [2026] 187 taxmann.com 151 (Delhi - Trib.) [03-06-2026] - [TS-817-ITAT-2026(DEL)] - IT Appeal No. 1934 (Del) of 2025 - [AY 2022-23]**

   ITAT: Canadian company's presence limited to a single employee's five-day site-inspection visit, none of the Article 5(1) fixed place PE tests satisfied, five-day installation activity does not cross the 120-day threshold for installation/supervisory PE. Thus, no PE - no attribution. [India–Canada DTAA]

   Assessee, a canadian company was engaged in developing, selling and leasing theatre systems globally and in providing installation and related support services. It entered into agreements with Indian customers covering (i) sale of theatre systems, (ii) installation and training/related services, and (iii) licence to use IMAX trademark. AO held that assessee had a fixed place PE and an installation/supervisory PE in India under the DTAA and made additions on that basis. Tribunal noted that assessee's presence in India during relevant year was limited to a five-day site-inspection visit by one employee and none of tests indicating existence of a fixed place PE were fulfilled. Therefore, there was no fixed place PE under article 5(1) of the DTAA. Further, since only activity attributable during relevant year was a five-day visit by an employee did not breach 120-day threshold prescribed under the DTAA, there was no installation or supervisory PE in India.

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II. BUISNESS PROFITS

Profits from offshore supply - not taxable in India

1. **Baker Hughes Energy Technology UK Ltd. vs. ACIT (IT) [2026] 186 taxmann.com 1265 (Delhi - Trib.) [27-05-2026] - IT Appeal No. 2081 (Delhi) of 2025 - [AY 2022-23]**

   UK company in offshore-supply consortium with ONGC had no project office and performed no installation in India, had no fixed place PE or deemed PE under proviso to Article 5(2), -profit attribution and application of s.44BB - not warranted. [India–UK DTAA]

   Assessee, a UK company was part of a consortium that entered into a contract with ONGC for offshore supply of goods. AO held that assessee had a fixed place PE in India in form of its declared Project Office established for executing ONGC contract and that sales to ONGC, for which Project Office provided logistic support, were attributable to this PE. AO further held that a deemed PE arose under proviso to Article 5(2) of the DTAA due to services linked to prospecting, exploration and extraction of mineral oil. Applying Section 44BB, AO computed profits at 10% of offshore supply receipts. Tribunal noted that assessee had very clearly and categorically stated that neither it had any project office in India nor had carried out any installation activity at gas well of ONGC at Krishna Godavari Basin. Since there was no PE of assessee in India, section 44BB would not apply. ***[Baker Hughes Energy Technology UK Ltd. v. ACIT (International Taxation) [2024] 160 taxmann.com 500/206 ITD 436 (Delhi-Trib.) followed.]***

Revenue Attribution to PE Must Reflect Actual Functions Performed

1. **BDA Partners Ltd. vs. Dy. CIT [2026] 187 taxmann.com 443 (Mumbai - Trib.) [10-06-2026] - IT Appeal No. 6053 (Mum) of 2025 - [AY 2023-23]**

   Where assessee engaged in M&A advisory services shared a part of revenue attributable to execution functions with its UK branch in respect of two deals, entire execution revenue could not be attributed to Indian PE and consequent addition was deleted [India-Hong Kong DTAA]

   Assessee, a Hong Kong-based M&A advisory firm with an Indian branch, allocated part of the execution revenue from two transactions to its UK branch based on its contribution to the deals. AO attributed the entire execution revenue to the Indian PE. Tribunal held that evidence established a significant role of the UK branch in execution functions and, therefore, revenue sharing was justified. Accordingly, attribution of the entire execution revenue to the Indian PE was not sustainable.

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Ad-hoc attribution to Indian PE; not sustainable

1. **Fincantieri Spa vs. ACIT, IT [2026] 187 taxmann.com 550 (Mumbai - Trib.) [29-05-2026] - IT Appeal No. 1272 (MUM) of 2026 - [AY 2023-24]**

   Where assessee, an Italian company with a project office in India, executed a single contract with MDL for know-how and related technical services and received contract receipts, only profits effectively connected to PO and determined on arm's length basis after allowing expenses could be attributed to PE, and ad hoc attribution of 50% of gross receipts to PO was not sustainable. [India–Italy DTAA]

   Assessee, a non-resident company incorporated in Italy, entered into a single contract with an Indian public sector shipyard for know-how and technology upgradation services relating to ship construction. It set up a project office in India to provide on-site support including know-how, design support, project management and technical assistance. For relevant year, assessee received about Rs. 66.99 crores from contract and, based on a transfer pricing study, offered about Rs. 13.30 crores as business income attributable to Indian project office taxable on a net basis u/s. 44DA, and treated balance about Rs. 53.69 crores as fees for technical services at 10% on gross basis under Article 12(2) of the DTAA read with section 115A. AO noted that contract was a single indivisible arrangement with composite milestones and that assessee could not furnish tender documents. He held that entire income arose from one project completed jointly by head office and PE and could not be reliably apportioned as claimed. He attributed 50% of total receipts, i.e., about Rs. 33.50 crores, to Indian project office. It was noted that major functions and activities were carried out in Italy and PO worked under control and supervision and guidance of HO and functions of PO were limited to on-site technical assistance to MDL. Tribunal ruled that attribution of revenue between PO and HO was an international transaction which was subject to TP regulations which had been duly complied with by assessee and AO had failed to carry out such analysis. Therefore, AO was not justified in attributing 50% of total receipts to assessee’s Indian Project Office (constituting a PE) on ad hoc basis rather than attributing only profits effectively connected with operations performed in India. ***[Fincantieri SPA v. Asstt. CIT [2025] 172 taxmann.com 854 (Mumbai - Trib.) followed]***

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III. SHIPPING & AIR TRANSPORT

<u>Receipts from feeder vessels/slot arrangement- covered under Article 8</u>

1. **Hapag-Llyod Aktiengesellschaft vs. Dy. CIT (IT) [2026] 187 taxmann.com 405 (Mumbai - Trib.) [05-06-2026] - IT Appeal No. 8673 (Mum) OF 2025 - [AY 2023-24]**

   German shipping company's receipts from feeder-vessel/slot arrangements are integral to operation of ships in international traffic, covered under Article 8 of and not taxable u/ s. 44B. [India–Germany DTAA]

   Assessee, a german company was engaged in operating ships in international traffic and transporting inbound and outbound cargo to and from Indian ports; due to draft constraints at Indian ports. It booked slots on feeder vessels to move cargo from Indian ports to its main vessels. In its return, assessee claimed exemption under article 8(1) of the DTAA for receipts from international transportation as well as receipts from transportation through feeder vessels, contending that such transportation formed an integral part of its business of operating ships in international traffic. AO held that receipts from transportation of cargo through feeder vessels/slot arrangements were not covered by article 8 and proposed to tax such receipts u/ s. 44B. DRP, following its directions for earlier year, upheld AO's view and assessment was finalized accordingly. Tribunal noted that in assessee's own case for earlier assessment years, coordinate bench had held that receipts from feeder vessels were covered under article 8 of the DTAA and were not taxable u/ s. 44B. Following its earlier order, the Tribunal held that receipts from feeder vessels were not taxable u/ s. 44B as they were covered under article 8 of the DTAA. ***[Director of Income Tax (Int. Taxation) v. Balaji Shipping Income Tax appeal no. 3024 & 3215 of 2009 followed]***

IV. DIVIDENDS

<u>Refund of DDT in excess of DTAA rate</u>

Huhtamaki India Ltd. vs. Dy. CIT [2026] 186 taxmann.com 723 (Mumbai - Trib.) [08-05-2026] - IT Appeal No. 7960 (MUM) of 2025 - [AY 2014-15]

Claim to restrict DDT to 10% under Article 10(2), remanded to AO pending authoritative resolution by the Supreme Court in JCIT v. Colorcon Asia. [India–Netherlands DTAA]

Assessee-company paid dividend to a Netherlands-resident shareholder and sought to restrict DDT to 10% under Article 10(2) of the DTAA. Since issue of applicability of DDT rate under the DTAA was pending before Supreme Court, Tribunal remanded the

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matter to AO to decide in accordance with outcome of the Supreme Court decision ***in JCIT v. Colorcon Asia (P.) Ltd [2026] 186 taxmann.com 774 (SC)*.**

V. INTEREST

<u>Broken-Period Interest -paid buyer of NCD taxable as Interest under head IFOS and Not Taxable as Capital Gains</u>

1. **Macquarie SBI Infrastructure Investments Pte Ltd. vs. ACIT (IT) [2026] 187 taxmann.com 584 (Delhi - Trib.) [15-06-2026] - [TS-905-ITAT-2026(DEL)] - IT Appeal No. 2667 (Delhi) of 2023 - [AY 2020-21]**

   Where assessee, a Singapore-based SEBI-registered Foreign Venture Capital Investor, sold NCDs on cum-interest basis and received broken-period interest for five days from buyer, identity of payer would not alter character of receipt, thus, broken-period interest would remain taxable in India as interest under head "Income from Other Sources" and not as STCG. [India-Singapore DTAA]

   Assessee, a Singapore based company and SEBI registered Foreign Venture Capital Investor, invested in non-convertible debentures (NCDs) of GMR Airports Ltd. (GAL). Part of said NCDs were redeemed by GAL, while remaining were sold to JPMSA on 5-7-2019 on a cum-interest basis. Assessee treated broken period amount of Rs. 6.35 crores received from JPMSA for five days' accrued interest as STCG and claimed same as exempt under Article 13(5) of the DTAA. AO treated interest income chargeable to tax under head income from other source. Tribunal ruled that simply because interest had been received not directly from issuer (i.e. GAL) but from buyer of debentures (i.e. JPMSA), this would not change nature of receipts in assessee's hands. Thus, broken-period interest of 5 days received by assessee on sale/transfer of NCDs to JPMSA on a cum-interest basis was taxable in India as interest under head 'Income from Other Sources'. ***[Nitesh Housing Developers (P.) Ltd. v. Dy. CIT [2022] 145 taxmann.com 30/290 Taxman 474/454 ITR 770 (Karnataka), Khushaal C. Thackersey v. ACIT [IT Appeal No. 3679 (Mum.) of 2015, dated 15-4-2024] and Taparia Tools Ltd. v. Jt. CIT [2015] 55 taxmann.com 361/231 Taxman 5/372 ITR 605 (SC) followed]***

<u>Decretal Amount including Interest – Not liable for TDS- not covered under definition of Interest u/ s. 2(28A)</u>

1. **DLF Home Developers Ltd. vs. Anto Thomas [2026] 186 taxmann.com 944 (Kerala) [19-05-2026] - OP(C) NO. 3359 OF 2025**

   Payment of decretal amount (including interest) by judgment debtor to non-resident makes s. 195 inapplicable. "Decretal debt" not covered by s. 195;

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interest payable under a court decree excluded from the definition of "interest" u/ s. 2(28A).

Judgment debtor, while paying decretal amount, is not liable to deduct tax at source from interest component payable under court decree, as Section 195 does not speak of a decretal debt and definition of 'interest' u/ s. 2(28A) does not include interest payable on a decree amount. ***[All India Reporter Ltd. v. Ramchandra D. Datar [1961] 41 ITR 446 (SC), Islamic Investment Co. v. UOI [2002] 122 Taxman 719 (Bombay), Voith Hydro Ltd. v. NTPC Ltd. [2021 SCC OnLine Del. 1325 and Sino Ocean Ltd. v. Salvi Chemicals Industries Ltd. 2017 SCC OnLine Bom. 9401 Followed]***

VI. ROYALTY

Software

1. **CIT (IT) vs. Veritas Storages Singapore Pte. Ltd. [2026] 186 taxmann.com 687 (Delhi) [12-05-2026] - IT Appeal Nos. 307 and 309 of 2025 – [AY 2017-18]**

   HC: Since ITAT deleted additions on software licence receipts per Engineering Analysis (SC) and additions on maintenance support, allied services and training were separately covered in assessee's favour by earlier HC ruling-T no interference warranted.

   Assessee, a singapore-based company earned receipts from sale of hardware appliances, sale of software licences, maintenance support and other services related to software licences, and education and training services. AO made additions on all four counts. Tribunal allowed assessee's appeal relying upon Supreme Court decision in ***Engineering Analysis.*** Tribunal, however, did not separately discuss or decide additions relating to maintenance support and other services or education and training services. Since said issues already stood covered in favour of assessee by earlier decision of High Court in ***TSYS Card Tech Ltd.***, High Court held that the impugned order called for no interference. ***[Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/432 ITR 471/281 Taxman 19/ (2022) 3 SCC 32 distinguished, CIT (IT) v. TSYS Card Tech Ltd. [IT Appeal No. 165 of 2024, dated 16-07-2024] followed]***

2. **ACIT vs. Informatica LLC [2026] 187 taxmann.com 444 (Bangalore - Trib.) [10-06-2026] - IT(IT) Appeal No. 2227 (Bang) of 2024 - [AY 2017-18]**

   Assessee sold software products and provided ancillary support services to Indian distributors and customers, consideration from sales of software products could not be taxed as royalty under Indian law or DTAA [India-USA DTAA]

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Assessee, US based company, was engaged in developing, manufacturing and distributing software products. It entered into agreements with distributors, resellers and customers in India for supply of software products. AO treated consideration from sale of software products as royalty taxable in India. It was noted that in case similar to assessee, Supreme Court in ***Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC)***, held that consideration received from sale of software products was not taxable in India as royalty. Thus, Tribunal ruled that following aforesaid view consideration from sale of software product could not be treated as royalty and were not taxable in India

3. **McAfee Singapore Pte. Ltd. vs. Dy. CIT, Int. Tax [2026] 187 taxmann.com 345 (Mumbai - Trib.) [05-06-2026] - [TS-831-ITAT-2026(Mum)] - IT(IT) Appeal No. 1174 (Mum) of 2026 - [AY 2018-19]**

   ITAT: McAfee software sales cannot be royalty if copyright not transferred; AO to assess correct income, remits matter

   Assessee, a singapore company sold limited-license software to Indian distributors while retaining copyright. For relevant assessment year, assessee offered receipts from such sales as royalty under Article 12(3) of the DTAA and return was processed u/ s. 143(1) without adjustment. Assessee thereafter claimed, relying upon decision of Supreme Court in ***Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC),*** that receipts were not taxable as royalty. CIT(A) dismissed appeal in limine holding that no appeal lay against intimation u/ s. 143(1) where no adjustment was made and fresh claim could not be entertained. Tribunal ruled that assessee was entitled to raise claim of non-taxability of receipts as royalty income in appeal preferred before first appellate authority. Tribunal ruled that since factual aspect as to whether software products sold by assessee were copyrighted articles without transfer of any copyright had not been examined at any stage, issue was restored to AO for examination and if found in favour of assessee, receipts could not be treated as royalty taxable in India.

Refunded Royalty - Not Taxable as Income

1. **CIT, (IT)-2 vs. Gemological Institute of America Inc. [2026] 187 taxmann.com 693 (Bombay) [16-06-2026] - IT APPEAL (L) NO. 21874 OF 2022- [AY 2011-12 to 2016-17]**

   Where GIA US received royalty from its subsidiary GIA India and, pursuant to an APA entered into by GIA India requiring refund of excess royalty, GIA US repaid part of royalty received, only royalty amount ultimately retained by GIA US could be taxed under article 12 and not gross amount initially received, as only real income chargeable in its hands could be brought to tax. [India-US DTAA]

   Assessee, GIA US, received royalty from its associated enterprise, GIA India, for technical know-how and expertise. GIA India entered into an Advance Pricing

Agreement (APA) with CBDT determining arm's length price of royalty and requiring excess royalty received by assessee to be repaid to GIA India. Pursuant thereto, assessee refunded excess royalty to GIA India and claimed that such refunded amount could not be regarded as its income. Tribunal directed that amounts repaid by assessee to GIA India be reduced from its total income, subject to verification of repayment. Further, quantum of royalty that could be brought to tax in India was amount which was ultimately retained by assessee and not amount which was initially received by it from GIA India on account of royalty. Therefore, amount refunded by assessee to GIA India pursuant to APA could not be regarded as income chargeable to tax in hands of assessee. ***[Order of Income Tax Appellate Tribunal, Mumbai dated 21-6- 2019 (AY 2010-2011), Order of Income Tax Appellate Tribunal, Mumbai dated 17-1-2022 (AY 2017-2018) and Gemological Institute of America Inc. v. Addl. CIT (Int. Tax.) [2021] 127 taxmann.com 167/189 ITD 254 (Mumbai - Trib.) affirmed, Pr. CIT v. EYGBS (India) (P.) Ltd [2025] 180 taxmann.com 681 (Karnataka) followed, Kishinchand Chellaram v. CIT [1962] 46 ITR 640 (SC) distinguished]***

<u>Market Data Charges to access databases</u>

1. **Goldman Sachs and Co. LLC vs. ACIT (IT) [2026] 187 taxmann.com 404 (Mumbai - Trib.) [05-06-2026] - IT Appeal No. 9029 (Mum) OF 2025 - [AY 2023-24]**

   Market data charges recovered from Indian AEs for access to third-party vendor databases was not royalty under Article 12 as settled by prior Tribunal rulings; Revenue's pendency of further appeals would not justify re-agitation. [India–USA DTAA]

   Assessee, a US company received market data charges from Indian AEs towards recovery of costs incurred for providing access to databases of third-party vendors. AO treated receipts as royalty taxable in India under the DTAA as well as domestic law. Tribunal noted that in assessee's own case for earlier years, co-ordinate bench had held that payments received towards recovery of costs incurred for providing access to databases of third-party vendors did not fall within ambit of royalty and recovery of corresponding costs from associated enterprises could not be treated as royalty in hands of assessee. Since factual position in year under consideration remained identical to earlier years, receipts could not be taxed as royalty under article 12 of the DTAA merely because Revenue had preferred further appeals against earlier Tribunal decisions. ***[Goldman Sachs Services (P.) Ltd. v. Dy. CIT, International Taxation [2022] 138 taxmann.com 162 (Bangalore - Trib.) and Goldman Sachs International v. Asstt. CIT (InternationalTaxation) [2026] 186 taxmann.com 18 (Mumbai-Trib.) followed.]***

VII. FEES FOR TECHNICAL SERVICES (FTS/FIS)

Logistics services

1. **CIT (IT) vs. Expeditors International of Washington Inc. [2026] 187 taxmann.com 242 (SC) [26-05-2026] - SLP Appeal (C) Diary No. 25133 of 2026 – [AY 2022-23]**

   SLP dismissed: receipts of US company from global freight logistics services (including logistic support to Indian AE) — not FTS/FIS under Act or treaty. [India–USA DTAA]

   Assessee, a US company was engaged in business of providing global freight logistics services worldwide. AO made addition to income of assessee on account of sale of logistic services and global account manager expenses to its AE in India treating same as FTS under Act as well as the DTAA. Tribunal held that amount received by assessee from freight/logistic support services could not be treated as FTS/FIS either under Act or under treaty provisions, as mere furnishing of service would not be sufficient to categorise the service as FTS. It would have to be necessarily accompanied by a transfer of expertise and which would consequently enable the recipient of service becoming skilled in its own right and empowered to perform those functions independently. (reasoning) High Court held that no substantial question of law arose and dismissed Revenue's appeal.Since no case for interference was made against the impugned order of the High Court, the Hon'ble Supreme court dismissed the Revenue's SLP. ***[SLP dismissed against CIT(IT) v. Expeditors International of Washington Inc. [2026] 186 taxmann.com 1226 (Delhi)]***

Advisory & Consultancy Services

1. **CIT (IT) vs. Ernst and Young U.S. LLP [2026] 187 taxmann.com 711 (Delhi)[18-06-2026] - [TS-903-HC-2026(DEL)] - ITA 423, 424, 715, 753 & 760 OF 2025 – [AY 2018-19 and 2020-21 to 2022-23]**

   HC: Where assessee, a US based LLP, rendered advisory and consultancy services from USA to Indian clients claiming same as exempt professional services under Article 15, since Tribunal deleted FTS additions by relying on exemptions under Article 12(5)(e) and Article 15 without properly delineating nature of services or addressing AO's factual findings on technical and consultancy character, matter was remanded to Tribunal for fresh consideration. [India-USA DTAA]

   Assessee-LLP, a US-based member of EY network, received consideration from Indian clients for professional advisory and consultancy services rendered from USA. Assessee claimed exemption under Article 12(5)(e) read with Article 15 of the DTAA, treating such income as 'professional services'. AO examined engagement

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letters/scope statements and held services to be technical and consultancy in nature, including training to customers, thereby satisfying 'make available' condition in Article 12(4)(b). After allowing exclusions under Article 12(5)(e) of the DTAA for certain professional streams, AO taxed balance as FTS. Tribunal reversed additions holding that 'make available' test was not met on facts and that definition of 'professional services' in Article 15(2) was inclusive. High Court noted that Tribunal had not delineated actual services provided by assessee to its Indian clients or discussed whether such services could be included in definition. However, Tribunal merely noted qualifications of employees of assessee and held that they would come within ambit of definition of professional services provided under Article 15(2) of the DTAA. Furthermore, merit and effect of finding of fact by AO that services were in nature of technical services and consultancy had neither been discussed nor distinguished by Tribunal. High Court concluded that since Tribunal had not examined key differences regarding services which had been charged as FTS in contrast to nature of services which were found to be exempted. Accordingly, matter was remanded back to Tribunal for reconsideration.***Centrica India Offshore (P.) Ltd. v. CIT-I [2014] 51 taxmann.com 386 (SC)/[2014] 227 Taxman 368 (SC) followed;***

Ernst & Young U.S. LLP v. ACIT [2025] 177 taxmann.com 170 (Delhi - Trib.), Ernst & Young U.S. LLP v. ACIT [ITA No. 2332/Del/2022], Ernst & Young U.S. LLP v. ACIT [2025] 175 taxmann.com 150 (Delhi - Trib.), ITA No. 3253/Del/2023 and ITA No. 1243/Del/2025 set aside;

CIT (International Taxation)-1 v. Bio-Rad Laboratories (Singapore) Pte. Ltd. [2023] 155 taxmann.com 646 (Delhi)/[2024] 296 Taxman 167 (Delhi)/[2023] 459 ITR 5 (Delhi), CIT, International Taxation v. RELX Inc. [2024] 160 taxmann.com 109 (Delhi) , Aecom Technical Services Inc. v. ITO [2025] 174 taxmann.com 1173 (Delhi)/[2025] 305 Taxman 234 (Delhi)/[2026] 485 ITR 357 (Delhi), Pr. CIT v. Boeing India (P.) Ltd. [2023] 146 taxmann.com 131 (Delhi)/[2023] 457 ITR 84 (Delhi), AT & T Communication Services (India) (P.) Ltd. v. Dy. CIT [2019] 101 taxmann.com 105 (Delhi - Trib.), CIT v. Industrial Engineering Projects (P.) Ltd. [1993] 202 ITR 1014 (Delhi), and K. Ravindranathan Nair v. CIT [2001] 114 Taxman 53 (SC)/[2001] 247 ITR 178 (SC) distinguished.]

<u>Support Services w.r.t sale of software products</u>

1. **ACIT vs. Informatica LLC [2026] 187 taxmann.com 444 (Bangalore - Trib.) [10-06-2026] - IT(IT) Appeal No. 2227 (Bang) of 2024 - [AY 2017-18]**

Assessee sold software products and provided ancillary support services to Indian distributors, receipts from ancilliary support services were not taxable as FTS under Indian law or DTAA [India-USA DTAA]

Assessee, a US company, was engaged in developing, manufacturing and distributing software products. It entered into agreements with Indian distributors/resellers/customers to provide software products and ancillary support

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services. AO treated consideration from ancillary/support services as FTS taxable in India. CIT(A) held that ancillary support services were not FTS. It was noted that CIT(A) had followed orders of Tribunal in assessee's own case in respect of other years which were given by following judgment of Supreme Court in ***Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT ([2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC***). Thus, Tribunal ruled that order of CIT(A) in allowing appeal filed by assessee was in order and it required no interference.

Credit Rating & Annual Surveillance services

1. **S & P Global Ratings Singapore Pte. Ltd. vs. ACIT [2026] 187 taxmann.com 585 (Delhi - Trib.) [15-06-2026] - IT Appeal No. 761 (Del) OF 2025 - [AY 2022-23]**

   Assessee provided credit rating and annual surveillance services to Indian clients without transferring any technical skill or knowhow, receipts from such services could not be treated as fees for technical services and were not taxable in India u/ s. 9(1)(vii) or Article 12 of DTAA [India-Singapore DTAA]

   Assessee, Singapore based company, provided credit rating and annual surveillance services to Indian clients. It claimed that such receipts were not taxable in India as it had no PE in India and no technical know-how was transferred. However, AO held that credit rating reports constituted commercial information and that annual surveillance services were ancillary thereto. He, thus, held that consideration for said services was taxable in India as FTS u/ s. 9(1)(vii) and Article 12 of the DTAA. Tribunal ruled that since no technical skill, process or know-how was made available to clients in process of providing ratings, AO was not justified in taxing receipts as FTS. ***[Taxation Department, ICICI Bank Ltd. v. DCIT [2008] 20 SOT 453 (Mumbai) followed]***

Management & Business support services /Cost Contribution Agreement

1. **Denso International Asia Co. Ltd. vs. ACIT, IT [2026] 187 taxmann.com 28 (Delhi - Trib.) [29-05-2026] - IT Appeal No. 3421 (DEL) of 2023 - [AY 2021-22]**

   Management and technical services provided by a Thailand tax resident to Indian group companies without a PE in India – cannot be taxed as Other Income under article 22 in absence of FTS [India–Thailand DTAA]

   Assessee - company, a tax resident of Thailand, acted as a regional service center of Denso Group for Asia and Oceania, providing business administration, material engineering, design and development, testing and technical services of automotive components to Indian group companies, It did not have any PE in India. During relevant year, it earned receipts from Indian group companies for management/technical services and claimed receipts as non-taxable under the DTAA in absence of a specific FTS clause. AO treated consideration as FTS falling under

Article 22 (Other income) of the DTAA and taxed it at 10% by applying section 9(1)(vii). Tribunal ruled that since there was no specific FTS clause in the DTAA, consideration received by assessee from Indian group entities for management/technical services was not taxable in India as 'Other income' under Article 22 of the DTAA but was to be treated as 'Business profits' under Article 7 of the DTAA and therefore not taxable in India in absence of a PE. ***[Dy. CIT v. TVS Electronics Ltd. [2012] 22 taxmann.com 215 (Chennai)/[2012] 52 SOT 287 (Chennai) distinguished, Denso International Asia Co. Ltd. v. ACIT [IT Appeal No. 1985/Del/2023, dated 27.06.2024], and Denso International Asia Co. Ltd. v. Asstt. CIT [IT Appeal No. 402/Del/2025, dated 08.10.2025] followed]***

2. **Shell International Petroleum Company Ltd. vs. Dy. CIT (IT) [2026] 186 taxmann.com 742 (Mumbai - Trib.) [14-05-2026] - IT Appeal No. 1939 (Mum.) of 2026 - [AY 2023-24]**

Cost allocations received by UK company from Indian affiliate under a Cost Contribution Agreement for general business support services are managerial, not technical — not taxable as FTS. [India–UK DTAA]

Assessee, a Shell Group company incorporated in U.K, was engaged in providing consultancy and business support services. It claimed benefit of the DTAA u/ s. 90(2) while filing its return. AO noted that assessee received Rs. 224.86 crores as cost allocation for General Business Support Services under a Cost Contribution Agreement (CCA). AO issued a draft assessment order proposing to tax BSS receipts as FTS and made an addition. DRP dismissed assessee’s objections. Tribunal noted that in assessee's own case for previous assessment year, it was held that services rendered by assessee were not in nature of technical service and were merely managerial in nature. Further, it was noted that ruling of the AAR in ***Shell India Markets (P.) Ltd., In re [2012] 18 taxmann.com 46/205 Taxman 288 (AAR - New Delhi)*** holding that same was liable to ***be taxed in India as*** FTS which was relied upon by AO had been reversed by High Court in **Shell India Markets (P.) Ltd. vs. Union of India [2024] 160 taxmann.com 175 (Bombay***)***. Tribunal ruled that there was no reason to uphold order of AO and impugned addition made by Assessing Officer was deleted. ***[Shell International Petroleum Company (Ltd.) v. Dy. CIT IT Appeal No. 1751 (Mum) of 2025, dated 11-2-2026 followed]***

3. **Tech Data (Singapore) Pte Ltd. vs. Dy. CIT [2026] 187 taxmann.com 717 (Mumbai - Trib.) [17-06-2026] - IT Appeal No. 8995 (MUM.) OF 2025 - [AY 2023-24]**

Consideration received by a, a Singaporean company, r from its Indian subsidiary for providing management and business support services- Not FTS – as make available condition not satisfied. [India-Singapore DTAA]

Assessee, a Singaporean company, entered into an agreement with its Indian subsidiary to provide management/business support services comprising of strategic business advisory, information technology, finance (FP&A and controlling), logistics, branding, tax, treasury, legal, ethics and compliance, human resources, trade compliance, and corporate/real estate/administrative services. For relevant assessment year, it received about Rs. 49.69 crores as consideration. AO held that part of services were consultancy and rest managerial, concluded that make-available condition was not required for managerial services, and treated consideration as taxable FTS u/ s. 9(1)(vii) and article 12(4), and, in alternative, as royalty u/ s. 9(1)(vi) and article 12(3). It was noted that in assessee's own case for earlier assessment years, Tribunal had held that services rendered by assessee were in nature of operational management and providing support system and did not make available any technical know-how nor there was any service rendered consisting of development and transfer of a technical plan or technical design. Tribunal ruled that on facts, amount received by assessee not being in nature of FTS under article 12(4) of the DTAA, was not taxable in India. ***[Tech Data (Singapore) Pte Ltd. v. Dy. CIT, International Taxation [IT Appeal No. 2367 (Mum.) of 2022, dated 21-08-2023] followed.]***

Commission

1. **Skechers SARL vs. ACIT [2026] 187 taxmann.com 642 (Mumbai - Trib.) [12-06-2026] - IT Appeal No. 6067 (MUM.) of 2025 - [AY 2023-24]**

   Assessee, a swiss company received buying agency commission for procurement-related activities performed for an Indian affiliate in China and Vietnam, since services did not make available any technical knowledge, skill, know-how or process to Indian company, commission was not taxable as fees for technical services in India under Article 12. [India-Switzerland DTAA]

   Assessee, a company incorporated in Switzerland, received Buying Agency Commission from SSAPL for acting as its buying representative in China and Vietnam for procurement-related activities. AO held that services extended beyond mere procurement facilitation and encompassed a broad spectrum of managerial, consultancy, and technical services. AO concluded that nature of services provided demonstrates that expertise, knowledge and technology provided by assessee had been absorbed and utilized by SSAPL for its business decision-making and operational execution. He, thus, held that payments qualified u/ s. 9(1)(vii) and Article 12(4) of the DTAA and taxed receipts at 10 per cent under Article 12 of the DTAA. In assessee's own case for earlier assessment year, Tribunal held that activities, though required business acumen and coordination, did not involve any technical knowledge, experience, skill, know-how or process as these services were rendered for and on behalf of SSAPL, and benefit remained confined only to execution of transactions, thus, commission received by assessee could not be regarded as FTS. Thus, Tribunal following aforesaid view, held that buying agency commission received by assessee could not be regarded as 'FTS' and was not taxed in India under Article 12 of the DTAA. ***[Skechers Sarl v. Asstt. CIT [2025] 180 taxmann.com 786 (Mumbai - Trib.) followed]***

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<u>Reimbursement of salary (and other related costs) of Seconded Employees</u>

1. **CIT (IT) vs. Ernst and Young U.S. LLP [2026] 187 taxmann.com 711 (Delhi)[18-06-2026] - [TS-903-HC-2026(DEL)] - ITA 423, 424, 715, 753 & 760 OF 2025 – [AY 2018-19 to 2022-23]**

HC: EY US retained overarching control & employee lien during India secondments, satisfies make available test - thus, reimbursements of salary cost were taxable as FTS u/ s. 9(1)(vii) and Article 12 [India-USA DTAA]

Assessee-LLP, a US-based member of EY network, seconded its employees to three EY India entities under deputation agreements. Assessee received certain amount towards cost-to-cost reimbursement of salary of seconded employees. Assessee claimed that said amount was not taxable in India as it was cost-to-cost reimbursement. AO opined that secondees continued to be employees of US entity who made available technical knowledge and expertise to Indian entities. He, thus, treated reimbursements as taxable in India as FTS/FIS. Tribunal held that secondees were to be treated as employees of EY India entities and receipts would not be taxable as FTS. High Court noted that seconded employees were working in Indian entities, during period of assignment and on such assignment, seconded employees continued to maintain their lien with assessee. In fact, seconded employees were entitled to all available benefits including social security from their employer, i.e., assessee. Additionally, Indian entities could not have terminated services of seconded employees, and they only had right to undertake legal or disciplinary action against misconduct, fraud, willful negligence or any illegal action of any international assignee and terminate secondment, prior to agreed period and relieve them from Indian entities to enable them join assessee. High court ruled that assignment of secondees was akin to a deputation from assessee to EY India entities, to enable secondees use their expertise of technical knowledge/know how and make available same to EY India entities, for Indian entities to then use same for their working in future. Thus, payments received by assessee from EY India entities towards secondment of employees were taxable in India as FTS u/ s. 9(1)(vii) and article 12 of the DTAA as services rendered by assessee satisfied 'make available' condition in article 12(4)(b) of the DTAA.

[Centrica India Offshore (P.) Ltd. v. CIT-I [2014] 51 taxmann.com 386 (SC)/[2014] 227 Taxman 368 (SC) followed;

Ernst & Young U.S. LLP v. ACIT [2025] 177 taxmann.com 170 (Delhi - Trib.), Ernst & Young U.S. LLP v. ACIT [ITA No. 2332/Del/2022], Ernst & Young U.S. LLP v. ACIT [2025] 175 taxmann.com 150 (Delhi - Trib.), ITA No. 3253/Del/2023 and ITA No. 1243/Del/2025 set aside;

CIT (IT)-1 v. Bio-Rad Laboratories (Singapore) Pte. Ltd. [2023] 155 taxmann.com 646 (Delhi)/[2024] 296 Taxman 167 (Delhi)/[2023] 459 ITR 5 (Delhi), CIT, IT v. RELX Inc. [2024] 160 taxmann.com 109 (Delhi) , Aecom Technical Services Inc. v. ITO [2025] 174 taxmann.com 1173 (Delhi)/[2025] 305 Taxman 234 (Delhi)/[2026] 485 ITR 357 (Delhi), Pr. CIT v. Boeing India (P.) Ltd. [2023] 146 taxmann.com 131 (Delhi)/[2023] 457 ITR 84 (Delhi), AT & T Communication Services (India) (P.) Ltd.

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v. Dy. CIT [2019] 101 taxmann.com 105 (Delhi - Trib.), CIT v. Industrial Engineering Projects (P.) Ltd. [1993] 202 ITR 1014 (Delhi), and K. Ravindranathan Nair v. CIT [2001] 114 Taxman 53 (SC)/[2001] 247 ITR 178 (SC) distinguished.]

2. **ExxonMobil Services & Technology (P.) Ltd. vs. Dy. CIT [2026] 187 taxmann.com 632 (Bangalore - Trib.) [15-06-2026] - IT Appeal No. 1932 (Bang) of 2025 - [AY 2016-17]**

   Where assessee reimbursed group company for seconded employees' services and claimed control over deputed staff but failed to produce requisite agreements and AO also did not call for them, disallowance u/ s. 40(a)(i) by treating said payment as fees for technical services ar required reconsideration by AO-matter remanded [India-Singapore DTAA]

   Assessee-company, engaged in providing administrative support, document processing, account maintenance, billing and transaction support services to its group, filed a revised return declaring income of about Rs. 5.47 crores for AY 2016-17. During scrutiny, AO noted reimbursement of about Rs. 14.71 crores made to ExxonMobil Asia-Pacific Pte. Ltd. without deduction of tax u/ s. 195, treated remittances as FTS under Act and the DTAA, disallowed sum u/ s. 40(a)(i), and assessed total income at about Rs. 20.19 crores. Assessee stated that, being in its initial years, 27 employees of affiliates were deputed to support setting up operations; secondees worked under its supervision and control; their duties, leave, remuneration terms and working hours were determined by assessee; and assessee provided benefits like provident fund, gratuity and accommodation, with performance appraisals conducted by it. CIT(A) dismissed assessee's plea, holding that operational control alone was not determinative; secondees belonged to group companies; and services (IT setup, operational support, coordination with senior management, internal controls) were managerial/consultancy in nature. Since assessee did not support its contentions by producing relevant agreements, nor did AO call for them, matter was restored to file of AO.

3. **Goldman Sachs and Co. LLC vs. ACIT (IT) [2026] 187 taxmann.com 404 (Mumbai - Trib.) [05-06-2026] - IT Appeal No. 9029 (Mum) OF 2025 - [AY 2023-24]**

   Reimbursements received from Indian AEs for employee-related expenses of seconded employees not FIS/FTS, prior Tribunal and High Court rulings on identical facts followed; Revenue's pendency of further appeals not a ground to re-agitate settled position. [India–USA DTAA]

   Assessee, a US company received reimbursements from Indian AEs towards employee-related expenses incurred in respect of seconded employees. AO treated receipts as FIS/FTS on ground that seconded employees rendered technical services. It was noted that Tribunal, in proceedings concerning similar reimbursements, had held that such payments were not in nature of FIS/FTS and, therefore, did not require deduction of tax at source u/ s. 195, and such view had been upheld by High Court. Tribunal held that since AO did not dispute that issue was covered by earlier decisions and sought to tax receipts only because Revenue had preferred further appeals against such decisions, amount in dispute could not be treated as FIS/FTS under the

DTAA in absence of any factual difference. ***[Goldman Sachs Services (P.) Ltd. v. Dy. CIT, International Taxation [2022] 138 taxmann.com 162 (Bangalore - Trib.) and Goldman Sachs International v. Asstt. CIT (International Taxation) [2026] 186 taxmann.com 18 (Mumbai-Trib.) followed.]***

Helicopter repair, maintenance & overhauling

1. **Global Vectra Helicorp Ltd. vs. ACIT [2026] 186 taxmann.com 994 (Delhi - Trib.) [20-05-2026] - IT Appeal No. 5949 (Delhi) of 2025 - [AY 2017-18]**

   Payments by Indian aviation company to non-residents for helicopter repair, maintenance and overhauling – Not FTS - "make available" condition in applicable tax treaties not satisfied – thus s. 40(a)(i) disallowance deleted.

   Assessee engaged in flying, operating, letting on hire/lease and charter hire of helicopters made payments to various non-resident entities towards helicopter repair and maintenance/overhauling charges. AO treated said payments as FTS u/ s. 9(1)(vii), held that tax was deductible u/ s. 195, and disallowed said amount u/ s. 40(a)(i) for alleged non-deduction of tax at source. Tribunal noted that in assessee's own case for earlier assessment years, co-ordinate Bench had held that since make available condition enshrined in concerned treaties were not satisfied, payments made to non-residents were not chargeable to tax in India and, thus, section 195 was not applicable. Following aforesaid decision, impugned disallowance made u/ s. 40(a)(i) was deleted.

Airline Passenger Services

1. **Dy. CIT vs. Sita Information Networking Computing USA INC [2026] 186 taxmann.com 291 (Mumbai - Trib.) [29-04-2026] - IT Appeal No. 7698 (MUM) of 2025 - [AY 2022-23]**

   Non-resident company providing airline passenger reservation and departure control services to Indian airlines using software and data centre located in USA, no technology made available. Thus, receipts not taxable as FTS/FIS. [India–USA DTAA]

   Assessee, a US company provided System solutions to Indian airlines. For relevant year, assessee earned receipts from Passenger Services. AO treated receipts from Passenger Services as taxable in India as FTS u/ s. 9(1)(vii) and as FIS under Article 12 of the DTAA and made addition accordingly. Since no technology was made available to Indian airlines and services were rendered using software supported by assessee's data centre in USA, Tribunal held that the said receipts from Passenger Services were not taxable as FTS/FIS. ***[Dy. CIT v. Sita Information Networking***

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Computing USA Inc. [ITA Nos. 6436, 6439 to 6444 & 6470/Mum/2024, dated 2-4-2025] (para 4) followed.]

<u>Commission for services rendered outside India</u>

1. **Dy. CIT vs. Ashish Subhash Agarwal [2026] 186 taxmann.com 1263 (Pune - Trib.) [20-05-2026] - IT Appeal No. 1582 (PUN) of 2025 - [AY 2020-21]**

   Commission payments to foreign entities for services rendered and received entirely outside India creates no PE or business connection in India and income does not accrue or arise in India thus, s. 195 not attracted. S.40(a)(i) disallowance rightly deleted.

   Assessee, an individual made aggregate payments outside India to entities situated outside India for commission and other services connected with overseas work. AO disallowed entire amount u/ s. 40(a)(i) for non-deduction of TDS, treating commission as FTS. Tribunal ruled that entities receiving commission had no PE or business connection in India and services were rendered and received outside India. Therefore, there was no accrual of income in India for impugned entities and impugned amount was not sum chargeable under Act, hence section 195 would not be applicable and disallowance u/ s. 40(a)(i) was rightly deleted by CIT(A). **[*Pr. CIT v. Sesa Goa Ltd. [2023] 146 taxmann.com 35/291 Taxman 229 (Bombay) and Pr. CIT v. Vedanta Ltd. [2023] 146 taxmann.com 34/[2022] 448 ITR 732/[2023] 291 Taxman 205 (SC), ACIT v. Manoj Raizada [2023] 154 taxmann.com 54 (Delhi - Trib.), ACIT v. Kapoor Industries Ltd. [2021] 125 taxmann.com 271/187 ITD 603 (Delhi - Trib.) followed*]**

VIII. CAPITAL GAINS

<u>Buisness Commitment furnished by Assessee's affiliate (to company whose shares are sold by the assessee, a mauritain entity)- Does Not Alter Character of Capital Gains in the hands of the Mauritian entity</u>

1. **Fifth Third Mauritius Holdings Ltd. vs. ACIT (International Tax), Circle) 2(3)(1) [2026] 187 taxmann.com 870 (Mumbai - Trib.) [08-06-2026] - IT Appeal No. 2010 (Mum) of 2025 - [AY 2022-23]**

   Where assessee, a tax resident of Mauritius, sold shares of an Indian company and AO invoked section 9 to tax 20.80 per cent of share sale consideration as 'Income from Other Sources' on basis of a purchase commitment furnished by assessee's affiliate, since no material established that purchase commitment artificially inflated share value or that transaction was a sham, colourable device or make-believe arrangement, entire consideration retained its character as

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consideration for transfer of a capital asset taxable under head 'Capital Gains', and addition was deleted, same being not taxable under article 13. [India–Mauritius DTAA]

Assessee, a tax resident of Mauritius, transferred 81,285 equity shares representing 9 per cent of share capital of SLK Global Solutions Private Limited (now Coforge Business Process Solutions Pvt. Ltd.) to Coforge Limited for a consideration of Rs. 137.75 crore. Assessee claimed that gains arising from transfer of shares were not taxable in India in terms of article 13 of the DTAA. Further, FTBNA (Fifth Third Bank National Association), an affiliate of the assessee and a longstanding customer of SLK Global Solutions Private Limited agreed to continue as a significant customer and assured a base business volume for five years commencing from FY 2022. AO alleged that FTBNA business commitment artificially inflated the valuation of SLK, and recharacterised 20.80 per cent of the sale consideration as 'Income from Other Sources'. Tribunal ruled that since no material was brought on record to establish that buisness commitment furnished by FTBNA had artificially enhanced value of shares or that transaction was a sham, colourable device or make-believe arrangement, AO was not justified in recharacterising 20.80 per cent of share sale consideration as 'Income from Other Sources' instead of treating entire receipt as consideration for transfer of a capital asset taxable under head 'Capital Gains'. Therefore, addition of Rs. 28.65 crore made by AO by treating 20.80 per cent of sale consideration as 'Income from Other Sources' was deleted. ***[CIT v. Arun Dua [1989] 45 Taxman 246/[1990] 186 ITR 494 (Calcutta), D.S. Bist & Sons v. CIT [1984] 17 Taxman 283/149 ITR 276 (Delhi), and Chryscapital Investment Advisors (India) (P.) Ltd. v. Dy. CIT [2015] 56 taxmann.com 417/232 Taxman 20/376 ITR 183 (Delhi), Pr. CIT v. New Silk Route [Income Tax Appeal No. 216 of 2016] followed]***

IX. FOREIGN TAX CREDIT

<u>Delay in filing Form 67</u>

1. **Shrinivasan Ranganathan vs. ACIT [2026] 186 taxmann.com 743 (Chennai - Trib.) [14-05-2026] - IT Appeal No. 378 (CHNY) of 2026 - [AY 2023-24]**

Failure to file revised Form 67 after upward revision of LTCG (and consequent increase in FTC entitlement) is a procedural lapse and cannot defeat substantive FTC claim. CIT(A) order confirming restricted FTC quashed in light of AO's subsequent rectification order granting full FTC.

Assessee, an individual filed return and furnished Form No. 67 claiming FTC u/ s. 90/91. During assessment, assessee offered additional LTCG through revised computation. Consequent to enhancement of taxable income, assessee claimed that eligible FTC increased to Rs. 9.78 crore. However, AO restricted FTC to Rs. 8.70 crores noting that no revised Form No. 67 had been filed. CIT(A) upheld order of AO. Tribunal noted that assessee filed rectification application claiming relief u/ s. 90/ 91 of higher amount. Accordingly, AO passed a rectification order and granted FTC to full extent. However, before assessee could withdraw instant appeal, CIT(A) passed impugned order confirming assessment order. Tribunal ruled that delay in filing Form No. 67 or claiming a lesser amount therein was only a procedural lapse and claim of a lesser amount could not defeat substantive claim of FTC. In light of rectification order of AO granting full benefit of FTC, order of CIT(A) confirming restriction of FTC to amount claimed in Form No.67 was quashed.

2. **Sunny Kumar Jaiswal vs. CPC [2026] 187 taxmann.com 644 (Kolkata - Trib.) [12-06-2026] - IT Appeal No. 691 (Kol.) of 2026 - [AY 2019-2020]**

   Where assessee, an employee deputed to Denmark, disclosed both Indian and Denmark salary and claimed foreign tax credit, denial of FTC solely due to delayed filing of Form 67 was unwarranted, as filing Form 67 is a directory and not a mandatory requirement.

   Assessee, an individual, was an employee of a software company in India and was on deputation in Denmark till December 2018. For April-December 2018, he received salary from Indian employer and allowances from its Denmark entity and thereafter drew salary only from India. He originally filed return as a non-resident based on Explanation 1(a) to section 6(1). After a defect notice u/ s. 139(9) for mismatch with Form 26AS and clarification from employer that Explanation 1(a) did not apply for relevant year, he revised return treating himself as resident, disclosed both Indian and foreign salary, claimed FTC u/ s. 90/90A for Denmark taxes, and furnished Form 67 along with revised return though not before due date u/ s. 139(1). On processing, CPC issued an intimation u/ s. 143(1) accepting returned income but disallowing FTC in full solely for non-compliance with timing requirement for Form 67. Tribunal ruled that filing of Form 67 is not mandatory but a directory requirement and thus, FTC cannot be denied to assessee for belated filing of Form 67. Therefore, AO was directed to allow credit of foreign tax to assessee. ***[Debanjan Chatterjee v. Dy. DIT [2024] 169 taxmann.com 685 (Kolkata - Trib.) and Anindya Sarkar v. ACIT CPC Bengaluru [IT Appeal No. 1345(Kol) of 2024, dated 26-7-2024] followed]***

3. **Kamleshkumar Rameshbhai Gandhi vs. Dy. CIT [2026] 186 taxmann.com 884 (Surat - Trib.) [15-05-2026] - IT Appeal No. 1277 (SRT) of 2025 - [AY 2019-20]**

   Form 67 filed belatedly with revised return (due date extended for Covid-19). - Filing requirement under Rule 128 is directory, not mandatory-delayed filing not a ground to deny FTC.

   Assessee was a salaried employee of a private energy company and was on international assignment to a group company in Iraq. For relevant assessment year, he filed his original return declaring gross total income of about Rs. 1.32 crores. He later filed a revised return along with Form No. 67, claiming FTC of about Rs. 10.06 lakhs. Owing to Covid-19 pandemic, due date for filing return for relevant assessment year stood extended. Tribunal ruled that though Form No. 67 was filed belatedly along with revised return,such belated filing could not be a ground for denying benefit of FTC. Therefore, JAO was directed to examine Form No. 67 claimed by assessee and allow FTC in accordance with law.

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Credit accepted by AO but omitted in final tax computation (Double Taxation Relief)

1. **Kellog Brown and Root Engineering and Construction India (P.) Ltd. vs. Dy. CIT [2026] 187 taxmann.com 342 (Delhi - Trib.) [05-06-2026] - IT APPEAL No. 3310 (Delhi) of 2024 - [AY 2020-21]**

   Where s. 90 double-taxation relief was accepted by both DRP and AO but credit was omitted in the final tax computation, matter was restored to AO to verify and grant relief in accordance with law.

   Assessee company claimed double taxation relief u/ s. 90 and both DRP and AO recorded that claim was correct and drew no adverse inference thereon. However, corresponding credit was not granted while computing tax liability pursuant to final assessment order. Tribunal restored the matter to the file of the AO for verification and grant of double taxation relief u/ s. 90 in accordance with law.

X. OTHERS

Equalization Levy

1. **Zoho Corporation (P.) Ltd. vs. Dy CIT, IT [2026] 187 taxmann.com 211 (Madras) [01-06-2026] - [TS-802-HC-2026(MAD)] – WP No. 6176 of 2022 - [AY 2017-18 and 2018-19]**

   HC: Where online advertising services were rendered by a non-resident to another non-resident and assessee merely reimbursed advertising expenses incurred by its overseas subsidiary, equalisation levy was not attracted since such reimbursement was not included within scope of specified service

   Petitioner, an Indian software product company reimbursed its US subsidiary towards expenditure incurred by latter for online advertising services availed from Google USA. Google USA rendered online advertising services and received payment from US subsidiary. Revenue sought to levy equalisation levy on reimbursement made by petitioner to US subsidiary. Tribunal ruled that since online advertising services were rendered by one non-resident to another non-resident and reimbursement of such expenditure was not included within scope of 'specified service' u/ s. 164 and 165 of Finance Act. Equalisation levy could not be imposed on petitioner merely on account of reimbursement of advertising expenses. ***[Hyatt International Southwest Asia Ltd. v. ADIT [2025] 176 taxmann.com 783/478 ITR 238/306 Taxman 241 (SC) / Civil Appeal No. 9766 of 2025, AAR (Income-Tax) v. Tiger Global International II Holdings [2026] 182 taxmann.com 375/485 ITR 214 (SC) /Civil Appeal No.262 of 2026 distinguished]*** Revenue sought to levy equalisation levy by treating payments made by US subsidiary to Google USA as payments made by petitioner on ground that employees of petitioner operated bank accounts of US subsidiary and accessed advertising invoices. Tribunal ruled that a precondition for piercing corporate veil is existence of impropriety, i.e., misuse of company as a device or façade to conceal wrongdoing. Thus, mere control and active involvement of holding company in affairs of subsidiary, in absence of evidence of impropriety, are insufficient to justify piercing corporate veil. Furthermore, where advertising arrangements and reimbursement of expenses existed prior to introduction of equalisation levy and there was no evidence that subsidiary was set up as a device for evading levy, corporate veil could not be pierced, and equalisation levy could not be imposed on petitioner. Thus, statements recorded during survey proceedings u/ s. 133A do not possess independent evidentiary value by themselves and could not be relied upon to fasten liability.

<u>Unsubstantiated Reimbursements Without Section 195(2) Approval Attract TDS</u>

1. **Vedanta Ltd. vs. ACIT, TDS-II, [2026] 187 taxmann.com 176 (Madras)[02-06-2026] - [TS-821-HC-2026(MAD)] - T.C.A. Nos. 733, 734 & 735 of 2010 – [AY 1998-99 to 2000-01]**

   HC: Where assessee, an oil exploration company, made consolidated payments to its non-resident parent company under a Production Sharing Contract claiming them as reimbursements without furnishing particulars or break-up of expenses and without obtaining determination u/ s. 195(2), it was liable for failure to deduct tax at source u/ s. 195, attracting consequences u/ s. 201(1) and 201(1A)- assessee could not take umbrage under DTAA to defeat tax liability as benefit of double taxation relief during relevant years was confined to Foreign Governments and not to private consortium parties contracting with Government of India and ONGC. [India–Australia DTAA]

   Assessee, an oil exploration company, made payments to its non-resident parent company and other non-residents under a Production Sharing Contract (PSC), claiming them as reimbursements of expenses and did not deduct tax at source u/ s. 195. Alternatively, it sought relief under the DTAA between India and Australia. AO treated payments as chargeable to tax and raised demands u/ s. 201(1) and 201(1A). Tribunal ruled that if terms of PSC restrict reimbursement of expenditure on cost-to-cost basis, application of section 44BB is not called for, but where assessee makes a consolidated claim of expenses under head 'reimbursement' without break-up details, it is not entitled to relief without determination by Commissioner u/ s. 195(2). Since expenses alleged to have been made as reimbursement were not substantiated with particulars or break-up, a consolidated amount claimed as deduction under head 'Reimbursement of Expenses' to non-resident parent company under PSC was impermissible. Further, Tribunal ruled that alternate plea to take umbrage under the DTAA was a misconceived claim made to defeat legal right of revenue since during relevant assessment years, benefit of double taxation relief was restricted to Foreign Governments and not to consortium of private parties having contracted with Government of India and ONGC. ***[Order of the Income Tax Appellate Tribunal ITA Nos. 879, 880 and 881 of 2002, dated 11.12.2009 affirmed]***

<u>Draft Assessment order (accompanied by demand notices) -Quashed</u>

1. **Marriott International Inc. vs. Dy. CIT (IT) [2026] 187 taxmann.com 325 (Mumbai - Trib.) [08-06-2026] - IT Appeal Nos.1622 & 1623 (Mum) of 2021 - [AY 2013-14 and 2014-15]**

   Draft assessment orders simultaneously accompanied by demand notices u/ s. 156, tax computations and penalty notices u/ s. 271(1)(c) - quashed. [India–USA DTAA]

   Assessee, a US company filed returns declaring NIL income and claiming refund of TDS. AO proposed to treat assessee's receipts as royalty and issued purported draft assessment orders u/ s. 143(3) read with section 144C (1). Along with these, AO issued demand notices u/ s. 156, attached computation sheets adjusting prepaid taxes, resulting in NIL net tax, and initiated penalty proceedings by issuing notices u/ s. 271(1)(c). Tribunal ruled that since AO issued demand notices u/ s. 156, computed tax, and initiated penalty u/ s. 271 along with so-called draft assessment orders, it indicated non-compliance with mandatory procedure u/ s. 144C, thereby vitiating final assessment orders and rendering them bad in law and quashed. ***[Marriott International Licensing Co. BV v. Dy. CIT (IT) [IT Appeal No. 1621 (Mum.) of 2021, dated 3-2-2023] and Perfetti Van Melle (India) (P.) Ltd. v. ACIT [2020] 118 taxmann.com 600 (Delhi - Trib.) Followed]***

<u>No Penalty where the addition is based on interpretation & application of law qua characterisation of income</u>

1. **Dy. CIT (IT) vs. Atos Information Technology HK Ltd. [2026] 187 taxmann.com 868 (Mumbai - Trib.) [19-06-2026] - IT Appeal No. 1118 (MUM) of 2026 - [AY 2021-22]**

   Where assessee, a Hong Kong-based company, disclosed all receipts from an Indian company in its computation of income with a note claiming non-taxability under DTAA and addition arose solely from a dispute regarding characterization of receipts as Royalty/FTS, penalty u/ s. 270A was not leviable since all primary facts were fully and truly disclosed and mere rejection of assessee's claim could not justify levy of penalty. [India–Hong Kong DTAA]

   Assessee, a Hong Kong-based company, provided electronic data processing services through its data centre in Hong Kong and disclosed sub-contracting receipts of about Rs. 85.64 crores from an Indian company, claiming by way of a note that such receipts were not taxable in India as Royalty/FTS under Act and the DTAA. AO treated receipts as taxable Royalty/FTS, brought them to tax and levied penalty u/ s. 270A. CIT(A), following Tribunal's order deleting corresponding quantum addition, deleted penalty. Tribunal noted that assessee had fully and truly disclosed all primary facts relating to receipts and addition arose only on account of a difference in their

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characterization as Royalty/FTS. Therefore, issue pertained merely to taxability and characterization of income and not to any non-disclosure or suppression of facts by assessee. Tribunal ruled that section 270A does not contemplate levy of penalty merely because a legal claim made by assessee was not accepted, where all material facts had been duly disclosed and dispute was confined to interpretation and application of law. Thus, no infirmity found in order of CIT(A) deleting penalty.