INTERNATIONAL TAX DIGEST (APRIL 2026)

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

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I. PERMANENT ESTABLISHMENT

Liason Office

1. **Deputy Director of Income-tax, International Taxation vs. Mitsubishi Corporation [2026] 185 taxmann.com 785 (Delhi - Trib.)[23-04-2026] -AY 2009-10**

Where assessee, a Japan-based company, closed its liaison office and set up a branch office with RBI approval, said branch office was held to be an expanded continuation of the liaison office and, therefore, constituted a PE in India, however, since attribution of income had not been properly examined in light of assessee's contentions regarding scope of its activities, matter was remanded to AO for fresh de novo adjudication. [India – Japan DTAA]

Assessee, a Japan based company, was engaged in trading activities catering to different industries - It had a LO in India which was closed in March 2008 - During relevant AY , assessee obtained RBI approval and established branch office - AO treated Branch Office as a continuation of liaison office and proposed to attribute income from sales made in or through India across all divisions to branch office by treating it as a PE in India - Assessee contended that branch officer was merely catering to machinery division of Head Office (HO) and no income should be attributed to branch office – Tribunal noted that issues raised in instant appeal were similar to issues involved in earlier AY s 2005-06 to 2008-09 which were pending before AO for de novo consideration - It was also noted that RBI had granted permission to assessee upgrade Liaison Office in India to a Branch Office - Thus, Indian branch office was to be regarded as a continuation and expanded version of earlier LO and was a PE in India . However, matter was to be restored for de novo consideration by AO with direction to pass a fresh assessment order after duly considering and examining assessee's submissions including those relating to its contention that Branch Office was merely catering to Machinery division of Head Office.

Service PE -Legal Services Personnel in India for brief period (21 days)

1. **Linklaters Singapore Pte. Ltd. vs. Assistant Commissioner of Income-tax (International Taxation) [2026] 186 taxmann.com 19 (Mumbai - Trib.)[30-03-2026] - IT Appeal No. 765 (Mum) of 2026 – AY 2019-20**

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Where a Singapore law firm provided legal services to a UK entity with its personnel present in India for only 21 days without any office or fixed place, such brief presence in hotels or client premises did not amount to a fixed place or Permanent Establishment under Article 5 , and, therefore, receipts were not taxable in India.[India–Singapore DTAA]

Assessee, a Singapore-incorporated law firm, provided legal services to Barclays, U.K. largely from outside India, with occasional visits by personnel for meetings .It filed a nil return .AO sought details of number of days during which personnel were in India . Assessee furnished passport copies and details, stating its personnel were present in India for only 21 days in year, below 90-day threshold in Article 5(6), and contended that no Service PE existed .AO was of view that places used by partners/staff in India, including hotels or client premises, constituted a place of business and led to a PE under Article 5 .Tribunal held that since none of employees had stayed in India for an aggregate period of more than 21 days, it could not be held that places where professionals stayed would amount to a fixed place or Permanent Establishment in India for assessee.

Also see case no 1 under II. Business Profit – Reimbursement without mark-up , case no 1 under VI. Fees for Technical Services – Legal advisory services and case no 1 under IX. Dependent Personal Services -Not applicable to companies

II. BUSINESS PROFITS

Attribution of Income to PE (Liason Office)

1. **Deputy Director of Income-tax, International Taxation vs. Mitsubishi Corporation [2026] 185 taxmann.com 785 (Delhi - Trib.)[23-04-2026] -AY 2009-10**

Where assessee, a Japan-based company, closed its liaison office and set up a branch office with RBI approval, said branch office was held to be an expanded continuation of the liaison office and, therefore, constituted a PE in India, however, since attribution of income had not been properly examined in light of assessee's contentions regarding scope of its activities, matter was remanded to AO for fresh de novo adjudication. [India – Japan DTAA]

Also see Case no 1 under I. PERMANENT ESTABLISHMENT – *Liason office*

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Reimbursement without mark-up

1. **Linklaters Singapore Pte. Ltd. vs. Assistant Commissioner of Income-tax (International Taxation) [2026] 186 taxmann.com 19 (Mumbai - Trib.)[30-03-2026] - IT Appeal No. 765 (Mum) of 2026 – AY 2019-20**

   Where assessee, a Singapore based law firm, received reimbursements or disbursements without any mark-up, such sums were not includible as part of assessee's gross receipts or income in India. [India -Singapore DTAA]

   Tribunal held as above by following ***Linklaters LLP v. Dy. CIT (IT) [2018] 97 taxmann.com 464/172 ITD 459 (Mum-Trib)***

   Also see case no 1 under I. Permanent Establishment – Service PE -Legal Service Personnel – brief stay, case no 1 under VI. Fees for Technical Services – Legal Advisory Services and case no 1 under IX. Dependent Personal Services – Not applicable to companies

Commission

1. **Principal Commissioner of Income-tax vs. Cholamandalam MS General Insurance Company Ltd. [2026] 185 taxmann.com 364 (SC)[06-04-2026] - SLP (CIVIL) Diary No(s). 10994 OF 2026 – AY 2005-06 to 2010-11, 2013-14 and 2014-15**

   SLP dismissed against order of High Court that where assessee, an insurance company, made payments towards reinsurance premium to non-resident reinsurers (NRRs) without deducting tax at source, since brokers were acting as independent entities merely playing role of facilitators, no tax at source was to be deducted on these payments, thus, payments made by assessee to NRRs could not be disallowed under section 40(a)(i)

   High Court held that in view of decision in case of ***CIT v. Royal Sundaram Alliance Insurance Co. [T.C. (A), No. 41 of 2019, dated 18-1-2019***], assessee insurance company was not liable to deduct tax at source on commission paid by it to several insurance companies for receipt of reinsurance premium from them -Since no case for interference was made with impugned order of High Court, SLP was dismissed . [***SLP dismissed against*** **Principal Commissioner of Income-tax - 4 v. Cholamandalam MS General Insurance Company Ltd. [2025] 175 taxmann.com 452 (Madras)**

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2. **ITO vs. Avadh Agri Exports [2026] 185 taxmann.com 188 (Rajkot - Trib.)[01-04-2026]- IT APPEAL No. 816 (RJT) OF 2025 -AY 2012-13**

Where commission was paid to a non-resident foreign agent for services rendered outside India in connection with export of goods, no tax was required to be deducted at source under section 195 and, consequently, disallowance under section 40(a)(i) was not warranted.

The Tribunal followed the decision of the coordinate bench in **Dy.CIT v. Sonpal Exports Pvt. Ltd. [IT Appeal No.29 (Rjt) of 2018,dated 21-8-2025]**

Note : Also see case No 1 under SHIPPING & AIR TRANSPORT -Ocean Freight

III. SHIPPING & AIR TRANSPORT

Ocean Freight

ITO vs. Avadh Agri Exports [2026] 185 taxmann.com 188 (Rajkot - Trib.)[01-04-2026]- IT APPEAL No. 816 (RJT) OF 2025 -[AY 2012-13]

Where assessee made payment of ocean freight to foreign shipping lines or their agents, in view of CBDT Circular No. 723, section 172 would apply and no tax was deductible at source under section 195 and, consequently, no disallowance under section 40(a)(i) could be made.

The Tribunal followed the decision of the coordinate bench in **Dy.CIT v. Sonpal Exports Pvt. Ltd. [IT Appeal No.29 (Rjt) of 2018,dated 21-8-2025]**

Note : Also see case No 2 under II. BUSINESS PROFIT -Commission

IV. DIVIDENDS

Refund of DDT in excess of rate under DTAA

1. **Guala Closures(India) (P.) Ltd. vs. ITO [2026] 185 taxmann.com 245 (Panaji - Trib.)[02-04-2026] - I T A. No. 344 (PAN) of 2017 - [AY 2013-14]**

Where assessee paid DDT on dividend to Netherlands-resident shareholder, DTAA rate was applicable in view of decision of High Court in Colorcon Asia (P.) Ltd. v. Jt. CIT [2025] 181 taxmann.com 301 (Bombay), matter remanded for fresh adjudication [India – Netherlands DTAA]

Assessee-company, engaged in manufacturing and sale of non-refillable plastic closures and nip caps, distributed dividend to its Netherlands-resident shareholder

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and raised an additional ground before Tribunal seeking application of 10 per cent rate under India-Netherlands DTAA to Dividend Distribution Tax (DDT) and refund of excess DDT paid .The Tribunal held that in view of decision of High Court in ***Colorcon Asia (P.) Ltd. v. Jt. CIT [2025] 181 taxmann.com 301 (Bombay),*** assessee was entitled to restrict tax rate on dividends distributed by it to its non-resident shareholder company to rate of tax provided under DTAA . The issue was restored to file of AO for fresh adjudication in light of above stated decision after examining applicability of DTAA and rate of tax under section 115-O vis-à-vis treaty provisions.

Note : The aforesaid issue in the case of Colorcon Asia (P.) Ltd. v. Jt. CIT [2025] 181 taxmann.com 301 (Bombay) has now been referred to the larger bench by the Hon'ble Bombay High Court in the case of Foseco India Ltd - TS-601-HC-2026(BOM)

Form 10F and TRC

Ram Krupa Medicare (P.) ltd. vs. Deputy Commissioner of Income-tax [2026] 186 taxmann.com 20 (Ahmedabad - Trib.)[09-04-2026] - IT Appeal No. 315 (AHD) of 2026 – AY 2021-22

Where assessee paid dividend to a Mauritius-resident shareholder and claimed DTAA benefit of 5 percent TDS but filed TRC for a period not covering dividend payment, matter was to be remanded to allow assessee to submit Form 10F and correct TRC for relevant period so DTAA benefit could be properly considered.[India – Mauritius DTAA]

Assessee-company paid dividend to its Mauritius-resident shareholder and deducted TDS at 5% under Article 10 of India-Mauritius DTAA - CPC-TDS processed TDS statement and rectified it under section 154, raising demand for short deduction and interest by applying domestic rate of 20%. Addl. CIT(A) dismissed assessee's appeal on ground that Form 10F and TRC of non-resident shareholder were not on record. Tribunal noted that assessee had made payment of dividend and deducted TDS thereon during Quarter 2 of F.Y. 2020-21 and TRC filed by assessee was valid for period 08.10.2021 to 07.10.2022, which was not relevant period during which dividend was paid .Therefore, matter was set aside to file of TDS-AO with a direction to allow another opportunity to assessee to produce Form No. 10F as well as tax residency certificate of non-resident deductee, for relevant period during which dividend payment was made and thereafter re-decide matter in accordance with provisions of law . [Matter remanded]

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V. ROYALTY

Voice termination Services

1. **Reliance Jio Infocomm USA Inc. vs. Deputy Commissioner of Income-tax (International Tax) [2026] 185 taxmann.com 604 (Mumbai - Trib.)[17-04-2026] - IT Appeal No. 7827 & 7828 (Mum) of 2025 and 2991 of 2023 -AY 2019-20 & 2020-21**

Where Singapore and USA affiliates received consideration from Indian entities for voice termination, bandwidth and operation & maintenance services, following earlier orders on identical facts, such receipts were not taxable in India as 'Royalty' or 'Fees for Technical Services' under Article 12 and assessees' claims were liable to be allowed. [India – USA DTAA & India – Singapore DTAA]

One assessee, a Singapore-resident wholly-owned subsidiary of an Indian telecom company, received about Rs. 44.17 crores from its Indian group company towards voice termination, bandwidth and annual operation & maintenance services - Another assessee, a USA-resident affiliate, received consideration from Indian group company towards voice termination services. AO treated such receipts as process royalty / fees for technical services under section 9(1)(vi)/(vii) and Article 12 of relevant DTAAs . The Tribunal noted the provisions of Article 12 of India-USA DTAA and India-Singapore DTAA are pari materia, particularly regarding scope of royalties and fees for included / technical services, including make available condition . Following earlier orders in assessees' own cases on identical facts, receipts from voice termination, bandwidth and annual operation & maintenance services were held to be not taxable in India as royalty / fees for technical services under Article 12. **[*Asstt. CIT v. Reliance Jio Infocomm Ltd.* [2019] 111 taxmann.com 371 (Mumbai - Trib.) *followed]***

Shared service agreement

Deputy Commissioner of Income-tax (IT) vs. Deloitte Toutche Tohmatsu India LLP [2026] 184 taxmann.com 722 (Mumbai - Trib.)[26-03-2026] - IT Appeal No. 8078 and 8079 (Mum) of 2025 -AY s 2018-19 and 2019-20

Where assessee made payments to a UK entity under a shared service agreement purely for internal alignment and common benefit, with no transfer of intellectual property or copyright involved, such payments could

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not be treated as royalty under Article 13(3) and were not taxable in India [India-UK DTAA]

Assessee, LLP rendering professional services and part of a global network, had a Shared Service Agreement with Deloitte Holdings, UK, which was created to facilitate international alignment among member firms . Under agreement, services included Global Brand, Global Communications and Global Technology/Knowledge Management .Assessee applied under section 195(2) to remit amounts under this agreement without TDS, noting that similar remittances for earlier years were allowed without TDS .AO held that payments for Global Technology, Global Communications and Global Brand were royalty for use of computer software and literary work, treated remittances as liable to TDS, and made an addition . Tribunal followed the decision of the coordinate bench in the assessee's own case for earlier AY s wherein it was held that these payments were purely for internal use, involved no transfer of intellectual property or copyright, and did not constitute royalty under Article 13(3) and, consequently, assessee was not required to deduct TDS on said payments.[**Deloitte Haskins & Sells LLP v. Dy. CIT (IT) [2022] 141 taxmann.com 205 (Mum-Trib) Followed**]

<u>Surcharge /Health & Education Cess</u>

1. **Shell International B.V. vs. Assistant Commissioner of Income-tax, (International Taxation)-1 [2026] 185 taxmann.com 774 (Ahmedabad - Trib.)[22-04-2026] - IT Appeal No. 577 (Ahd.) of 2025 - AY 2022-23**

   Where Article 12 read with Article 2 of India-Netherlands DTAA provided for a 10 per cent tax rate on royalty and FTS, this rate included surcharge and education cess, thus, no additional levy over and above treaty rate was permissible [India – Netherlands DTAA]

   The Tribunal held that levy of surcharge and cess over and above the taxable rate of 10 per cent on royalty and FTS is not permissible as per the treaty provisions, by relying upon various decisions of the Tribunal. It held that that levy of surcharge and cess cannot exceed the tax rate of 10 per cent as per Article 12 of India - Netherlands tax treaty, since the Treaty provides that the tax is to be charged on royalty and FTS shall not exceed 10 per cent of the gross amount of royalty or FTS. Further, Article 2 of the Tax Treaty defines tax in India as 'income tax including any surcharge thereon'. Therefore, Article 12 read with Article 2 of the Tax Treaty makes it clear that the rate of tax at 10 per cent would encompass surcharge and education cess as it is also in the nature of tax. Therefore, levy of surcharge and cess over and above the taxable rate of 10 per cent on royalty and FTS is not permissible as per the Treaty provisions.

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VI. FEES FOR TECHNICAL SERVICES

Online Learning Platform

1. Commissioner of Income-tax (International Taxation) vs. Coursera Inc. [2026] 185 taxmann.com 365 (SC)[01-04-2026] - SLP (CIVIL) Diary No(s). 10085 OF 2026 - SLP (CIVIL) Diary No(s). 10085 OF 2026 – AY 2020-21

SLP dismissed against order of High Court that where assessee, a US based company, operated a global online learning platform providing online courses and degrees from leading universities and companies, since assessee merely provided access to contents of universities/companies through platform on receipt of fees and it did not make available any technical knowledge, experience, skill, know-how, or processes, receipts of assessee were not chargeable to tax as fees for included services (FIS) [India – USA DTAA]

Assessee, a US based company, operated a global online learning platform providing online courses and degrees from leading universities and companies - AO sought to tax receipts from provision of said services as fees for technical services (FTS) within meaning of section 9(1)(vii) and fees for included services (FIS) within meaning of paragraph 4 of article 12 of India USA DTAA - It was noted that assessee merely provided access to contents of universities/companies through platform on receipt of fees and AO had not brought on record any material to establish fact that assessee provided technical services through its online platform and further make available condition was not satisfied .High Court held that since services provided by assessee did not include any element of included services, receipts of assessee could not be taxed as FTS or FIS under provisions of Act as well as DTAA. Since no case for interference was made with impugned order of High Court, SLP was dismissed. [***SLP dismissed against*** *Commissioner of Income-tax, International Taxation* v. *Coursera Inc.* [2025] 174 taxmann.com 1230 (Delhi)/[2025] 305 Taxman 269 (Delhi)]

Surveyor Fees

2. Principal Commissioner of Income-tax vs. Cholamandalam MS General Insurance Company Ltd. [2026] 185 taxmann.com 364 (SC)[06-04-2026] - SLP (CIVIL) Diary No(s). 10994 OF 2026 – AY 2005-06 to 2010-11, 2013-14 and 2014-15

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SLP dismissed against order of High Court that where assessee paid survey fees to various non-resident surveyors outside country, since entire services of surveyors were rendered outside country, assessee was not liable to deduct TDS on survey fees paid by it to surveyors.

High Court held that where assessee paid survey fees to various non-resident surveyors outside country, since entire services of surveyors were rendered outside country, assessee was not liable to deduct TDS on survey fees paid by it to surveyors .Since no case for interference was made with impugned order of High Court, SLP was dismissed. [***SLP dismissed against*** **Principal Commissioner of Income-tax - 4 v. Cholamandalam MS General Insurance Company Ltd. [2025] 175 taxmann.com 452 (Madras)**

Legal Advisory Services

Linklaters Singapore Pte. Ltd. vs. Assistant Commissioner of Income-tax (International Taxation) [2026] 186 taxmann.com 19 (Mumbai - Trib.)[30-03-2026] - IT Appeal No. 765 (Mum) of 2026 – AY 2019-20

Where Singapore based law firm provided legal advisory services to UK client and no technical knowledge or expertise was made available enabling independent application by recipient, such services constituted professional advisory support and did not meet 'make available' condition, and, thus, fees received were not taxable as 'fees for technical services' under Article 12 [India–Singapore DTAA.]

Assessee, a Singapore based law firm, provided legal services to its client Barclays, U.K. Most activities were carried on outside India .AO held that technical knowledge, experience and skill were made available through legal advice and treated receipts as Fees for Technical Services. Tribunal held that since assessee had not made available to its clients any technical knowledge, experience, expertise or skill in such a manner so as to enable them to apply same independently, services rendered by assessee were in nature of professional advisory services, and mere receipt of such services by recipient would not satisfy 'make available' condition . Therefore, fees received by assessee would not be taxable in India as 'fees for technical services' under Article 12 of India–Singapore DTAA.**[*CIT v. De Beers India Minerals (P.) Ltd* [2012] 21 taxmann.com 214/208 Taxman 406/346 ITR 467 (Kar) (para 7.4), *Linklaters Singapore (Pte.) Ltd.* v. *Dy. CIT (IT)* [2019] 101 taxmann.com 486 (Mum-Trib) Followed]**

Also see case no 1 under I. Permanent Establishment – Service PE -Legal Service Personnel – brief stay, case no 1 under II. Business Profit –

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Reimbursement without mark-up and case no 1 under IX. Dependent Personal Services – Not applicable to companies

CHR Recruitment, External Information Services, IT Services, Real Estate & Corporate Travel, and Health Ecotox Services

1. **Shell International B.V. vs. Assistant Commissioner of Income-tax, (International Taxation)-1 [2026] 185 taxmann.com 774 (Ahmedabad - Trib.)[22-04-2026] - IT Appeal No. 577 (Ahd.) of 2025 - AY 2022-23**

Where assessee, a tax resident of Netherlands, received cost consideration for services such as CHR Recruitment, External Information Services, IT Services, Real Estate & Corporate Travel, and Health Ecotox Services rendered to its AEs, since revenue failed to establish that such services "made available" technical knowledge to Indian entities as required under Article 12 , receipts could not be taxed as FTS [India-Netherlands DTAA]

Assessee, a tax resident of Netherlands, was engaged in providing intra-group services to its Indian affiliates - Assessee received consideration/cost recoveries during relevant year for services including CHR Recruitment, External Information Services, IT Services, Real Estate & Corporate Travel Services, Health Ecotox Services .AO treated such cost recoveries from Indian affiliates as taxable in India as FTS under section 9(1)(vii) and Article 12 of India-Netherlands DTAA – Tribunal noted that in assessee's own case for earlier AY s, Tribunal had held that there was a specific requirement that in order to qualify as "Fee for Technical Services", services should be rendered in a manner that "make available" technology to recipient of services .Since revenue had not been able to establish that "make available" clause had been satisfied, said services would not qualify as FTS under Act read with India-Netherlands Tax Treaty. [***Shell International B.V.*** **v.** ***Dy. CIT (IT)*** **[2024] 160 taxmann.com 761 (Ahmedabad - Trib.),** ***Shell International B.V.*** **v.** ***Asstt. CIT (International Taxation)*** **[IT Appeal No.688 (Ahd) of 2023, dated 25-11-2024] and** ***Shell International B.V.*** **v.** ***Asstt. CIT (International Taxation)*** **[2025] 174 taxmann.com 611 (Ahmedabad - Trib.) (para 7)** ***followed*** **]**

Corporate Support Services -Strategy & Planning, Advisory, and Manage & Lead CR functions

1. **Shell International B.V. vs. Assistant Commissioner of Income-tax, (International Taxation)-1 [2026] 185 taxmann.com 774 (Ahmedabad - Trib.)[22-04-2026] - IT Appeal No. 577 (Ahd.) of 2025 - AY 2022-23**

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Where assessee, a tax resident of Netherlands, received cost consideration for services such as Strategy & Planning, Advisory, and Manage & Lead CR functions rendered to its Indian affiliates, in absence of any material showing satisfaction of "make available" condition, such services did not qualify as FTS under DTAA and were not taxable in India [India-Netherlands DTAA]

Assessee, a tax resident of Netherlands, was engaged in providing intra-group services to its Indian affiliates - Assessee received consideration/cost recoveries during relevant year for services including other corporate support services such as Strategy & Planning, Advisory, and Manage & lead CR function - AO treated such cost recoveries from Indian affiliates as taxable in India as FTS under section 9(1)(vii) and Article 12 of India-Netherlands DTAA .Since there was no specific reference as to how 'make available' under India-Netherlands Tax Treaty had been satisfied while rendering above services, so as to fall within ambit of FTS under India-Netherlands Tax Treaty, Tribunal held that the impugned services did not qualify as FTS under India-Netherlands Tax Treaty. [***Shell International B.V.*** **v.** ***Dy. CIT (IT)*** **[2024] 160 taxmann.com 761 (Ahmedabad - Trib.),** ***Shell International B.V.*** **v.** ***Asstt. CIT (International Taxation)*** **[IT Appeal No.688 (Ahd) of 2023, dated 25-11-2024] and** ***Shell International B.V.*** **v.** ***Asstt. CIT (International Taxation)*** **[2025] 174 taxmann.com 611 (Ahmedabad - Trib.) (para 7)** ***followed*** **]**

Voice termination Services

1. **Reliance Jio Infocomm USA Inc. vs. Deputy Commissioner of Income-tax (International Tax) [2026] 185 taxmann.com 604 (Mumbai - Trib.)[17-04-2026] - IT Appeal No. 7827 & 7828 (Mum) of 2025 and 2991 of 2023 -[AY 2019-20 & 2020-21]**

Where Singapore and USA affiliates received consideration from Indian entities for voice termination, bandwidth and operation & maintenance services, following earlier orders on identical facts, such receipts were not taxable in India as 'Royalty' or 'Fees for Technical Services' under Article 12 and assessees' claims were liable to be allowed. [India – USA DTAA & India – Singapore DTAA]

See case no 1 under V. ROYALTY – Voice termination services

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Underwriting commission from Indian companies for ADR/GDR issues abroad

1. **DCIT(IT) vs. Merrill Lynch International [2026] 184 taxmann.com 715 (Mumbai - Trib.)[26-03-2026] - IT APPEAL No. 9302 (Mum) OF 2025 -AY 2017-18**

   Where assessee, a UK tax resident, received underwriting commission from Indian companies for ADR/GDR issues abroad, since such commission was only for assuming liability to purchase unsubscribed shares and did not involve rendering of technical or consultancy services, it could not be taxed in India as fee for technical services or included services under section 9(1)(vii) / article 13[India-UK DTAA]

   Assessee, a tax resident of United Kingdom, acted as lead manager and underwriter to ADR/GDR issues of Indian companies outside India - It received underwriting commission/fees from Indian companies for ADR/GDR issuances abroad - AO treated said commission as taxable in India as 'fees for technical services' under section 9(1)(vii) and as 'fees for included services' under Article 13 of India-UK DTAA .Tribunal held that since underwriting commission was only for incurring liability of subscribing to unsubscribed portion left over by general public and assurance so given for purchasing unsubscribed shares did not require rendering of any services by underwriter, underwriting commission could not fall within definition of fee for technical services under section 9(1)(vii) and was not taxable in India as FTS/FIS under Article 13 of India-UK DTAA

Reimbursement -Payment to self

1. **SMEC International Pty. Ltd. vs. Deputy Commissioner of Income-tax [2026] 185 taxmann.com 787 (Delhi - Trib.)[23-04-2026] - IT Appeal Nos. 2992 & 2993 (Delhi) of 2016 -[AY s 2009-10 and 2010-11]**

   Where Project office (in India) constituting PE of assessee, an Australian tax resident , reimbursed its Head Office actual salary cost of staff deputed for Indian projects, this inter-branch transaction was a payment to self and could not be treated as income liable to tax in India and such reimbursement could not be taxed as fee for technical services either under Act or under DTAA. [India – Australia DTAA]

   Assessee, an engineering consultancy company and a tax resident of Australia, had a Project Office (PO) in India constituting its PE under Article 5 of India–Australia DTAA - It rendered services to Indian clients through PO and offered receipts to tax under section 44DA - It utilized inputs from employees of Head Office (HO) in Australia, and HO recovered cost of such staff inputs from PO on

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actuals without any markup - PO reimbursed HO Rs. 4.59 crores during year and claimed amount as a deduction under clause (ii) of proviso to section 44DA - AO ,while computing taxable profits under section 44DA, allowed claimed reimbursement as an expense on footing that it represented staff cost paid by PO to HO on actuals - However, AO also treated reimbursement received by HO as fee for technical services under Act as well as DTAA and held it taxable in India in hands of HO .Tribunal held that since PE and HO being part of same enterprise, payment from branch office to HO being payment to self could not give rise to any income in hands of assessee***.[Sumitomo Mitsui Banking Corpn. v. DDIT [2012] 19 taxmann.com 364/136 ITD 66 (Mumbai)(SB) [Para 8] Followed]***

Salary reimbursement of Seconded Employees

Goldman Sachs International vs. Assistant Commissioner of Income Tax (International Taxation) [2026] 186 taxmann.com 18 (Mumbai - Trib.)[30-03-2026] - IT Appeal No. 6033 (Mum) of 2025 – AY 2023 – 24

Where assessee, a UK based company, seconded employees to Indian AEs and received reimbursement of salary costs on a pure cost-to-cost basis without markup, with employees taxed in India on their full salaries, such reimbursements constituted salary and not FTS, and were thus not taxable in India under section 9 or article 13(5) [India-UK DTAA]

Assessee, UK based company, seconded certain employees to its Indian AE . Indian AE paid part of salary in India and assessee paid part of salary outside India in employees' home country. Portion paid abroad was reimbursed to assessee by Indian AEs on a pure cost-to-cost basis without any markup . AO treated reimbursement of salary as FTS on ground that seconded employees provided technical and managerial expertise to Indian AEs and made available their skills and accordingly made addition . Tribunal noted that in assessee's own case for earlier assessment year, Tribunal had noted that seconded employees were in India for more than 183 days, had PAN cards, and filed returns in India on 100 per cent salary .Accordingly, Tribunal in assessee's own case had held that Indian AEs were economic and de facto employers of seconded employees, and thus, reimbursement of salary costs received by assessee from its Indian AEs in respect of seconded employees was not taxable in India as FTS under section 9 and article 13(5) of India-UK DTAA***.[Goldman Sachs Services (P.) Ltd. v. Dy. CIT, International Taxation [2022] 138 taxmann.com 162 (Bang-Trib) followed]***

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Article 12 (FTS) Vs Article 14 (IPS)- Scouting Services

Deputy Commissioner of Income-tax vs. Indiawin Sports (P.) Ltd. [2026] 185 taxmann.com 47 (Mumbai - Trib.)[27-03-2026] - IT Appeal No. 4576 (Mum) of 2023 - AY 2020-21

Where payment was made to a New Zealand resident for scouting services(treated as FTS by AO) , whose his stay in India was below 183 days with no evidence of control or employment, since applicability of Article 14 depended on existence of a fixed base in India, matter was to be remanded to verify this aspect.

Assessee-company was engaged in owning, managing and operating Mumbai team of Indian Premier League (IPL) - It made payment of certain amount to one, JW, a tax resident of New Zealand, for his services rendered as talent scout for its IPL team - AO characterized payment as FTS under Article 12 of DTAA and made disallowance under section 40(a)(i) for failure to deduct tax under section 195 – Tribunal noted that Assessee produced passport/visit details of JW which showed that JW's aggregate stay in India during relevant period was 88 days, which was below threshold of 183 days prescribed under Article 14 - Further agreement delineated scope of work but did not prescribe manner in which such services were to be performed - Furthermore, there was no material to suggest existence of an employer-employee relationship or control indicative of dependent services - Since one of essential conditions under Article 14 was absence of a "fixed base" in India for purpose of rendering such services and this aspect required proper factual verification , matter was to be remanded to AO for limited purpose of examining whether JW had a fixed base in India within meaning of Article 14 of DTAA, and if so, to determine extent of income attributable thereto in accordance with law.

Surcharge /Health & Education Cess

1. **Shell International B.V. vs. Assistant Commissioner of Income-tax, (International Taxation)-1 [2026] 185 taxmann.com 774 (Ahmedabad - Trib.)[22-04-2026] - IT Appeal No. 577 (Ahd.) of 2025 - AY 2022-23**

   Where Article 12 read with Article 2 of India-Netherlands DTAA provided for a 10 per cent tax rate on royalty and FTS, this rate included surcharge and education cess, thus, no additional levy over and above treaty rate was permissible [India – Netherland DTAA]

   See Case No 1 under V. ROYALTY - *Surcharge /Health & Education Cess*

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VII. CAPITAL GAINS

Sale of Derivatives

Em Delta one vs. ACIT, International Taxation [2026] 185 taxmann.com 868 (Delhi - Trib.)[22-04-2026] - IT (IT) Appeal No. 84 (Delhi) of 2025 - AY 2023-24

Where assessee, a Mauritius resident, earned short-term capital gains from trading in index-based derivatives, since derivatives are a distinct asset class from equity shares, such gains fall under Article 13(4) and are not taxable in India but only in State of residence.[India–Mauritius DTAA]

Assessee, a Mauritius-resident, earned short-term capital gains from trading in index-based derivatives and claimed gains as not taxable in India under Article 13(4) of India–Mauritius DTAA .AO taxed gains in India by applying Article 13(3A) of DTAA as gains from alienation of shares .The Tribunal held that since derivatives are a distinct asset class as compared to equity shares, short-term capital gains from trading in index-based derivatives would fall under Article 13(4) (residuary) and not Article 13(3A) and would be taxable only in State of residence. [***Estee India fund v. Asstt. CIT [2026] 184 taxmann.com 416 (Delhi-Trib) (Para 3) Followed***]

Sale of shares of real estate companies

1. **DCIT vs. Merrill Lynch Capital Markets Espana SA SV. [2026] 184 taxmann.com 716 (Mumbai - Trib.)[26-03-2026] - I.T.A. No. 9195 and 9196 (Mum) OF 2025 - AY s 2016-17 and 2017-18**

   Where assessee, a Spain-resident company, earned capital gains/loss on sale of shares of Indian real estate companies, and its minuscule shareholding conferred no rights over immovable property, such gains/loss would not fall under Article 14(4) but under Article 14(6) and be taxable only in State of residence. [India–Spain DTAA]

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Assessee, a Spanish-resident company registered as Foreign Institutional Investor (FII), incurred short-term capital loss of Rs. 116.11 crores in AY 2016-17 and earned short-term capital gains of Rs. 15.49 crores in AY 2017-18 from sale of shares of Indian real estate development companies - It claimed exemption under Article 14(6) of India–Spain DTAA - AO held such loss/gains taxable in India under Article 14(4) on ground that value of shares was derived from immovable property situated in India .Tribunal held that for Article 14(4) to apply, it is not sufficient that company whose shares are transferred is engaged in real estate business or that immovable property constitutes a substantial component of its assets; what is required is that gains arising from alienation of shares should, in substance, partake of character of gains derived from immovable property situated in source State.Since assessee's holding was minuscule and did not confer any right of enjoyment, control or disposal over immovable properties held by such companies, particularly when such properties constituted business assets/stock-in-trade of companies themselves, such gains could not be brought within ambit of Article 14(4), but would fall under Article 14(6) and would accordingly be taxable only in State of residence. [***Assistant Director of Income Tax (International Taxation), Range -4(1) v. Merrill Lynch Capital Market Espana S.A.S.V.*** **[2017] 86 taxmann.com 161/167 ITD 194 (Mumbai),** ***Deputy Commissioner of Income Tax, Circle-3(2)(1), Mumbai v. Merrill Lynch Capital Market*** **[2018] 100 taxmann.com 281/[2019] 174 ITD 226 (Mumbai) (para 5.4)** ***followed.]***

VIII. INDEPENDENT PERSONAL SERVICES

Article 12 (FTS) Vs Article 14 (IPS)- Scouting Services

Deputy Commissioner of Income-tax vs. Indiawin Sports (P.) Ltd. [2026] 185 taxmann.com 47 (Mumbai - Trib.)[27-03-2026] - IT Appeal No. 4576 (Mum) of 2023 - [AY 2020-21]

Where payment was made to a New Zealand resident for scouting services(treated as FTS by AO) , whose his stay in India was below 183 days with no evidence of control or employment, since applicability of Article 14 depended on existence of a fixed base in India, matter was to be remanded to verify this aspect.

See Case No 1 under VI. FEES FOR TECHNICAL SERVICES - ***Article 12 (FTS) Vs Article 14 (IPS)- Scouting Services***

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IX. DEPENDENT PERSONAL SERVICES

Not applicable to companies

1. Linklaters Singapore Pte. Ltd. vs. Assistant Commissioner of Income-tax (International Taxation) [2026] 186 taxmann.com 19 (Mumbai - Trib.) [30-03-2026] - IT Appeal No. 765 (Mum) of 2026 – AY 2019-20

Where assessee, a Singapore incorporated company, provided legal services to Barclays, U.K., since Article 15 applies only to individuals and not to companies, application of Article 15 to tax receipts in assessee's hands was incorrect and not sustainable. [India-Singapore DTAA]

Assessee, a Singapore incorporated company, provided legal services to Barclays, U.K. AO invoked Article 15 and taxed receipts in India. Tribunal held that since Article 15 applies only to individuals and not to a company and assessee was not an individual, Assessing Officer was not correct in holding that receipts were taxable under Article 15. [***Linklaters LLP v. Dy. CIT (IT) [2018] 97 taxmann.com 464/172 ITD 459 (Mum-Trib) and Linklaters LLP v. Dy. CIT (International Taxation) [2017] 79 taxmann.com 12 (Mum-Trib) Followed]***

Also see case no 1 under I. Permanent Establishment – Service PE -Legal Service Personnel – brief stay, case no 1 under II. Business Profit – Reimbursement without mark-up and case no 1 under VI. Fees for Technical Services – Legal advisory services

X. FOREIGN TAX CREDIT (FTC)

Delay in filing Form 67

1. Naresh Dharamchand Kapadia vs. Assistant Commissioner of Income-tax [2026] 185 taxmann.com 298 (Mumbai - Trib.)[30-03-2026] - IT Appeal No. 8331 (Mum) of 2025 -AY 2017-18

Where assessee, a resident individual, earned salary in Malaysia and claimed FTC in India, denial of credit solely for non-filing of Form No. 67 before due date under section 139(1) was unjustified, as requirement under rule 128 is directory and DTAA override mandates allowance of FTC, subject to verification.

Assessee, a resident individual, earned salary in Malaysia on which tax was deducted thereon and included such income in return filed in India claiming FTC under section 90 – AO denied FTC solely on ground that Form No. 67 was not furnished before due date under section 139(1), though same was filed during assessment proceedings .Tribunal held that requirement of filing Form No. 67 within due date under rule 128 is directory and not mandatory and that FTC could not be denied for mere delay in filing Form No. 67, particularly when DTAA provisions override Act and Rules. This principle has been upheld by the Supreme Court in ***Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/432 ITR 471/281 Taxman 19 (SC)*** and the same was overlooked in **Muralikrishna Vaddi v. ACIT/Dy. CIT [2022] 142 taxmann.com 32/196 ITD 705 (Visakhapatnam - Trib.)** (thus said case was *distinguished]*

2. Varun Vijaykumar Chhabria vs. Income-tax Officer [2026] 185 taxmann.com 699 (Bangalore - Trib.)[15-04-2026] - IT Appeal No.589 (Bang) of 2026- [AY 2019-20]

Where assessee, deputed to USA, paid tax there on salary and subsequently furnished Form 67 along with revised return to claim foreign tax credit under section 90, failure to submit Form 67 by due date was merely procedural, thus, assessee could not be denied legitimate foreign tax credit when all substantive requirements and evidence of tax payment abroad were fulfilled

Assessee, an individual, was employed with an Indian company and was deputed to USA - Assessee drew salary from a USA group entity and paid tax in USA - In original return, assessee declared only Indian salary .In revised return, assessee declared salary drawn in India as well as from USA and claimed foreign tax credit

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(FTC) under section 90, and furnished Form 67 along with revised return - AO disallowed FTC claim and raised tax demand with interest . Tribunal held that filing of Form 67 within prescribed time limit i.e. on or before due date specified under section 139(1) (prior to amendment applicable from A.Y. 2022-23) was directory in nature and assessee could not be deprived of legitimate FTC merely on account of procedural delay - Since assessee had produced necessary evidence such as payment of tax and copy of US Tax Return which substantiated that assessee had indeed paid tax in USA on foreign income offered to tax in India, assessee was to be allowed claimed FTC. [***Ms. Brinda Ramkrishna v. ITO ([2022] 135 taxmann.com 358/ 193 ITD 840 (Bangalore - Trib.) followed]***

General

1. **Whirlpool of India Ltd. vs. ACIT [2026] 185 taxmann.com 85 (Delhi - Trib.)[30-03-2026] - IT Appeal No. 1307 (Delhi) of 2022 -AY 2017-18**

Where assessee claimed foreign tax credit and credit was not allowed, matter was required to be remitted to AO for verification of foreign tax credit certificates before deciding grant of credit

Assessee claimed foreign tax credit. AO did not allow foreign tax credit - It was noted that in earlier years, Tribunal had remitted matter to AO for verification of certificates and in effect-giving orders, AO allowed credit after reconciliation and production of certificates. Since, on facts, assessee was entitled to foreign tax credit, subject to verification of certificates ,matter was remanded by the Tribunal.

2. **Unilever Industries (P.) Ltd. vs. Assistant Commissioner of Income-tax, Circle-1(3)(1) [2026] 185 taxmann.com 775 (Mumbai - Trib.)[22-04-2026] - IT Appeal No. 4898 (Mum) of 2024 -AY 2020-21**

Where assessee claimed foreign tax credit and furnished Form 67 with supporting documents, such statutory claim under sections 90/91 was to be verified and allowed in accordance with law if prescribed conditions were fulfilled.

Assessee claimed foreign tax credit of about Rs. 1.04 crores in respect of taxes paid in foreign jurisdictions and furnished Form 67 along with supporting documents – AO did not grant such credit while computing tax liability – Tribunal held that foreign tax credit is a statutory entitlement under sections 90/91, subject to fulfilment of prescribed conditions, and where assessee has furnished necessary details, claim ought to be examined and

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allowed in accordance with law – Thus , AO was directed to verify claim of foreign tax credit in light of documents furnished by assessee and grant same in accordance with law. [Matter remanded]

3. **Vinay Dube vs. ITO [2026] 185 taxmann.com 484 (Mumbai - Trib.)[15-04-2026] - IT Appeal No.9106 (Mum.) of 2025 - AY 2023-24**

Where assessee earned income in India and USA and claimed foreign tax credit, but could not furnish complete US tax return for entire relevant period, and details for remaining period became available subsequently, matter was to be restored to AO for verification of foreign income and tax paid for entire year and grant of relief as per law.

Assessee, an individual, earned income both in India and USA - In return of income, assessee claimed relief under sections 90 and 90A against tax paid in USA .In order to substantiate its claim of taxes paid in USA in respect of income earned in USA, assessee furnished its return of income for Calendar Year 2022, which covered period from 01-04-2022 to 31-12-2022. However, for balance period from 01-01-2023 to 31-03-2023, assessee could not furnish its return of income filed in USA . AO held that relief under section 90 had been claimed without any basis and disallowed entire claim under section 90/90A .Tribunal noted that details of foreign income and tax paid for balance period, i.e. from 01-01-2023 to 31-03-2023, was now available with assessee as tax return for Calendar Year 2023 had been filed in USA .Thus , it restored this issue to file of AO for verification of quantum of income and tax paid by assessee for entire financial year 2022-23 from tax return filed by assessee in USA for Calendar Years 2022 and 2023 and directed to grant relief to assessee under sections 90 and 90A, as per law.

XI. OTHERS

Reassessment – Interest on NRE Saving Account

Abhinav Jain vs. Income-tax Officer [2026] 185 taxmann.com 461 (Delhi)[13-04-2026] - W.P.(C) No. 2638 of 2023 – AY 2018-19

Where, a non-resident claiming exemption on interest from NRE deposits and credit from father, did not produce RBI permission or relevant

documentation to establish eligibility for such account, reassessment was valid as eligibility depended on proving necessary RBI permissions.

Assessee-non-resident individual, living in Dubai, did not file ITR for relevant year. He maintained NRE account with BOI and savings account with PNB. Insight portal verification was triggered due to non-filing. AO issued section 148A(b) notice relying on NMS/Insight transactions aggregating about Rs. 9.29 crores - Assessee replied that Rs. 8.50 crores were received from his father into his NRE account and interest on NRE deposits was exempt under Section 10(4)(ii)/Section 10(15) (fa) and had furnished bank statements, Form 26AS, his passport and UAE residence permit. AO passed order under section 148A(d) initiating reassessment and issued notice under section 148. The assessee file a writ petition .The High Court held that since assessee had not produced any RBI permission or other documentation under FEMA establishing eligibility to maintain NRE account and claim exemption, issue whether necessary permissions were obtained from RBI for assessee to open NRE account would decide aspect of reassessment of income and these aspects shall be looked into by AO . Therefore, the High Court held no interference was called for with reassessment order.

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