INTERNATIONAL TAX DIGEST (August 2026)

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I. TREATY BENEFITS

i. <u>MLI could not be invoked to apply principal purpose test to deny Treaty Benefits</u>

1. **Bluesky 19 Leasing Company Ltd. vs. Dy CIT [2026] 189 taxmann.com 3 (Mumbai - Trib.) [21-07-2026] - IT Appeal Nos. 3330, 3336, 3575 & 3576 (MUM) of 2026 - [AY 2023-24]**

Where assessee, an Ireland-based lessor, leased aircrafts to an Indian airline and claimed India–Ireland DTAA protection on lease receipts, as no specific notification under section 90 existed and DRP could not distinguish prior Tribunal decision, MLI could not be applied to deny treaty benefits so impugned addition was to be deleted. [India–Ireland DTAA]

Assessee, an Ireland incorporated company, was engaged in business of leasing of aircrafts. It leased 4 aircrafts to an Indian airline under operating leases and received lease rentals and end-of-lease payments aggregating about Rs. 115.49 crores. It filed a NIL return claiming protection under the DTAA. Case was selected for scrutiny for "Large exempt income under DTAA claimed by non-resident". AO, in draft order, proposed to tax receipts and assess income at about Rs. 118.51 crores. DRP rejected assessee's claims and declined to follow a coordinate tribunal decision cited by assessee, inter alia observing that accepting that view would be inconsistent with scheme of Multilateral Instrument (MLI) and incompatible with international treaty practice. AO passed final order making additions. It was noted that in case of ***Sky-High Appeal XLIII Leasing Company Ltd. v. Asstt. CIT (International Tax) [2025] 177 taxmann.com 579 (Mumbai - Trib.),*** it was held that in absence of a specific notification under section 90, MLI could not be applied to modify India–Ireland DTAA (including importing Articles 6 and 7 of MLI) so as to deny treaty benefits. Since revenue had not been able to distinguish said case, either on facts or in law, following said decision, impugned addition was to be deleted. ***[Sky High XXXIV Leasing Company Ltd. v. ACIT International Taxation [2026] 186 taxmann.com 231 (Mumbai - Trib.), Sky High Appeal XLIII Leasing Company Ltd. v. Asstt. CIT (International Tax) [2025] 177 taxmann.com 579 (Mumbai - Trib.), and Sunflower Aircraft Leasing Ltd. v. Asstt. CIT (International Tax) [2025] 177 taxmann.com 728 (Mumbai-Trib.), Celestial Aviation Trading 15 Ltd. v. Asstt. CIT, International Taxation [2025] 176 taxmann.com 902 (Delhi - Trib.), Pembroke Aircraft Leasing 4 Ltd. v. Dy. CIT IT Appeal No. 127 (DEL) of 2026, followed]***

II. PLACE OF EFFECTIVE MANAGEMENT (POEM)

i. <u>CBDT Circular No. 08/2017- Turnover Exclusion Overrides Voluntary POEM Filing - Refund Allowed</u>

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1. **Kern Enterprise Ltd. vs. Dy CIT, IT [2026] 188 taxmann.com 378 (Madras) [25-06-2026] - W.P. No. 19206 of 2023 – [AY 2017-18 to 2020-21]**

   Where assessee, a New Zealand-incorporated company and subsidiary of an Indian logistics company, filed returns in India as a resident based on POEM but was later found resident only in New Zealand and below threshold under CBDT Circular No. 08/2017, it was not liable to tax in India for the relevant years and tax paid ought to have been refunded along with interest, with section 155(14A) operating substantively and procedures not barring substantive relief. [India – New Zealand DTAA]

   Assessee-company, incorporated in New Zealand as a subsidiary of an Indian logistics company, had filed returns in India for relevant assessment years treating itself as a foreign company resident in India on basis of POEM. It had paid aggregate taxes of about Rs. 56.66 lakhs. Subsequently, by communication dated 17.11.2021, Inland Revenue Department, New Zealand stated assessee was resident in New Zealand and liable there on worldwide income. Assessee paid NZD 64,867 (about Rs. 32.43 lakhs) in New Zealand on 07.12.2021. It then applied on 24.03.2022 to Indian department seeking refund of about Rs. 56.66 lakhs under section 155(14A) read with Rule 128; in alternative, it restricted claim to about Rs. 32.43 lakhs corresponding to tax paid abroad. In a written submission dated 20.04.2023, it asserted that POEM was inapplicable in view of CBDT Circular No. 08/2017 and that claim was within six months of settlement of its residency/tax in New Zealand. Revenue passed an order dated 12.05.2023 under section 155(14A) read with Rule 128 rejecting refund claim, recording that returns were voluntarily filed based on POEM, that concluded assessments could not be reversed, that section 155(14A) was not applicable, and that any relief should be sought from New Zealand authorities under DTAA mechanism High Court ruled that since in Circular No. 08/2017 dated 23.02.2017, CBDT clarified that provision of clause (ii) of sub-section (3) of Section 6 will not apply to a company having a turnover or gross receipts of Rs.50 crores or less in a financial year, and it shall come into effect from 1 April 2017 and accordingly applies to assessment year 2017-18 and subsequent years, thus, assessee was not liable to tax in terms of above clarifications of Board and therefore, tax paid by assessee ought to have been actually refunded back to petitioner. Further it was ruled that section 155(14A) is both substantive and procedural and therefore, benefit should ensure to assessee, notwithstanding procedural impediments, if any. Thus, impugned order was quashed, and case was remitted back to respondent to refund tax paid by assessee for assessment years in question together with interest in accordance with law. ***[Commissioner of Sales Tax v. Auriaya Chamber of Commerce 1986 taxmann.com 531 (SC)/1986 (3) SCC 50 followed]***

III. PERMANENT ESTABLISHMENT

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

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1. **ACIT vs. GE Power Solutions (Malaysia) [2026] 188 taxmann.com 1004 (SC) [17-07-2026] - SLP (CIVIL) Diary No. 21549 of 2026 – [AY 2013-14 to 2017-18]**

   SLP dismissed against order of High Court that where AO issued reopening notice against assessee, a foreign company, on ground that assessee had a PE in India in form of a Dependent Agent PE and Fixed Place PE, since 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, HC set aside reopening notice issued against assessee.

   Assessee, a non-resident company, was engaged in business of manufacturing, sales, marketing of power generation equipment and technical support services. A survey under section 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 and, thus, part of its business income attributable to its PEs was chargeable to tax in India. 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, he issued reopening notice 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, the Hon'ble Supreme Court dismissed the SLP. ***[SLP dismissed against Ge Steam Power Systems v. Assistant Commissioner of Income-tax [2026] 185 taxmann.com 914 (Delhi)]***

2. **PCIT vs. Cholamandalam [2026] 189 taxmann.com 259 (SC) [27-07-2026] - SLP (CIVIL) Diary No(s). 38047 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)

   Assessee was an insurance company carrying on reinsurance business. It made payments towards reinsurance premium to non-resident reinsurers (NRRs) without deducting tax at source. AO disallowed such payments under section 40(a)(i) for non-deduction of TDS under section 195. High court noted that discussion in order of Tribunal set out relevant facts making it clear that brokers were acting as independent entities merely playing role of facilitators and they did not engage in negotiation of the terms and neither did they finalize the percentages of commission in regard to the reinsurance contracts. Tribunal thus concluded that brokers did not either constitute a business connection in terms of Explanation (2) to section 9(1)(i) or a PE in terms of article 5 of relevant DTAAs. High Court held that no material was produced by

Department before court to dislodge factual findings rendered by Tribunal. Therefore, payments made by assessee to NRRs could not be disallowed under section 40(a)(i). Supreme court ruled that 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)]***

3. **GE Energy Parts Inc vs. ACIT [2026] 189 taxmann.com 300 (Delhi - Trib.) [03-08-2026] - [TS-1214-ITAT-2026(DEL)] - IT Appeal No. 1947 (Delhi) of 2025 - [AY 2022-23]**

   Where assessee, a US resident, was alleged to have a fixed place PE/Dependent Agent PE in India through project office of its group company, but agreement relied upon by AO was between group company and Indian customer and no document showed that assessee had authorised Project Director to represent it, project office of group Co. could not be regarded as assessee's PE in India and attribution of profit to alleged PE was not warranted. [India – USA DTAA]

   Assessee, a tax resident of USA, supplied spare parts including replacement, refurbishment and rotable parts to customers in India on offshore basis. AO held that project office of assessee's group company, GEII, constituted assessee's fixed place PE/Dependent Agent PE in India and attributed 10 per cent of gross receipts to alleged PE. It was noted that Comprehensive Service Agreement relied upon by AO was between GEII and Ratnagiri Gas and Power and not assessee, and agreement was signed by Project Director in his capacity as Project Director of GEII and not as representative of assessee. Further, no document showed that assessee had authorised said Project Director to represent it and AO failed to bring on record any documentary evidence establishing satisfaction of conditions under article 5(2), (3) and (4). Tribunal ruled that therefore, project office of GEII could not be held to constitute assessee's PE or DAPE in India and attribution of profit to alleged PE was not warranted.

ii. <u>DAPE</u>

1. **Dy CIT (IT) vs. Mercedes-Benz Group AG [2026] 189 taxmann.com 182 (Mumbai - Trib.) [31-07-2026] - IT Appeal Nos. 2878 and 2879 (MUM.) of 2026 - [AY 2018-19 and 2020-21]**

   Where assessee, a German company, sold raw materials, spare parts, and CBU cars to Indian subsidiaries on principal-to-principal basis with title and risk passing outside India and no manufacturing, sales, or distribution took place in India, such arrangements did not create a business connection or PE in India under section 9 or Article 5. [India–Germany DTAA]

   Assessee, a company incorporated in Germany, was engaged in manufacture and sale of automobile components and spare parts and in licensing of technology and provision of technical services to group entities worldwide. It supplied raw materials

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and spare parts to MBIPL and DICV, sold CBU cars to MBIPL, and also sold CBU cars directly to customers in India. AO held that income from sale of CBU cars and spare parts accrued or arose in India under sections 5(2) and 9(1)(i), noting that MBIPL acted as exclusive distributor under various distribution and supply agreements, thereby creating a business connection. AO further held that MBIPL constituted a PE under Article 5 of the DTAA since MBIPL functioned as assessee's office/place of management/branch and sales outlet, was economically and legally dependent, habitually secured orders, maintained stock and facilitated sales on behalf of assessee, and relationship was not on an independent principal-to-principal basis. AO applied a net profit rate of 1.12% on aggregate business receipts of about Rs. 2,520.86 crores from sales of raw materials, spare parts and CBU cars, attributed 30% thereof to India, and computed profits attributable to India of about Rs. 8.47 crores. Tribunal was noted that all sales of raw materials, spare parts and CBU cars were concluded outside India on a principal-to-principal basis; title and risk passed outside India; no manufacturing, sales or distribution activities were carried out in India; and no contracts were negotiated or concluded in India. Tribunal ruled that mere sale of raw materials/CKD units to DCIL/MBIPL on a principal-to-principal basis with title passing outside India did not result in accrual of income in India and DCIL/MBIPL does not constitute a business connection under section 9. Mere existence of a subsidiary does not by itself create a PE; assessee had no right to use subsidiary's premises, no business operations were carried out in India, management decisions were taken in Germany, and sales of parts/CKD to subsidiary were on principal-to-principal basis, hence no fixed place PE under Article 5(1)/ (2). For direct sales of CBU cars to Indian customers, subsidiary only acted as a communication channel without authority to conclude contracts, risk passed at shipment and customs clearance was by customers, and activities were preparatory or auxiliary; therefore, no agency PE arises under Article 5(5) and no profits were attributable to India under Article 7. ***[Dy. CIT v. Daimler AG [IT Appeal No. 183 (Mum.) of 2018, dated 28-3-2019] followed]***

2. **Bloomberg LP vs. Addl. DIT IT (IT) RG 3 [2026] 189 taxmann.com 609 (Mumbai - Trib.) [14-08-2026] - TS-1255-ITAT-2026(Mum) - IT Appeal Nos. 5529 & 5530 (MUM.) of 2014 - [AY 2008-09 and 2009-10]**

   Where assessee, a US company, provided financial information globally and licensed its Indian subsidiary (BDS) to distribute products/services in India with BDS contracting and billing customers independently, BDS could not be considered a dependent agent PE since sales were on principal-to-principal basis. Further, where inter-company transactions between assessee and its Indian subsidiary were examined and accepted at arm's length by TPO, even if a permanent establishment were found to exist, no further profits could be attributed to such PE.

   Assessee, a US company, was engaged in providing financial information globally through Bloomberg Professional Services (BPS), a web portal cum web network. Assessee entered into a distribution agreement with its Indian subsidiary, BDS, whereby assessee made available its products/services and granted a limited licence and network access; BDS had right to distribute in India, was required to procure/install compatible equipment, appoint personnel at its own cost, execute and enforce contracts directly with Indian subscribers, and handle billing/collection with charges determined by BDS subject to assessee's and RBI's approval. An indemnity clause placed liability for distribution activities on BDS. Sample customer agreements showed BDS contracted directly with and billed Indian customers. For relevant assessment years, assessee received about Rs. 122.59 crores and Rs. 198.86 crores respectively from BDS as licence fees for BPS, which it offered to tax as royalty income under section 115A at 10%, asserting no PE in India and that BDS operated independently on a principal-to-principal basis. AO held that BDS constituted a dependent agent PE; without prejudice, he also held there was a service PE, alleging that products/services were sold in India through joint efforts and that services were provided in India to customers through BDS personnel. He attributed income by allowing 10% of receipts as expenses and treating balance as income attributable to alleged PE. It was noted that employees of assessee were in India for auxiliary activities of overseeing operation of its Indian subsidiary, providing training to employees of BDS, providing BDS with administrative and general support, assisting BDS in governing of news, information and providing support on sales of its products. Tribunal ruled that since departmental authorities had failed to establish that services rendered by assessee to BDS were beyond stewardship/auxiliary activities or they did not fall within ambit of FIS under Article 12(4), without ascertaining nature of services provided by assessee, it could not be said that assessee was having a service PE. Since sale of products/services by Indian subsidiary to end customers in India was on principal-to-principal basis and not for and on behalf of assessee, Indian subsidiary could not be considered as DAPE of assessee in India. Further, since the inter-company transactions between assessee and its Indian subsidiary were examined and were accepted at arm’s length by TPO, even if a permanent establishment were found to exist, no further profits could be attributed to such PE.

IV. BUISNESS PROFITS

i. *Commission to non-resident agents not liable to TDS*

1. CIT (IT and TP) vs. Nidra Hospitality Gujarat (P.) Ltd. [2026] 188 taxmann.com 215 (Gujarat) [23-06-2026] - R/TAX APPEAL NO. 438 of 2026 – [AY 2017-18]

Where assessee paid commission to travel agents on hotel bookings made through websites or subsidiaries, such commission was not covered under other sums liable for TDS under section 195 and, having filed TDS return and Form 15CB, assessee could not be considered as assessee in default under section 201

AO noted that assessee had paid commission to certain non-resident travel agents, booking websites and credit card companies without deducting tax at source under section 195. He, thus treated assessee as an assessee-in-default under sections 201(1) and 201(1A). Tribunal noted that assessee had submitted Form 15CB related to each transaction involving payment to non-resident, deducted tax wherever required in accordance with Income-tax Act and applicable DTAAs, and duly deposited such tax. Tribunal held that assessee could not be treated as an assessee in default. High Court ruled that commission paid to travel agents on hotel bookings on websites as well as subsidiaries of travel agents would not be covered under provision of other sums liable for TDS as per provisions of section 195. Once assessee had discharged its obligation by filing TDS return and Form 15CB i.e. certificate from a Chartered Accountant for liability of deduction of tax under Chapter-XVIIB as per Rule 37BB of Income Tax Rules, 1962, assessee could not be considered as assessee in default under section 201. ***[Order of the Income Tax Appellate Tribunal in ITAT/882/AHD/2025, affirmed]***

2. **Kloeckner Desma Machinery (P.) Ltd. vs. Dy CIT [2026] 188 taxmann.com 689 (Ahmedabad - Trib.) [17-07-2026] - IT Appeal (TP) Nos. 555, 2579 & 2322 (Ahd.) of 2017 - [AY 2012-13 and 2013-14]**

   Where commission was paid to non-resident agents for services rendered outside India, and such agents had no business connection or permanent establishment in India, said commission was not taxable in India solely because payment was made by an Indian resident, so no tax was deductible at source under section 195 and disallowance under section 40(a)(i) was rightly deleted.

   Assessee paid commission to non-resident agents for procuring export orders and providing marketing support outside India. AO held the payments chargeable to tax in India, required deduction of tax at source under section 195, and since no tax was deducted, disallowed the payments under section 40(a)(i). DRP deleted the disallowance, holding that commission paid for services rendered outside India was not taxable in India. Tribunal ruled that commission paid to non-resident agents for services rendered outside India, where agents did not have any business connection or PE in India, was not chargeable to tax in India merely because payment was made by an Indian resident. Therefore, no tax was deductible at source under section 195 and disallowance under section 40(a)(i) was rightly deleted.

3. **Dy CIT vs. Tamil Nadu News Print & Papers Ltd. [2026] 188 taxmann.com 845 (Chennai - Trib.) [21-07-2026] - IT Appeal No. 1280 (Chny) of 2026 - [AY 2017-18]**

   Where export commission was paid to non-resident agents for procuring export orders abroad and neither a permanent establishment nor services were rendered in India, such commission was not chargeable to tax in India and no tax was deductible at source, making disallowance under section 40(a)(i) unwarranted.

   Assessee, engaged in manufacture of paper, power, energy and cement, paid export commission to non-resident agents for procuring export orders outside India. The agents had no PE in India, and the services were rendered entirely outside India. AO disallowed it under section 40(a)(i) on the ground that tax was not deducted at source under section 195. CIT(A) deleted the disallowance under section 40(a)(i) following the jurisdictional High Court's decision in the assessee's own case. Tribunal ruled that export commission paid to non-resident agents for procuring export orders abroad is

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not chargeable to tax in India in absence of PE or services rendered in India, and thus, no tax is deductible at source under section 195 and disallowance under section 40(a)(i) was unwarranted.

4. **Rajasthan Tourism Development Corporation Ltd. vs. ACIT [2026] 189 taxmann.com 233 (Delhi - Trib.) [05-08-2026] - IT Appeal No. 3756 (DELhi) of 2026 - [AY 2015-16]**

   Where assessee, a government undertaking, paid commission to foreign-based agents and did not obtain certificate under section 197 for exemption from TDS on such payments, liability to deduct tax on commission paid to foreign entities having no PE in India must be decided by Assessing Officer after verifying assessee's documents, and matter required reconsideration on merits, thus, matter was remanded to AO.

   Assessee-company, a Rajasthan State Government undertaking engaged in tourism development, ran two luxury trains and paid commission to travel agents for bookings, including certain agents located outside India. Proceedings under section 201(1) r.w.s. 201(1A) were initiated on basis of information from DCIT (TDS) regarding commission expenses. Notice under section 201 r.w.s. 201(1A) was issued and a final opportunity was provided. However, assessee did not file any reply. An order was then passed creating tax liability of about Rs. 1.98 crores for non-deduction of TDS. Assessee thereafter sought rectification under section 154, stating that total commission of about Rs. 8.89 crores had been paid with TDS deducted. AO noted that earlier computation had mistakenly applied default on total commission figure of about Rs. 10.10 crores instead of restricting it to balance amount of about Rs. 1.21 crores, computed default at 10% and, on rectification, raised demand of about Rs. 23.76 lakhs (inclusive of interest under section 201(1A)). Tribunal ruled that since AO took figure of Rs. 10.10 crore based on information received from DCIT (TDS) and on that basis passed order, whether assessee was not liable to deduct tax on commission paid to foreign entities, could be decided by AO after verifying documents submitted by assessee. Since assessee did not obtain any certificate under section 197 that it was exempted from deducting tax on commission paid to foreign entities having no PE in India, matter was remanded to AO.

ii. *Offshore supply of equipment - not taxable in India*

1. **GE Energy Parts Inc vs. ACIT [2026] 189 taxmann.com 300 (Delhi - Trib.) [03-08-2026] - [TS-1214-ITAT-2026(DEL)] - IT Appeal No. 1947 (Delhi) of 2025 - [AY 2022-23]**

   Where assessee, a US resident, supplied equipment and parts to Indian customers from outside India and undertook repairs and refurbishment outside India, with title in equipment passing outside India, receipts from such offshore supplies and repairs were not taxable in India under the DTAA, and separate

offshore and onshore agreements executed from bid stage could not be regarded as artificial splitting of contracts. [India – USA DTAA]

Assessee, a tax resident of USA, undertook offshore supply of spare parts and offshore repair/refurbishment services for Indian customers and treated receipts of Rs. 108.57 crores from such offshore activities as exempt, asserting that supplies and repair activities were carried outside India. AO treated offshore and onshore arrangements as composite contracts artificially split to reduce tax liability. Tribunal noted that under offshore supply agreements, title in equipment passed to customers outside India immediately after goods departed territorial land/waters of USA and repairs/refurbishment were also carried outside India. Further, separate agreements for offshore supplies and onshore services were executed right from bid stage. Since offshore supplies and repairs were concluded outside India, receipts therefrom were not taxable in India under the DTAA and attribution of profit to alleged PE did not arise. Further, separate offshore and onshore agreements could not be regarded as artificial splitting of contract. ***[Ishikawajma-Harima Heavy Industries Ltd. v. DIT [2007] 158 Taxman 259/288 ITR 408 (SC) followed]***

Note: Also see case no. 3, under PERMANENT ESTABLISHMENT – DAPE/ Fixed place PE

iii. Survey charges paid to non-resident surveyors

1. **PCIT vs. Cholamandalam [2026] 189 taxmann.com 259 (SC) [27-07-2026] - SLP (CIVIL) Diary No(s). 38047 OF 2026 – [AY 2005-06 to 2010-11, 2013-14 and 2014-15]**

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

Assessee was an insurance company carrying on reinsurance business. 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. Hon'ble Supreme court ruled that since no case for interference was made with impugned order of High Court, SLP was to be dismissed. ***[SLP dismissed against Principal Commissioner of Income-tax - 4 v. Cholamandalam MS General Insurance Company Ltd. [2025] 175 taxmann.com 452 (Madras)]***

iv. Vendor compliance expenses paid w.r.t activities undertaken by US customer in connection with assessee's exports - does not accrue in India

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1. **Dy CIT vs. Magick Woods Exports (P.) Ltd. [2026] 189 taxmann.com 616 (Chennai - Trib.) [13-08-2026] – IT Appeal No. 3377 (Chny) of 2025 - [AY 2018-19]**

   Where assessee engaged in export business incurred vendor compliance expenses deducted by US customer for slotting, display, advertisement and sales-support activities directly connected with export sales, and Assessing Officer pointed out no specific defect in supporting records or finding that expenditure was unconnected with business, disallowance was rightly deleted; where such activities were undertaken outside India, no income accrued or arose in India under section 9(1)(i), and no withholding tax obligation arose

   Assessee engaged in manufacturing and export of sanitary and plumbing products, incurred vendor compliance expenses of Rs. 9.32 crores, being deductions made by a major US customer from export proceeds towards slotting allowance, advertisement/promotion, store support, display and other sales-support activities. Assessee furnished cost break-up, programme documents, ledger, cheque copies and deduction/remittance statements and explained increase in expenditure by launch/expansion of specific product programmes. AO disallowed expenditure under section 37 alleging inadequate evidence and non-establishment of commercial expediency and also raised an issue of non-deduction of tax at source. Tribunal ruled that since deductions made by US customer for slotting, display, advertisement and retail-support activities in connection with sale of assessee's products were directly connected with assessee's export business, and increase in such expenditure stood explained, AO having not pointed to any specific defect in ledger entries, deduction statements or cheque/remittance advices, nor recorded any finding that expenditure was unconnected with assessee's business, CIT(A) was justified in deleting disallowance of Rs. 9.32 crores. Further since vendor compliance deductions related to activities undertaken by US customer outside India in connection with assessee's export sales, any income embedded therein would not accrue or arise in India under section 9(1)(i) read with Explanation 1(a) thereto and, therefore, no withholding tax consequences arose. ***[CIT v. Aktiengesellschaft Kuhnle Kopp & Kausch ([2002] 125 Taxman 928/ [2003] 262 ITR 513) followed]***

v. ***If payment to alleged PE is at arm's length- no further profit attribution is warranted***

1. **Bloomberg LP vs. Addl. DIT IT (IT) RG 3 [2026] 189 taxmann.com 609 (Mumbai - Trib.) [14-08-2026] - TS-1255-ITAT-2026(Mum) - IT Appeal Nos. 5529 & 5530 (MUM.) of 2014 - [AY 2008-09 and 2009-10]**

   Where inter-company transactions between assessee and its Indian subsidiary were examined and accepted at arm's length by TPO, even if a permanent establishment were found to exist, no further profits could be attributed to such PE.

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Assessee, a US resident company providing BPS (Bloomberg professional services) in India through a Distribution Agreement with its Indian subsidiary (BDS), received about Rs. 122.59 crores (A.Y. 2008-09) and Rs. 198.86 crores (A.Y. 2009-10) as licence fees, which it offered to tax as royalty under section 115A at 10%. During assessment, after holding that the assessee had a PE (as a dependent agent and, alternatively, a service PE), the AO attributed profits by allowing 10% of the receipts as expenses and treating the balance as income attributable to the alleged PE. In appeal, the Commissioner (Appeals) sustained the attribution. Tribunal ruled that where inter-company transactions between assessee and its Indian subsidiary had been examined and accepted at arm's length by TPO in an order under section 92CA, which was on record, even assuming a PE were found to exist, no further profits were attributable to such PE.

Note: Also see case no. 2 under PERMANENT ESTABLISHMENT - DAPE

vi. ***Profit attribution rate enhanced to compensate for additional activities carried out***

1. **BBC Global News Ltd. vs. Dy CIT, IT [2026] 189 taxmann.com 436 (Delhi - Trib.) [10-08-2026] - IT Appeal No. 1847 (Delhi) of 2025 - [AY 2017-18 to 2022-23]**

Where assessee, a UK tax resident, operated BBC World News via its Indian DAPE and authorities enhanced profit attribution rate from 8.75% to 15 % after finding broader functions performed in India, profit attribution under earlier MAP could not be followed, but considering facts, attribution of profit to PE was restricted to 12 percent of advertisement revenue for relevant years.

Assessee, a tax resident of UK, was engaged in running and operating BBC World News television channel and website bbc.com, and had a DAPE in India through its AE, BGNIPL. For AYs 2004-05 to 2014-15, under a MAP, profit attribution to PE was fixed at 8.75% of advertisement revenue, and same percentage was adopted for AYs 2015-16 and 2016-17. For AY 2022-23, AO, in draft assessment, increased rate of attribution from 8.75% to 15%, primarily relying on a February 2023 survey and statement of Sales Director indicating that AE/DAPE performed activities beyond scope described in TPSR for year. Consequent to survey, reassessment proceedings for AYs 2017-18 to 2021-22 were reopened, and in those reassessments AO similarly enhanced attribution rate to 15%. Tribunal ruled that since scope of activities carried out by assessee's PE was much wider than what was specifically stated in TPSR, rate of attribution determined under MAP could not be adopted and rate of attribution of profit to assessee's PE in India was required to be enhanced to compensate for additional activities carried out by PE in India. However, rate of attribution as determined by AO was very much on higher side and to meet ends of justice and to lay matter to rest, attribution was restricted to 12% of advertisement revenue for impugned assessment years.

vii. *Interest paid to HO/ Overseas branch; Not taxable in hands of Indian PE*

1. **DBS Bank Ltd. vs. ADIT (IT) [2026] 188 taxmann.com 1038 (Mumbai - Trib.) [29-07-2026] - IT Appeal Nos. 4732 and 4644 (MUM) of 2015 and others – [AY 2010-11 to 2012-13]**

   Where an Indian PE of a Singapore bank paid interest to its Head Office and overseas branches, such interest was deductible while computing profits attributable to Indian PE under Article 7 of the DTAA. [India-Singapore DTAA.]

   Assessee, an Indian PE of DBS Bank Ltd., Singapore, claimed deduction of interest paid to its Head Office and overseas branches. AO disallowed claim on ground that payment by a branch to its Head Office constituted payment to self. Tribunal ruled that interest paid by Indian PE/branch to its Head Office and other overseas branches is deductible while computing profits of Indian PE. ***[Sumitomo Mitsui Banking Corpn. v. Deputy DIT (IT) [2012] 19 taxmann.com 364/136 ITD 66 (Mumbai) followed]***

V. SHIPPING & AIR TRANSPORT

i. *Income from operating cruises*

1. **DIT (IT) vs. Star Cruises (India) (P.) Ltd. [2026] 188 taxmann.com 1068 (SC) [30-07-2026] - TS-1155-SC-2026 - CIVIL APPEAL NO(S). 3334 & 3336 OF 2012 – [AY 2006-07 to 2008-09]**

   Where non-resident operated cruises originating and terminating at same port in India and earned income from cruise packages, mere provision of hospitality and entertainment services on board did not exclude cruises from scope of 'carriage' under section 44B, thus, income was taxable on a presumptive basis under section 44B at 7.5% of the gross cruise fare receipts

   Assessee, Indian agent of non-resident ship operator (SLL), operated cruises in India and collected revenue from sale of cruise packages and shore excursions. Assessee claimed that income accruing to SLL was taxable on a presumptive basis under Section 44B, with estimated income at 7.5 per cent of gross cruise fare receipts. AO observed that cruises originated and terminated at Mumbai as round trips with hospitality/entertainment on board and did not merely transport passengers from one port to another. He, thus, treated activity as primarily hospitality/entertainment and estimated deemed income at 25 per cent of cruise fare receipts. It was noted that possibility of passengers de-boarding at intermediate ports was not taken into account by AO. Supreme court ruled that providing ancillary services on a voyage did not take away from meaning of 'carriage' as per Section 44B. Thus, AO's restrictive interpretation of 'carriage' as requiring movement from one port to another was erroneous and income accruing to SLL from operating cruises in India was assessed at presumptive rate of 7.5 per cent of gross cruise fare receipts for purposes of deduction under section 195. ***[Order of the Bombay High Court in Income Tax Appeal Nos. 485, 486 and 683 of 2010, dated 01-07-2011 affirmed]***

ii. ***Income from Lease of aircrafts***

1. **Bluesky 19 Leasing Company Ltd. vs. Dy CIT [2026] 189 taxmann.com 3 (Mumbai - Trib.) [21-07-2026] - IT Appeal Nos. 3330, 3336, 3575 & 3576 (MUM) of 2026 - [AY 2023-24]**

   Where assessee, an Irish company, leased aircrafts to an Indian airline for operation in international traffic, lease rentals and end-of-lease payments received by assessee were taxable only in Ireland under Article 8(1) of the DTAA and not chargeable to tax in India, since aircrafts were not deployed in Ireland and were operated by Indian lessee. [India–Ireland DTAA]

   Assessee, an Irish company, was engaged in business of leasing aircrafts. It leased 4 aircrafts to an Indian airline (Indigo) under operating lease agreements. Assessee received lease rentals and end-of-lease payments (maintenance reserves) totaling about Rs. 115.49 crores and filed NIL return claiming amounts were not taxable in India under the India-Ireland DTAA. AO brought to tax lease rentals and end-of-lease receipts. Tribunal ruled that since aircrafts were operated in international traffic by Indian lessee and were not deployed in Ireland, lease rentals and end-of-lease payments received by assessee were taxable only in Ireland under Article 8(1) of the DTAA and not in India. Since lease was an operating lease, and not a finance lease, the income would be covered under article 8 and not article 11 (dealing with interest). Further, in absence of a specific notification under section 90, MLI could not be applied to modify India–Ireland DTAA (including importing Articles 6 and 7 of MLI) so as to deny treaty benefits. Assessee did not have a fixed place of business / PE in India, and thus, income from operating lease was not taxable in India. Thus, additions made by AO were to be deleted. ***[Sky High XXXIV Leasing Company Ltd. v. ACIT International Taxation [2026] 186 taxmann.com 231 (Mumbai - Trib.), Sky High Appeal XLIII Leasing Company Ltd. v. Asstt. CIT (International Tax) [2025] 177 taxmann.com 579 (Mumbai - Trib.), and Sunflower Aircraft Leasing Ltd. v. Asstt. CIT (International Tax) [2025] 177 taxmann.com 728 (Mumbai-Trib.), Celestial Aviation Trading 15 Ltd. v. Asstt. CIT, International Taxation [2025] 176 taxmann.com 902 (Delhi - Trib.), Pembroke Aircraft Leasing 4 Ltd. v. Dy. CIT IT Appeal No. 127 (DEL) of 2026, followed]***

iii. ***Ground handling and engineering services rendered to airlines***

1. **British Airways PLC. vs. ADIT [2026] 188 taxmann.com 542 (Delhi - Trib.) [14-07-2026] - [TS-1061-ITAT-2026(DEL)] - ITA 2200 & 2201 (DEL) OF 2017 - [AY 2009-10 and 2010-11]**

   Where assessee, a UK based airline, rendered ground handling and engineering services to other airlines in India and claimed exemption for such income under Article 8 of the DTAA, since earlier years' Tribunal decisions taxed similar receipts and those were not reversed, surplus from these services was not exempt as profits from operation of aircraft under Article 8 and was taxable in India. [India-UK DTAA]

   Assessee, a UK based airline company, was engaged in operation of aircraft in international traffic. It also rendered ground handling and engineering services to other airlines in India. Assessee claimed that revenue from these services was exempt in India under Article 8 of the DTAA as part of operation of aircraft and participation in pools. AO treated surplus from rendering ground handling and engineering services to other airlines in India as taxable in India and rejected assessee's claim of exemption under Article 8 of the DTAA. Tribunal noted that in earlier years, similar receipts were treated as taxable and prior Tribunal decisions against assessee were not shown to have been reversed. Thus, Tribunal ruled that on facts, income from ground handling and engineering services rendered by assessee to other airlines in India was not exempt in India as profits from operation of aircraft under Article 8 of the DTAA. ***[DIT v. KLM Royal Dutch Airlines [2017] 78 taxmann.com 1/245 Taxman 341/392 ITR 218 (Delhi) distinguished]***

VI. DIVIDENDS

i. Refund of DDT more than rate under DTAA

1. **HCL Technologies Ltd. vs. Dy CIT [2026] 189 taxmann.com 11 (Delhi - Trib.) [30-07-2026] - IT Appeal Nos. 1842 (DEL) of 2014 and others - [AY 2009-10 to 2011-12]**

   Where Dividend Distribution Tax was levied on dividends paid to non-resident shareholders, levy was to be restricted to rate specified under Article 10 of applicable DTAA and not the higher domestic rate under section 115-O.

   Tribunal ruled that levy of DDT on dividends paid to non-resident shareholders should be restricted to rate specified in Article 10 of applicable DTAA rather than rate under Section 115-O following the decision of Hon'ble Bombay High Court in the case of ***Colorcon Asia (P.) Ltd. v. Jt. CIT [2025] 181 taxmann.com 301/ [2026] 486 ITR 476 (Bombay).***

2. **L. G. Electronics India (P.) Ltd. vs. Asstt. /Jt./Addl. CIT/ITO, National e-Assessment Centre [2026] 188 taxmann.com 1024 (Delhi - Trib.) [21-07-2026] - IT**

Appeal Nos. 490 (Delhi) of 2021 AND OTHERS - [AY 2015-16, 2017-18, 2018-19, 2020-21 and 2022-23]

Where assessee raised additional claim for relief from Dividend Distribution Tax by applying Indo-Korea DTAA but lower authorities declined such relief relying on section 115-O, in light of Supreme Court's interim order on similar issue, matter was required to be remitted to Assessing Officer to await Supreme Court's final decision. [Indo–Korea DTAA]

Assessee raised additional claim in appeals against final assessment orders under section 143(3) read with section 144C (13) seeking relief on DDT by applying Indo–Korea DTAA, which lower authorities did not allow, concluding that computation had to be under section 115-O. In view of Supreme Court's interim order in ***Jt. CIT v. Colorcon Asia (P.) Ltd. (2026) 186 taxmann.com 774*** admitting Revenue's SLP on similar issue and directing High Courts to consider staying further proceedings, instant issue was remitted by Tribunal back to AO to await Supreme Court's final decision.

3. **Interactive Television (P.) Ltd. vs. ACIT [2026] 189 taxmann.com 655 (Mumbai - Trib.) [13-08-2026] - [TS-1266-ITAT-2026(Mum)] - IT Appeal No. 4862 (Mum.) of 2026 - [AY 2020-21]**

   Where assessee distributed dividend to a Netherlands-resident shareholder and claimed benefit of lower DTAA rate over section 115-O, since Supreme Court was seized of identical issue, matter was remanded for fresh adjudication in accordance with Supreme Court's decision. [India-Netherlands DTAA]

   Assessee, a resident corporate entity, distributed dividend to its non-resident shareholder, a tax resident of Netherlands, and paid tax under section 115-O. Assessee subsequently claimed that dividend distribution tax should be restricted to beneficial rate of 10 per cent under Article 10 of the DTAA. AO did not consider claim and Commissioner (Appeals) (NFAC) did not interfere. Since Supreme Court admitted SLP on issue whether DDT under section 115-O could be governed by applicable DTAA and advised High Courts to consider staying similar matters. In view of judicial discipline, Tribunal remanded matter for de novo adjudication in accordance with Supreme Court's decision.

VII. INTEREST

i. ***<u>Interest on income tax refund</u>***

1. **DBS Bank Ltd. vs. ADIT (IT) [2026] 188 taxmann.com 1038 (Mumbai - Trib.) [29-07-2026] - IT Appeal Nos. 4732 and 4644 (MUM) of 2015 and others – [AY 2012-13]**

   Where assessee, a Singapore tax resident with a PE in India, received interest under section 244A on income-tax refund, such interest is taxable as 'interest'

under Article 11 of the DTAA at 15 per cent and not as business profits attributable to PE and where Article 11 of the DTAA prescribed a maximum rate of tax on interest, surcharge and health and education cess could not be levied over and above treaty-capped rate. [India-Singapore DTAA]

The assessee, a tax resident of Singapore, received interest under section 244A on an income-tax refund and offered it to tax at 15% under Article 11(2)(b) of the India-Singapore DTAA. The AO held that the interest did not fall within Article 11 and taxed it as business profits attributable to the assessee's Indian PE at the normal applicable rate, additionally levying surcharge and education cess over such rate. The CIT(A) affirmed the AO's classification of the interest as falling outside Article 11 but held that surcharge and cess could not be levied over and above the rate capped by a DTAA article prescribing a maximum tax rate. On further appeal, the Tribunal held that interest on an income-tax refund is "interest" within the meaning of Article 11 and is taxable in India at the treaty rate of 15%, not as business profits of the PE, reversing the authorities' classification. On the rate question, it held that once a DTAA article caps the maximum permissible rate of tax, as Article 11 does, surcharge and education cess cannot be levied in addition to that capped rate. However, where relevant Article of DTAA did not itself prescribe any rate or ceiling of tax, once taxable income is determined in accordance with Treaty, rate of tax was governed by provisions of Income-tax Act read with relevant Finance Act, including surcharge and health and education cess, unless Treaty expressly provides otherwise. ***[Asstt. CIT v. Clough Engineering Ltd. [2011] 11 taxmann.com 70/[2011] 130 ITD 137 (Delhi) (SB), DIT (IT) v. Credit Agricole Indosuez [2016] 69 taxmann.com 285/ [2015] 377 ITR 102 (Bombay), DHL Operations B.V. v. DDIT IT Appeal No. 431 of 2012, dated 17.07.2014 DIC Asia Pacific Pte. Ltd. v. Asstt. DIT, International Taxation [2012] 22 taxmann.com 310/ [2012] 52 SOT 447 (Kolkata) followed]***

2. **Taj TV Ltd. vs. Dy. CIT [2026] 189 taxmann.com 1010 (Mumbai - Trib.) [18-08-2026] - [TS-1317-ITAT-2026(Mum)] - IT Appeal No. 3365 (MUM) of 2026 - [AY 2017-18]**

   Where assessee received interest on income-tax refund and final assessment order applied DTAA rate of 7.5% under Article 11 on such income, Assessing Officer could not later apply domestic tax rate by rectification under section 154 without first lawfully rectifying or revising assessment determination, and only 7.5% rate should be applied as per original assessment order. [India–Mauritius DTAA]

   Assessee, a non-resident, had interest on income-tax refund under section 244A amounting to about Rs. 18.56 crores. Though assessee had offered this interest to tax under Act in its return, final assessment order passed under section 143(3) read with section 144C (13) specifically computed this interest under Income from Other Sources and recorded it as taxable at 7.5% under (Article 11 of) the DTAA. Subsequently, after appellate relief on other issues, AO passed an order giving effect and recomputed taxable income at about Rs. 18.56 crores but applied domestic rate as per return instead of 7.5% under DTAA. Assessee filed a section 154 application, pointing out that tax had been computed at around 43% instead of 7.5%. In a rectification order under section 154, AO recorded that assessee's contention was verified and found tenable and rectified tax rate accordingly to 7.5%. Thereafter, AO passed another order under section 154, reversing position and applying domestic rate on ground that assessee itself had offered interest at 40% plus surcharge and cess in return; total income remained same while tax was recomputed at domestic rate. Tribunal ruled that since final assessment order giving effect expressly applied rate of 7.5% to this particular income and said determination was never independently rectified, revised or otherwise disturbed in accordance with law, AO exceeded jurisdiction vested in him under section 154 in passing impugned rectification order. Consequently, AO was to be directed to apply rate of 7.5% on interest income of Rs. 18.56 crore, as specifically determined in final assessment order and to give consequential effect in accordance with law.

3. **Spencer Stuart International B.V. vs. ACIT (IT) [2026] 188 taxmann.com 983 (Mumbai - Trib.) [24-07-2026] - [TS-1150-ITAT-2026(Mum)] - IT Appeal No. 7262 (MUM.) of 2025 - [AY 2023-24]**

   Where assessee, a tax resident of Netherlands, received interest on income-tax refund, such interest was taxable in India at rate specified under Article 11(2) of the DTAA instead of domestic law rate. [India-Netherlands DTAA]

   Assessee, a tax resident of Netherlands, received interest on income-tax refund and disputed the applicable tax rate, asserting that the rate in Article 11(2) of the DTAA should apply. Tribunal ruled that interest received on income-tax refund had to be taxed by applying rate provided under Article 11(2) of the DTAA.

VIII. FEES FOR TECHNICAL SERVICES (FTS/FIS)

i. Advertising expenses

1. **Play Games 24X7 (P.) Ltd. vs. ACIT [2026] 188 taxmann.com 360 (Mumbai - Trib.) [08-07-2026] - TS-1020-ITAT-2026(Mum) - IT Appeal Nos. 7076 and 8302 (MUM) of 2025 - [AY 2017-18]**

   Where assessee made payments to Facebook Ireland for banner advertisements on its online platform to avail a standard online advertising facility without acquiring any rights over Facebook's servers or infrastructure or receiving any technical services, such payments did not constitute royalty or fees for technical services and, therefore, no disallowance under section 40(a)(i) could be made for non-deduction of tax under section 195. [India-Ireland DTAA]

   Assessee-company was engaged in the business of operating online and mobile gaming platforms for card games. Assessee incurred advertisement expenses towards banner advertisements on Facebook Ireland Ltd.'s online platform. AO treated payments as royalty chargeable to tax in India and disallowed same under section

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40(a)(i) for non-deduction of tax under section 195. Commissioner (Appeals) deleted disallowance by following Tribunal's order in assessee's own case for earlier assessment year. Tribunal ruled that payments made for availing a standard online advertising facility, without any control or possessory rights over Facebook Ireland Ltd.'s servers or infrastructure and without any transfer of technical knowledge, did not constitute royalty or FTS under Act or the DTAA and, therefore, were not chargeable to tax in India. Consequently, assessee was under no obligation to deduct tax under section 195 and disallowance under section 40(a)(i) was rightly deleted. ***[Dy. CIT v. Play Games 24x7 (P.) Ltd. [IT Appeal No. 7075 (Mum) of 2025] followed]***

ii. Legal and consultancy services

1. **ACIT vs. Shardul Amarchand Mangaldas & Co. [2026] 188 taxmann.com 1112 (Delhi - Trib.) [31-07-2026] - IT Appeal Nos. 2327 TO 2332 (Delhi) of 2026 - [AY 2017-18, 2018-19, 2020-21 to 2022-23]**

   Where assessee, a partnership firm providing legal and consultancy services, declared gross foreign consultancy receipts from overseas including Japan as Fees for Technical Services and claimed FTC for taxes withheld abroad by properly filing Form 67 and submitting TDS certificates, and as there is no restriction under Rule 128 for allowing FTC under sections 90/90A, assessee was entitled to FTC and such receipts were to be characterized as FTS under Article 12(4) and not Article 14 of the DTAA. [India–Japan DTAA]

   Assessee, a partnership firm engaged in rendering legal and consultancy services to Indian and overseas clients, offered gross foreign professional receipts to tax in India and claimed FTC under sections 90/90A read with Rule 128, filing Form 67 and foreign TDS certificates for each year. Assessee treated overseas consultancy receipts, predominantly from Japan, as FTS under applicable DTAAs (including Article 12(4) of the DTAA, on which tax was rightly withheld in Japan). AO held that services were legal/professional and fell under Article 14 (Independent Personal Services (IPS)) of relevant DTAAs (including India–Japan), that Article 14 applied to firms as well, and that India had right to tax the same; he accordingly denied FTC (on the ground that tax was wrongly withheld abroad), He similarly applied IPS articles for other jurisdictions as well viz. China, Uganda, Malaysia, Sri Lanka, Poland and Oman). Tribunal ruled that since assessee had rendered services in overseas jurisdictions, foreign payers had withheld taxes in accordance with DTAA provisions for which TDS certificates duly authenticated by their revenue authorities were issued, assessee as resident in India had declared gross receipts in taxable income in India and claimed FTC for taxes withheld overseas by filing Form 67. Rule 128 did not contain any restriction for allowing FTC credit in accordance with section 90/90A, there remained no reason or justification in denying taxes withheld by overseas clients against gross income declared in India by assessee. Therefore, assessee was entitled to FTC, and receipts were to be characterized under Article 12(4) (FTS) and not Article 14 (IPS) of the DTAA. ***[Amarchand & Mangaldas & Suresh A. Shroff & Co. v. Asstt. CIT [2020]***

122 taxmann.com 248/[2021] 187 ITD 750 (Mumbai - Trib.), Dy. CIT v. Cyril Amarchand Mangaldas [2023] 154 taxmann.com 99 (Mumbai - Trib.) followed]

<u>UK law firm's receipts taxable partner-wise under applicable DTAAs</u>

2. **Herbert Smith Freehills LLP vs. ACIT (IT) [2026] 188 taxmann.com 1086 (Delhi - Trib.) [28-07-2026] - IT Appeal No. 1841 (Delhi) of 2025 - [AY 2022-23]**

   Where assessee, a UK based LLP with partners tax resident in Belgium, China, France, Germany and Japan, provided legal services and LLP was tax transparent, taxability of Indian professional fees attributable to profit share of such partners was to be examined at partner level under respective DTAAs, making addition under section 9(1)(vii) unsustainable.

   Assessee, a UK based LLP, was engaged in providing legal services worldwide. It had partners who were tax residents of UK as well as Belgium, China, France, Germany and Japan. For AY 2022-23, assessee filed its return of income declaring NIL income. AO denied treaty relief under India–Belgium, India–China, India–France, India–Germany and India–Japan DTAAs to partners resident in those countries and held that professional fee from Indian engagements relatable to their profit share was taxable in India as 'FTS' under section 9(1)(vii). Tribunal ruled that since partnership firms or LLPs in UK were tax transparent, taxability of professional fee from Indian engagements attributable to profit share of partners who were tax residents of Belgium, China, France, Germany and Japan had to be examined at partner level in accordance with respective India–Belgium, India–China, India–France, India–Germany and India–Japan DTAAs. Therefore, impugned addition made by AO under section 9(1)(vii) was unsustainable and was deleted. ***[Herbert Smith Freehills LLP v. Commissioner of Income-tax (Appeals)-43 [2026] 187 taxmann.com 916 (Delhi - Trib.) followed]***

iii.<u>Engineering design services</u>

1. **AIOLOS Engineering Corporation vs. Dy CIT Intl. [2026] 189 taxmann.com 400 (Mumbai - Trib.) [03-08-2026] - IT Appeal No. 867 (MUM) of 2023 - [AY 2020-2021]**

   Where assessee, a Canadian company, rendered engineering design and review services outside India for a wind tunnel project and did not make available technical knowledge or skills to an Indian co. to enable independent application in future, nor were payments for use of intellectual property, consideration received was not taxable in India as fees for included services under Article 12(4) of the DTAA or as royalty under Section 9 read with Article 12(3) of the DTAA. [India–Canada DTAA]

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Assessee, a company resident of Canada, was engaged in design and construction of wind tunnel and test facilities. In connection with Trisonic Wind Tunnel project at VSSC (ISRO), Tata Projects Ltd. (TPL) engaged assessee as a primary sub-vendor for engineering design and review services. During year, assessee rendered critical design review and final design review services along with engineering design and review, and procurement support to be performed outside India, including providing technical information, drawings, specifications, review of supplier proposals, and vendor inspections outside India. Activities in India such as procurement and supervision, installation supervision, integrated testing, tunnel performance acceptance and commissioning, and training were excluded from its scope. Consideration of about Rs. 30.29 crores was received from Tata Projects Ltd., with milestones covering PDR, CDR and FDR; contractual terms required assessee to return all notes, reports and documents to Tata Projects Ltd. at expiry and did not grant assessee any right to use names, marks, logos, trademarks or copyrights of Tata Projects Ltd. or Department. Tribunal ruled that since technical knowledge, experience, skill, know-how or processes were not in nature of made available to TPL in any manner enabling it to independently apply same for any future project and designs and technical inputs supplied by assessee were project specific, consideration received by assessee could not be taxed in India as 'fees for included services' under Article 12(4) of the DTAA (make available test) or as 'royalty' under Section 9 read with Article 12(3) of the DTAA. ***[Buro Hapold Limited v. DCIT [2019] 103 taxmann.com 344 (Mumbai) followed]***

iv. Software development services

1. **Sasken Technologies Ltd. vs. ACIT [2026] 188 taxmann.com 69 (Bangalore - Trib.) [29-06-2026] - IT Appeal Nos. 2057 and 2058 (Bang) of 2025 - [AY 2017-18]**

Where assessee made payments to non-resident contractors via its US branch for onsite software development services, but there was no finding that technical knowledge or expertise was made available enabling assessee to independently perform those functions, such fees could not be taxed as fees for included services in India. [India – USA DTAA]

Assessee, an Indian company engaged in telecom software services, provided onsite and offshore services through foreign branches, and its US branch routed payments to 23 non-resident contractors for onsite software development services. AO held that contracts were secured and controlled from India, US branch was only a payment conduit, services were technical/consultancy in nature, and contractual clauses on IP/confidentiality showed technical inputs were made available. He treated sums as FTS chargeable in India, held section 195 applicable, and disallowed payments under section 40(a)(i). Tribunal noted that although contractors rendered technical services to assessee, AO had not shown that assessee was thereby enabled to perform same functions on its own. Tribunal ruled that since this was essential requirement for holding that fees for included services were 'made available' and were consequently taxable in India, mere provision of services, or transfer of information or work product, was insufficient unless recipient was equipped to use underlying technical knowledge or expertise independently in future without further assistance from service provider. Therefore, assessee was not required to deduct tax at source, as income was not chargeable to tax in India in respect of payment made to foreign contractors for rendering technical services and consequently, no disallowance could be made under section 40(a)(i) read with section 195.

v. Export commission

1. **Saint Gobain India (P.) Ltd. vs. Dy CIT [2026] 188 taxmann.com 336 (Chennai - Trib.) [03-07-2026] - [TS-1072-ITAT-2026(CHNY)] - IT Appeal No. 3002 and 3242 (CHNY) OF 2025 - [AY 2015-16]**

   Where assessee claimed benefit of Most Favoured Nation (MFN) clause under the DTAA in respect of export commission paid to a Belgium entity but conceded, in view of Supreme Court decision in AO (IT) v. Nestle SA that such claim was no longer sustainable, disallowance under section 40(a)(i) for non-deduction of tax at source was upheld. [India–Belgium DTAA]

   Assessee-company, engaged in manufacturing processed sand, processed dolomite and various glass products, paid export commission to Saint-Gobain Exprover, Belgium. AO held payment taxable in India as FTS under Explanation 2 to section 9(1)(vii) as well as under the DTAA and, for non-deduction of tax at source, disallowed expenditure under section 40(a)(i). During hearing before Tribunal, assessee fairly conceded that, in view of Supreme Court's decision in ***Assessing Officer (International Taxation) v. Nestle SA (2023) 155 taxmann.com 384/296 Taxman 580/458 ITR 756 (SC)***, its claim based on Most Favoured Nation (MFN) clause under the DTAA between India and Belgium was no longer sustainable. Accordingly, disallowance under section 40(a)(i) was upheld. ***[MRF Ltd. v. Dy. CIT [IT(TP)A No. 68 (Chny) of 2018] followed]***

vi. Manpower supply services

1. **Sasken Technologies Ltd. vs. ACIT [2026] 188 taxmann.com 69 (Bangalore - Trib.) [29-06-2026] - IT Appeal Nos. 2057 and 2058 (Bang) of 2025 - [AY 2020-21]**

   Where assessee made payment to Tangent International, UK for contract staffing/manpower supply services but failed to furnish scope of work, it could not be determined whether payment was for mere manpower supply or for software development services involving technical inputs, therefore assessee was granted opportunity to furnish scope of work before tax authorities within prescribed period.

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Assessee made payment of Rs. 47.38 lakhs to Tangent International, UK, for contract staffing/manpower supply services and claimed that amount was covered by the exception in section 9(1)(vii)(b) and was not FTS; hence, no tax was deductible at source. AO rejected claim, holding that under assessee's onsite-offshore model, substantial work was subcontracted to non-residents, assessee retained control and responsibility, source of income was in India, and services constituted fees for technical services satisfying "make available" condition; payment was disallowed under section 40(a)(i) for non-deduction under section 195. Assessee asserted that some vendors supplied only manpower; however, referring to agreement and prior-year material, Commissioner (Appeals) noted that consultants were to provide software-related services and that assessee had not furnished scope of work for Tangent International; in absence of such details, disallowance was confirmed. Tribunal ruled that since assessee had not furnished scope of work assigned to Tangent International, UK, it was not possible to determine whether payment was only for manpower supply services or for software development services involving technical inputs and, thus, in interest of justice, an opportunity was granted to assessee to furnish scope of work before AO within 90 days from date of receipt of order. Matter Remanded.

vii. *Executive search services*

1. **Spencer Stuart International B.V. vs. ACIT (IT) [2026] 188 taxmann.com 983 (Mumbai - Trib.) [24-07-2026] - [TS-1150-ITAT-2026(Mum)] - IT Appeal No. 7262 (MUM.) of 2025 - [AY 2023-24]**

   Where assessee, a Netherlands-based executive search company, rendered executive search services to its Indian affiliate for multi-country assignments without a PE in India, fees received could not be taxed as fees for technical services or as royalty under Article 12 of the DTAA; thus, such income was not taxable in India. [India–Netherlands DTAA]

   Assessee, a non-resident company incorporated and tax resident of Netherlands, was engaged in executive search/headhunting business. It rendered executive search services to its Indian affiliate in respect of multi-country assignments and received fees, including expenses, of about Rs. 26.72 crores. Assessee did not offer this amount to tax, claiming it was business income not taxable in India in absence of a PE. AO held that fees qualified as FTS under Article 12(5)(a) and 12(5)(b) of the DTAA and, without prejudice, alternatively characterised receipts as royalty under Article 12(4), and brought amount to tax. Tribunal ruled that executive search fee was not taxable as FTS under Article 12(5)(a)/ 12(5)(b) of India-Netherlands DTAA which was based on observations of the Coordinate Bench wherein it was held that executive search fee was neither taxable as royalty under Article 12(4) nor as FTS under Article 12(5)(a)/ 12(5)(b) of the DTAA. ***[Spencer Stuart International B.V. v. Asstt. CIT (Int. Tax.) [2023] 146 taxmann.com 235/198 ITD 698 (Mumbai - Trib.) /ITA No. 514/Mum/2022 followed]***

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viii. Management/ Business support services

1. **Spencer Stuart International B.V. vs. ACIT (IT) [2026] 188 taxmann.com 983 (Mumbai - Trib.) [24-07-2026] - [TS-1150-ITAT-2026(Mum)] - IT Appeal No. 7262 (MUM.) of 2025 - [AY 2023-24]**

   Where assessee, a Netherlands tax resident, received management fee from Indian affiliate for executive search related management and support services under a shared services agreement, managerial services do not fall within scope of Article 12(5) of the DTAA, hence such fees would stand excluded from FTS under Treaty and taxability requires re-examination based on material on record. [India-Netherlands DTAA]

   Assessee, a tax resident of Netherlands, was engaged in business of executive search. It entered into a Shared Services Agreement (SCA) with its Indian affiliate for providing various services such as financial services, firm-wide marketing services, oversight/control and management services, administrative services, legal and tax services, information technology services and worldwide database services. Assessee received management fee of Rs. 14.06 crores under SCA. AO treated said receipts as FTS under Article 12(5) of the DTAA and Section 9(1)(vii). Tribunal ruled that since managerial services do not come within ambit of Article 12(5) of the DTAA, fee received from managerial services would stand excluded from FTS under Treaty. However, issue was restored to file of AO to re-examine assessee's claim with reference to materials on record. ***[Spencer Stuart International B. V. v. Asstt. CIT (Int. Tax.) [2026] 185 taxmann.com 889 (Mumbai - Trib.) followed]***

ix. Corporate charges

1. **Anixter India (P.) Ltd. vs. ITO [2026] 188 taxmann.com 540 (Chennai - Trib.) [09-07-2026] - [TS-1050-ITAT-2026(CHNY)] - IT A No. 3681 (Chny) OF 2025 - [AY 2018-19]**

   Where assessee made corporate charges payment to non-resident Singapore entity for support services without tax deduction at source, as services did not make available technical knowledge or skill nor resulted in any Permanent Establishment, DTAA provisions did not render payment chargeable to tax in India, so section 195 was not attracted and related disallowance under section 40(a)(i) was unsustainable. [India-Singapore DTAA]

   Assessee-company, engaged in distribution of communication products and electrical/electronic wires, cables and fasteners, had incurred corporate charges payable to Anixter Singapore Pte. Ltd. without deducting tax at source. Assessee explained that payment was not chargeable to tax in India under the DTAA, as services did not make available technical knowledge/skill/know-how, and amount constituted business profits not taxable in absence of a PE in India. AO rejected assessee's explanation, treated payment as FTS under section 9(1)(vii) and disallowed expenditure under section 40(a)(i) for non-deduction of tax at source. Tribunal ruled that section 195 applies only where sum paid to a non-resident is chargeable to tax in India. Further under Article 12 of the DTAA, services are taxable only if they "make available" technical knowledge or skill to recipient. Since in this case there was neither transfer of technical knowledge nor ability in hands of assessee to apply any technical expertise independently, section 195 was not attracted. Mere receipt of corporate charges or rendering of support services could not create a PE under the DTAA. Therefore, payment in question was not taxable under the DTAA, hence there was no obligation to deduct tax under section 195, and therefore disallowance under section 40(a)(i) was legally unsustainable. ***[Kuppusamy Thankaraj, erode v. Income Tax Officer IT Appeal No. 3630/Chny/2025 followed]***

x. CRM services

1. **CIT, IT vs. Salesforce.Com Singapore Pte. Ltd. [2026] 188 taxmann.com 642 (SC) [13-07-2026] - SLP (CIVIL) Diary No(s). 26285 of 2026 – [AY 2019-20]**

SLP dismissed against impugned order of High Court that where assessee, a non-resident was received payments for providing Customer Relationship Management services, such receipts could not be considered as fees for technical services under India–Singapore DTAA. [India–Singapore DTAA]

Assessee received payments for providing Customer Relationship Management (CRM) services. Revenue contended that these payments were taxable in India as FTS under Act and the DTAA. ITAT held that receipts for CRM services were not chargeable as FTS. High Court held that since no substantial question of law arose for consideration, appeal was to be dismissed. Hon'ble Supreme court ruled that since no case for interference was made with impugned order of High Court, SLP was dismissed. ***[SLP dismissed against CIT, IT-3 v. Salesforce.Com Singapore Pte. Ltd. [2026] 188 taxmann.com 385 (Delhi)]***

xi. Reimbursement service charges

1. **Spencer Stuart International B.V. vs. ACIT (IT) [2026] 188 taxmann.com 983 (Mumbai - Trib.) [24-07-2026] - [TS-1150-ITAT-2026(Mum)] - IT Appeal No. 7262 (MUM.) of 2025 - [AY 2023-24]**

Where assessee, a Netherlands tax resident, received reimbursement service charges from its Indian affiliate and such reimbursements had already been held not to constitute FTS as per Article 12 of the DTAA in earlier years, similar addition treating such reimbursements as FTS could not be sustained and was deleted. [India–Netherlands DTAA]

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Assessee, a Netherlands tax resident engaged in executive search business, received about Rs. 3.03 crores as reimbursement service charges from its Indian affiliate. In assessment, AO treated reimbursement service charges as FTS under Section 9(1)(vii) of Act and Articles 12(5)(a) and 12(5)(b) of the DTAA and brought them to tax, which assessee disputed. It was noted that in assessee's own case for earlier assessment years, Tribunal had held that reimbursement of expenses would not constitute FTS as per Article 12 of tax treaty. Tribunal following aforesaid decision ruled that impugned addition was to be deleted. ***[Spencer Stuart International B.V. ITA no 514/Mum/2022 followed]***

xii. Surcharge & Cess

1. **Spencer Stuart International B.V. vs. ACIT (IT) [2026] 188 taxmann.com 983 (Mumbai - Trib.) [24-07-2026] - [TS-1150-ITAT-2026(Mum)] - IT Appeal No. 7262 (MUM.) of 2025 - [AY 2023-24]**

   Where assessee was a tax resident of Netherlands, surcharge and cess could not be applied in addition to tax rate specified therein, thus only DTAA-stipulated rate applied. [India – Netherlands DTAA]

   The assessee, a Netherlands tax resident, disputed the levy of surcharge and cess on the tax computed on its taxable income, having regard to the rate of tax prescribed under the applicable Treaty provisions. Tribunal ruled that surcharge and cess cannot be levied over and above rate of tax prescribed under applicable provisions of the DTAA.

xiii. Explanation inserted in section 9(2) by the Finance Act, 2010 with retrospective effect from 1-6-1976 to be read down as prospective

1. **Jindal Thermal Power Company Ltd. vs. Dy CIT [2026] 189 taxmann.com 218 (Karnataka) [06-08-2026] - TS-1208-HC-2026(KAR) - WRIT PETITION NO. 192 OF 2011 (T-IT) and others – [AY 1996-97 to 1998-99]**

   FTS paid to a non-resident were chargeable to tax under section 9(1)(vii) only if the services were both rendered and utilised in India, a requirement unaffected by the Finance Act, 2007, and even if the amendment altered the interpretation of section 9, the more beneficial article 12(4) of the DTAA would prevail under section 90(2); the Explanation inserted in section 9(2) by the Finance Act, 2010 with retrospective effect from 1-6-1976, though styled as removing doubts, in substance widened the charging provision and created a fresh charge of tax, and was therefore to be read down as prospective, not retrospective from 1-6-1976; and CBDT Circular No. 7/2009, withdrawing the beneficial Circulars No. 23 and 786, being oppressive to the assessee, likewise operated only prospectively and could not take away the benefit already conferred. [India-USA DTAA]

The assessee entered into contracts with Raytheon Ebasco Overseas Ltd. (REOL), Badger Energy Inc. (BEI), and Energy Overseas International Inc. (EOI) for offshore equipment supply and related services, engineering, transportation and erection services, and construction materials and erection-related services respectively and deducted tax under section 195 on part payments to REOL as a safeguard measure by relying on beneficial CBDT Circular Nos. 23/1969 dated 23-7-1969 and 786/2000 dated 7-2-2000, which exempted from tax net profits of a non-resident not attributable to operations carried out in India even where a business connection existed, and claimed a refund of the tax so deducted. AO treated the Appellant as an assessee-in-default under section 201(1), holding that the amount credited to REOL represented FTS chargeable under section 9(1)(vii) read with Article 12(4) of the DTAA, Commissioner (Appeals) and Tribunal upheld taxability thereof. Assessee filed the present appeals to the High Court for AY 96-97, 97-98, 98-99. During pendency of the appeals, the Hon'ble Supreme Court in *Ishikawajima-Harima*, the Court held that section 9(1)(vii) required technical services to be both rendered and utilised in India, and a Coordinate Bench of the High Court (vide order dated 16-3-2009) granted (partial) relief on this basis to the assessee holding that Finance Act, 2007, while removing the requirement of residence, place of business or business connection in India, did not disturb this twin requirement. Department, aggrieved, filed SLP before the Supreme Court. Meanwhile, CBDT withdrew Circular Nos. 23 and 786 vide Circular No. 7/2009 dated 22-10-2009, and the Finance Act, 2010 further amended section 9(2) with retrospective effect from 1-6-1976, this time going a step further by removing even the requirement that services be rendered in India, so that mere utilisation of services in India would suffice to attract tax. Hon'ble Supreme Court disposed of the Department's SLP, granting liberty to move the High Court by way of review petition in light of the Finance Act, 2010 amendment. Department filed Review Petitions before the Karnataka HC, with the assessee also challenging the amendment through writ petition. High court ruled that Finance Act, 2010, though stated to be clarificatory and retrospective from 1-6-1976, removed the requirement of rendition of services in India and thereby widened the scope of the charging provision. Such an amendment, which effectively created a fresh tax liability, could not operate retrospectively merely because it was described as being "for the removal of doubts", and was therefore to be read as prospective. The Court further held that withdrawal of beneficial CBDT Circular Nos. 23/1969 and 786/2000 by Circular No. 7/2009 was oppressive, as it withdrew an existing benefit and enlarged the scope of taxability, and therefore could operate only prospectively. In the alternative, even assuming the Finance Act, 2010 amendment altered the domestic-law position, the more beneficial Article 12(4) of the India-USA DTAA prevailed under section 90(2). Accordingly, the appeals and writ petition were allowed, and the amendment was read down as prospective. ***[Whirlpool Corporation v. Registrar of Trademarks (1998) 8 SCC 1, HARBANSLAL SAHNIA v. Indian Oil Corpn. Ltd. (2003) 2 SCC 107, ISHIKAWAJIMA-HARIMA HEAVY INDUSTRIES LTD. V. DIRECTOR OF INCOME TAX, MUMBAI [2007] 158 Taxman 259/288 ITR 408 (SC)/(2007) 3 SCC 481, and SEDCO Forex International DRILL INC. v. CIT ((2005) TAXMAN 352 (SC) followed,***

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Order of ITAT, Bangalore Order of ITAT, Bangalore dated 18-5-2005 in ITA No. 245/BANG/1999 reversed]

IX. ROYALTY

i. ***Software***

1. **Dy CIT (IT) vs. Value Labs LLP [2026] 188 taxmann.com 1105 (Hyderabad - Trib.) [22-07-2026] - TS-1118-ITAT-2026(HYD) - IT Appeal No. 1828 (HYD) of 2025 - [AY 2010-2011]**

   Where assessee purchased software and IP rights from its Malaysian AE under separate agreements, outright purchase of software did not constitute royalty and, since TDS had already been deducted on payment for IP rights, assessee could not be treated as an assessee-in-default under sections 201(1) and 201(1A). [India – Malaysia DTAA]

   Assessee-LLP, engaged in software development, purchased software and IP rights from its Malaysian associated enterprise under two separate agreements and made separate payments, therefore assessee deducted tax at source at 10 per cent on payment towards acquisition of IP rights but did not deduct tax on consideration paid for outright purchase of software, AO treated assessee as an assessee-in-default under sections 201(1) and 201(1A) for failure to deduct tax at source on remittances made to Malaysian AE. Tribunal ruled that purchase of software by assessee being an outright sale did not constitute payment of royalty and, since tax had already been deducted at source on payment towards IP rights, assessee could not be treated as an assessee-in-default under sections 201(1) and 201(1A).

ii. ***Website/ Subscription charges/Database***

1. **CIT (IT) vs. Springer Nature Customer Service Centre [2026] 189 taxmann.com 775 (SC) [17-08-2026] - TS-1267-SC-2026 - SLP (CIVIL) Diary No(s). 27540 OF 2026 – [AY 2020-21 and 2021-22]**

   SLP dismissed against order of High Court that where assessee, a German company, engaged in business of publishing e-magazines and journals, collected subscription fees from various third parties for subscription to e-magazines and content, since subscription fee was standardized and not specifically collected or generated for any particular entity, it would not partake character of a fee for technical service within meaning of Explanation 2 to section 9(1)(vii). [India-Germany DTAA]

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Assessee, a German company, was engaged in business of publishing e-magazines and journals. It collected subscription fees from various third parties for subscription to e-magazines and content. High Court held that since subscription fee was standardized and not specifically collected or generated for any particular entity, it would not partake character of an FTS within meaning of Explanation 2 to section 9(1)(vii). Hon'ble Supreme Court held that since no case for interference was made with impugned order of High Court, SLP was to be dismissed. ***[SLP dismissed against Commissioner of Income-tax, International Taxation v. Springer Nature Customer Service Centre GMBH [2025] 174 taxmann.com 77 (Delhi)/ [2026] 487 ITR 267 (Delhi)]***

2. **Sasken Technologies Ltd. vs. ACIT [2026] 188 taxmann.com 69 (Bangalore - Trib.) [29-06-2026] - IT Appeal Nos. 2057 and 2058 (Bang) of 2025 - [AY 2017-18]**

   Where assessee made payment to Forrester Research Ltd., UK, for a licence to access website and use material with Forrester's logo and credentials, such payment was to be considered royalty under section 9, so disallowance under section 40(a)(i) read with section 195 was justified. [India – UK DTAA]

   Assessee, an Indian company engaged in telecom software services had obtained a licence to access website and use material bearing Forrester's logo/corporate credentials, Tribunal ruled that payment made to Forrester Research Ltd., UK, was in nature of royalty under section 9 and, therefore, disallowance under section 40(a)(i) read with section 195 was justified.

3. **ITO vs. Stoughton Street Tech Labs (P.) Ltd. [2026] 188 taxmann.com 676 (Mumbai - Trib.) [15-07-2026] - TS-1097-ITAT-2026(Mum) - IT Appeal Nos. 268 & 885 (MUM) of 2026 - [AY 2022-23]**

   Where assessee paid foreign vendors subscription fees and marketing technology charges without acquiring any right to exploit underlying copyright or intellectual property, such payments did not constitute 'royalty' and thus no tax was deductible at source on them, making disallowance under section 40(a)(i) unjustified.

   Assessee, an online video streaming company, made foreign remittances towards subscription fees and marketing technology to non-resident vendors. AO disallowed expenditure under section 40(a)(i) for failure to deduct tax at source under section 195 on footing that payments were liable to tax in India. Tribunal ruled that since AO had not demonstrated that assessee acquired any right to exploit underlying copyright or intellectual property so as to bring payments within ambit of 'royalty', disallowance made under section 40(a)(i) was rightly deleted by Commissioner (Appeals). ***[Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 followed]***

4. **American Chemical Society vs. Dy CIT [2026] 189 taxmann.com 434 (Mumbai - Trib.) [10-08-2026] - IT Appeal No.1167 (Mum) of 2026 - [AY 2023-24]**

   Subscription revenue received by assessee, US scientific society, for providing access to online chemistry data base and for sale of online journal in chemical

extract service and publication division to Indian company did not qualify as 'Royalty' in terms of section 9(1)(vi) of Act as well as article 12(3) of the DTAA. [India-USA DTAA]

Assessee was a scientific society based in United States of America that supported scientific enquiry in field of chemistry. During year, assessee received fee for providing access (by subscription) to online chemistry database and subscription revenue from sale of online journals (PUBS division) products/services from outside India to Indian customers. AO taxed subscription revenue earned by assessee as 'Royalty' income. Tribunal ruled that subscription charges received from Chemical Abstracts Service (CAS) division and Publications (PUBS) division from Indian customers do not qualify as 'royalty' in terms of Section 9(1)(vi) of Income Tax Act as well as Article 12(3) of the DTAA. By providing access to the journals, the assessee neither shared its experiences, techniques or methodology employed in evolving databases with the users, nor imparted any information relating to them. As was clear from the sample agreements, all that the customers got was the right to search, view and display the articles (whether online or by taking a print) and reproducing or exploiting the same in any manner other than for personal use was strictly prohibited. Further, the customers did not get any rights to the journal or articles therein. ***[American Chemical Society v. Deputy Commissioner of Income-tax [IT Appeal No. 1603/Mum/2015] followed.]***

iii. ***<u>Cloud Computing services</u>***

1. **CIT vs. Amazon Web Services Inc [2026] 189 taxmann.com 257 (SC) [04-08-2026] - SLP Appeal (C) No(s). 17045 OF 2026 – [AY 2014-15 and 2016-17]**

SLP dismissed against order of High Court that where assessee, US company, provided cloud computing services to its customers, since assessee's customers did not acquire any right of using infrastructure and software of assessee for purposes of commercial exploitation and charges paid by assessee's customers were for availing services, which assessee provided by using its proprietary equipment and other assets, payments received could not be considered as royalties within meaning of article 12(3) of the DTAA. [India-US DTAA]

Assessee, a US based company, was engaged in providing cloud computing services to its customers around globe. Assessee had received certain sums of money from Indian entities for rendering cloud computing services. AO held that income received by assessee from Indian entities for providing cloud computing services was chargeable to tax in India as royalty and FTS. It was noted that assessee operated a cloud computing platform, which essentially comprised of hardware as well as software. Assessee's customers did not acquire any right to commercially exploit any of assessee's intellectual property rights (IPRs). Provision of cloud computing services did not entail placing any hardware at exclusive disposal of customer. Assessee granted access to standard and automated services, which were available online - Customers could select from services offered according to their needs - High Court held that since assessee's customers did not acquire any right of using infrastructure and software of assessee for purposes of commercial exploitation and charges paid by assessee's customers were for availing services, which assessee provided by using its proprietary equipment and other assets, payments received could not be considered as royalties within meaning of article 12(3) of the DTAA. Supreme court ruled that 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 -1 v. Amazon Web Services, Inc [2025] 174 taxmann.com 1188 (Delhi)/ [2025] 478 ITR 44 (Delhi)]***

iv. Satellite Services

1. **Dy CIT (IT) vs. Studio 18 Media (P.) Ltd. [2026] 189 taxmann.com 41 (Mumbai - Trib.) [29-07-2026] - TS-1209-ITAT-2026(Mum) - IT Appeal Nos. 2346, 2381, 2401, 2403, 2463 & 2464 (Mum.) of 2026 - [AY 2009-10 to 2012-13]**

   Where assessee, a broadcaster, availed satellite transponder services from Intelsat Corporation, USA, payments were not royalty under section 9(1)(vi) or article 12 of India-USA DTAA since they were merely for standard satellite communication services and retrospective amendments to section 9(1)(vi) could not enlarge Treaty, consequently no tax was deductible under section 195. [India-USA DTAA]

   Assessee, engaged in broadcasting television channels, availed satellite transponder services from Intelsat Corporation, USA, for transmission and distribution of its television signals. AO treated payments as royalty under section 9(1)(vi) and article 12 of the DTAA. Tribunal ruled that payments made by assessee to Intelsat were consideration for availing standard satellite communication services and not for use of, or right to use, any industrial, commercial or scientific equipment or any process within meaning of section 9(1)(vi) and article 12 of the DTAA. Further, retrospective amendments to section 9(1)(vi) could not, by virtue of section 90(2), unilaterally expand scope of article 12 of the DTAA so as to render such payments taxable and attract withholding obligation under section 195. Consequently, where Intelsat had no PE in India and corresponding receipts were not chargeable to tax in India, no liability to deduct tax at source under section 195 arose in respect of such payments. ***[Asia Satellite Telecommunications Co. Ltd. v. DIT [2011] 9 taxmann.com 168/197 Taxman 263/332 ITR 340 (Delhi), DIT v. New Skies Satellite BV [2016] 68 taxmann.com 8/238 Taxman 577/382 ITR 114 (Delhi), Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC) (para 44), and GE India Technology Centre (P.) Ltd. v. CIT [2010] 7 taxmann.com 18/193 Taxman 234/327 ITR 456 (SC) followed]***

v. Live telecast

1. **CIT vs. Sri Lanka Cricket [2026] 189 taxmann.com 657 (SC) [14-08-2026] - TS-1241-SC-2026 - SLP (CIVIL) Diary No(s). 42869 of 2026**

   SLP dismissed against order of High Court that where consideration received by a non-resident for enabling live telecast of cricket matches did not extend beyond live feed and involved no transfer of copyright or derivative exploitation rights, it did not constitute royalty under section 9(1)(vi) or Article 12 of the DTAA between India and Sri Lanka

   High Court held that consideration received by a non-resident for enabling live telecast of cricket matches does not constitute royalty under section 9(1)(vi) or Article 12, where rights granted do not extend beyond live feed and no copyright or derivative exploitation rights are transferred. Further, revenue having failed to show that rights of exhibition exceeded beyond 'live feed', no interference was warranted with Tribunal's order holding that such income was not taxable as royalty. Hon'ble Supreme court by following ***Dy. DIT, International Taxation v. Shine Satellite Public Company Ltd. [C.A. Nos. 586-593 of 2012, dated 13-1-2026]***, dismissed the SLP.

vi. Engineering Design Services

1. **Saipem India Projects (P.) Ltd. vs. ACIT [2026] 188 taxmann.com 408 (Chennai - Trib.) [07-07-2026] - IT(TP)A No. 8 (CHNY) OF 2018 - [AY 2013-14]**

   Where payments made by assessee to associated enterprise for engineering design services were not chargeable to tax in India as royalty, no obligation to deduct tax at source under section 195 arose and disallowance under section 40(a)(i) in respect of such payments was deleted.

   Assessee, a company providing engineering design services. AO made a disallowance under Section 40(a)(i) in respect of payments made by the assessee to its AE on which no tax was deducted at source under Section 195. Tribunal ruled that since payments to AE were not chargeable to tax in India, no obligation to deduct tax at source under Section 195 arose since the same do not fall under the meaning of the term 'Royalty' as per the DTAA and therefore, disallowance under Section 40(a)(i) in respect of said payments was deleted. ***[order of ITAT in ITA No.1862 to 1868/Mds/2017 followed]***

2. **AIOLOS Engineering Corporation vs. Dy CIT Intl. [2026] 189 taxmann.com 400 (Mumbai - Trib.) [03-08-2026] - IT Appeal No. 867 (MUM) of 2023 - [AY 2020-2021]**

   Where assessee, a Canadian company, rendered engineering design and review services outside India for a wind tunnel project and did not make available technical knowledge or skills to an Indian co. to enable independent application in future, nor were payments for use of intellectual property, consideration

received was not taxable in India as fees for included services under Article 12(4) of the DTAA or as royalty under Section 9 read with Article 12(3) of the DTAA. [India–Canada DTAA]

Assessee, a company resident of Canada, was engaged in design and construction of wind tunnel and test facilities. In connection with Trisonic Wind Tunnel project at VSSC (ISRO), Tata Projects Ltd. (TPL) engaged assessee as a primary sub-vendor for engineering design and review services. During year, assessee rendered critical design review and final design review services along with engineering design and review, and procurement support to be performed outside India, including providing technical information, drawings, specifications, review of supplier proposals, and vendor inspections outside India. Activities in India such as procurement and supervision, installation supervision, integrated testing, tunnel performance acceptance and commissioning, and training were excluded from its scope. Consideration of about Rs. 30.29 crores was received from Tata Projects Ltd., with milestones covering PDR, CDR and FDR; contractual terms required assessee to return all notes, reports and documents to Tata Projects Ltd. at expiry and did not grant assessee any right to use names, marks, logos, trademarks or copyrights of Tata Projects Ltd. or Department. Tribunal ruled that since technical knowledge, experience, skill, know-how or processes were not in nature of made available to TPL in any manner enabling it to independently apply same for any future project and designs and technical inputs supplied by assessee were project specific, consideration received by assessee could not be taxed in India as 'fees for included services' under Article 12(4) of the DTAA (make available test) or as 'royalty' under Section 9 read with Article 12(3) of the DTAA. ***[Buro Hapold Limited v. DCIT [2019] 103 taxmann.com 344 (Mumbai) followed]***

vii. Professional fees paid to non-resident member firms

1. **KPMG India (P.) Ltd. vs. Dy CIT [2026] 189 taxmann.com 513 (Mumbai - Trib.) [12-08-2026] - IT Appeal Nos.1414 and 2841 (MUM) OF 2026 - [AY 2015-16]**

   Where a management consultancy firm paid professional fees to various non-resident member firms and AO failed to demonstrate that payments to non-residents were for use of any copyright, intellectual property, or similar rights to qualify as 'royalty' under Article 12 of the DTAA, disallowance under section 40(a)(i) was not justified and could not be sustained. [India-US DTAA]

   Assessee, a management consultancy firm engaged in finance, environment audit, investment and IT. Assessee had paid professional fees to various non-resident KPMG member firms aggregating about Rs 4.03 crores without deducting tax under section 195 of the Act. AO, examining invoices, agreements and the nature of services, held that the payments were for imparting technical, commercial or industrial knowledge and constituted royalty within section 9(1)(vi) and under Articles 12/13 of the applicable DTAAs. AO rejected assessee’s contention that the receipts were business profits not taxable in the absence of a PE and disallowed the entire amount

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under section 40(a)(i). Tribunal ruled that where AO failed to establish that payments made to non-residents were for use of any copyright, literary, artistic or scientific work, cinematograph film or other work, patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience so as to bring them within term 'royalty' under Article 12 of the DTAA, disallowance under section 40(a)(i) was not correct. ***[KPMG Advisory Services (P.) Ltd. v. Dy. CIT [IT Appeal Nos. 5392 to 5396 (Mum.) of 2024, dated 13.02.2025], and KPMG India (P.) Ltd. v. ADDL CIT [ITA no.4861/Mum/2013, dated 23.12.2015] followed]***

viii. <u>Advertising expenses</u>

1. **Play Games 24X7 (P.) Ltd. vs. ACIT [2026] 188 taxmann.com 360 (Mumbai - Trib.) [08-07-2026] - TS-1020-ITAT-2026(Mum) - IT Appeal Nos. 7076 and 8302 (MUM) of 2025 - [AY 2017-18]**

   Where assessee made payments to Facebook Ireland for banner advertisements on its online platform to avail a standard online advertising facility without acquiring any rights over Facebook's servers or infrastructure or receiving any technical services, such payments did not constitute royalty or fees for technical services and, therefore, no disallowance under section 40(a)(i) could be made for non-deduction of tax under section 195. [India-Ireland DTAA]

   Assessee-company was engaged in the business of operating online and mobile gaming platforms for card games. Assessee incurred advertisement expenses towards banner advertisements on Facebook Ireland Ltd.'s online platform. AO treated payments as royalty chargeable to tax in India and disallowed same under section 40(a)(i) for non-deduction of tax under section 195. Commissioner (Appeals) deleted disallowance by following Tribunal's order in assessee's own case for earlier assessment year. Tribunal ruled that payments made for availing a standard online advertising facility, without any control or possessory rights over Facebook Ireland Ltd.'s servers or infrastructure and without any transfer of technical knowledge, did not constitute royalty or FTS under Act or the DTAA and, therefore, were not chargeable to tax in India. Consequently, assessee was under no obligation to deduct tax under section 195 and disallowance under section 40(a)(i) was rightly deleted. ***[Dy. CIT v. Play Games 24x7 (P.) Ltd. [IT Appeal No. 7075 (Mum) of 2025] followed]***

ix. <u>Executive search services</u>

1. **Spencer Stuart International B.V. vs. ACIT (IT) [2026] 188 taxmann.com 983 (Mumbai - Trib.) [24-07-2026] - [TS-1150-ITAT-2026(Mum)] - IT Appeal No. 7262 (MUM.) of 2025 - [AY 2023-24]**

Where assessee, a Netherlands-based executive search company, rendered executive search services to its Indian affiliate for multi-country assignments without a PE in India, fees received could not be taxed as fees for technical services or as royalty under Article 12 of the DTAA; thus, such income was not taxable in India. [India–Netherlands DTAA]

Assessee, a non-resident company incorporated and tax resident of Netherlands, was engaged in executive search/headhunting business. It rendered executive search services to its Indian affiliate in respect of multi-country assignments and received fees, including expenses, of about Rs. 26.72 crores. Assessee did not offer this amount to tax, claiming it was business income not taxable in India in absence of a PE. AO held that fees qualified as FTS under Article 12(5)(a) and 12(5)(b) of the DTAA and, without prejudice, alternatively characterised receipts as royalty under Article 12(4), and brought amount to tax. Tribunal ruled that executive search fee was not taxable as FTS under Article 12(5)(a)/ 12(5)(b) of India-Netherlands DTAA which was based on observations of the Coordinate Bench wherein it was held that executive search fee was neither taxable as royalty under Article 12(4) or as FTS under Article 12(5)(a)/ 12(5)(b) of the DTAA. ***[Spencer Stuart International B.V. v. Asstt. CIT (Int. Tax.) [2023] 146 taxmann.com 235/198 ITD 698 (Mumbai - Trib.) /ITA No. 514/Mum/2022 followed]***

x. ***<u>Educational services</u>***

1. **CIT, IT vs. Coursera Inc. [2026] 189 taxmann.com 260 (SC) [20-07-2026] - TS-453-SC-2026 - SLP (CIVIL) Diary No(s). 39172 of 2026 – [AY 2022-23]**

   SLP dismissed against order of High Court that where assessee, a US based company, was engaged in business of facilitating education through online medium and provided online courses to its Indian customers, since assessee was an aggregation service provider and did not provide technical services through its online platform, receipts from online courses would not be taxable in India. [India – USA DTAA]

   Assessee, a US based company, was engaged in business of facilitating education through online medium as well as host multimedia courses for end users. AO noted that assessee had earned gross receipt from India comprising of receipts from individual customers as well as enterprise customers. AO opined that said receipts should be considered information consisting industrial, commercial or scientific experience and consequently a royalty both under act as well as under the DTAA. Tribunal set aside order of AO by following decision of Tribunal of earlier year wherein it was held that assessee was an aggregation service provider and did not provide technical services through its online platform and, thus, receipts from online courses would not be taxable in India. High Court held that since issue involved in this appeal was covered against Revenue and in favour of assessee in terms of judgment in ***CIT International Taxation v. Coursera Inc. [2025] 174 taxmann.com 1230/305 Taxman 269 (Delhi),*** no substantial question of law arose in this appeal and same

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was dismissed. Supreme court ruled that 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. [2026] 188 taxmann.com 863 (Delhi)]***

X. CAPITAL GAINS

i. __ESOPs__

1. **Rajesh R Hemrajani vs. ITO Int. tax [2026] 189 taxmann.com 183 (Mumbai - Trib.) [31-07-2026] - TS-1195-ITAT-2026(Mum) - IT Appeal No. 1284 (MUM) of 2025 - [AY 2019-20]**

   Where assessee, a non-resident tax resident of UK, exercised ESOPs granted by Indian listed company and perquisite component was taxed as salary income in UK, assessee was entitled to adopt fair market value determined as per section 17(2)(vi) read with Rule 3 as cost of acquisition under section 49(2AA) when computing capital gains on subsequent share transfer, irrespective of whether perquisite was taxed in India. [India–UK DTAA]

   Assessee, a non-resident and tax resident of UK, was employed with L&T Infotech Ltd., UK Branch, and had been granted 7,700 ESOPs in respect of equity shares of L&T Infotech Ltd., an Indian listed company, at an exercise price of Re. 1 per share. In relevant previous year, he exercised 1,540 options by paying Re. 1 per share, shares were credited to his demat account, and he sold all 1,540 shares through a recognised stock exchange for an aggregate sale consideration of about Rs. 25.99 lakhs. For perquisite valuation under section 17(2)(vi) read with Rule 3, fair market value was about Rs. 1,753.58 per share. While computing capital gains, assessee adopted said fair market value as cost of acquisition under section 49(2AA) and reported a short-term capital loss of about Rs. 1.00 lakh. He stated that perquisite component (FMV minus exercise price) had been subjected to tax in UK as part of his salary income. AO held that perquisite did not accrue or arise in India under sections 5 and 9 and under the DTAA and therefore section 49(2AA) could not apply; cost of acquisition was restricted to actual exercise price of Re. 1 per share. Tribunal ruled that section 49(2AA) does not stipulate that perquisite should have actually been subjected to tax in India or included in total income of assessee and it merely refers to fair market value determined in accordance with statutory mechanism prescribed under section 17(2)(vi) read with Rule 3 of Income-tax Rules. Therefore, assessee was entitled to adopt fair market value of shares as on date of exercise, determined in accordance with section 17(2)(vi) read with Rule 3(8)(ii), as cost of acquisition under section 49(2AA) while computing capital gains arising on subsequent transfer of shares. ***[Ramamurthy Sridharan v. ACIT [IT Appeal No. 1238 (Hyd) of 2008] distinguished]***

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ii. Carry forward of STCL allowed- despite DTAA benefit in respect of STCG & LTCG

1. **ACIT (IT) vs. Wexford Spectrum Investors Mauritius Ltd. [2026] 189 taxmann.com 413 (Mumbai - Trib.) [10-08-2026] - TS-1224-ITAT-2026(Mum) - IT Appeal No. 1914 (Mum.) of 2026 - [AY 2015-16]**

   Where assessee, a Mauritius based company, earned capital gains on shares and claimed exemption under Article 13 of the DTAA, brought-forward STCL from earlier years could not be set off against such gains since they were not taxable in India, thus, STCL was allowed to be carried forward to subsequent years. [India-Mauritius DTAA]

   Assessee, Mauritius based company, had earned STCG and LTCG on equity shares. It claimed that these gains were not taxable in India under Article 13 of the DTAA. It also carried forward earlier short-term capital losses (STCL) without set-off. Assessment was completed accepting returned income and allowing losses to be carried forward. Subsequently, reassessment proceedings were initiated and AO proposed to adjust brought-forward STCL against current-year capital gains, leaving balance to be considered for DTAA benefit. Tribunal ruled that it was for assessee to examine whether or not, in light of applicable legal provisions and in light of precise factual position, provisions of Act were more beneficial to him or that of applicable DTAA. Further, claim of AO that capital losses forwarded from earlier years, pertaining to a source of income that was exempt from tax was not to be carried forward to subsequent years, being devoid of any merit, was to be rejected. Thus, brought-forward STCL determined in earlier years could not be set off against current-year capital gains that were not taxable in India under Article 13 of the DTAA, and such loss could be carried forward to subsequent years.

XI. INDEPENDENT PERSONAL SERVICES

i. Legal and consultancy services

1. **ACIT vs. Shardul Amarchand Mangaldas & Co. [2026] 188 taxmann.com 1112 (Delhi - Trib.) [31-07-2026] - IT Appeal Nos. 2327 TO 2332 (Delhi) of 2026 - [AY 2017-18, 2018-19, 2020-21 to 2022-23]**

   Where assessee, a partnership firm providing legal and consultancy services, declared gross foreign consultancy receipts from overseas including Japan as Fees for Technical Services and claimed FTC for taxes withheld abroad by properly filing Form 67 and submitting TDS certificates, and as there is no restriction under Rule 128 for allowing FTC under sections 90/90A, assessee was entitled to FTC and such receipts were to be characterized as FTS under Article 12(4) and not Article 14 of the DTAA. [India–Japan DTAA]

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Assessee, a partnership firm engaged in rendering legal and consultancy services to Indian and overseas clients, offered gross foreign professional receipts to tax in India and claimed FTC under sections 90/90A read with Rule 128, filing Form 67 and foreign TDS certificates for each year. Assessee treated overseas consultancy receipts, predominantly from Japan, as FTS under applicable DTAAs (including Article 12(4) of the DTAA, on which tax was rightly withheld in Japan). AO held that services were legal/professional and fell under Article 14 (Independent Personal Services (IPS)) of relevant DTAAs (including India–Japan), that Article 14 applied to firms as well, and that India had right to tax the same; he accordingly denied FTC (on the ground that tax was wrongly withheld abroad), He similarly applied IPS articles for other jurisdictions as well viz. China, Uganda, Malaysia, Sri Lanka, Poland and Oman). Tribunal ruled that since assessee had rendered services in overseas jurisdictions, foreign payers had withheld taxes in accordance with DTAA provisions for which TDS certificates duly authenticated by their revenue authorities were issued, assessee as resident in India had declared gross receipts in taxable income in India and claimed FTC for taxes withheld overseas by filing Form 67. Rule 128 did not contain any restriction for allowing FTC credit in accordance with section 90/90A, there remained no reason or justification in denying taxes withheld by overseas clients against gross income declared in India by assessee. Therefore, assessee was entitled to FTC, and receipts were to be characterized under Article 12(4) (FTS) and not Article 14 (IPS) of the DTAA. ***[Amarchand & Mangaldas & Suresh A. Shroff & Co. v. Asstt. CIT [2020] 122 taxmann.com 248/[2021] 187 ITD 750 (Mumbai - Trib.), Dy. CIT v. Cyril Amarchand Mangaldas [2023] 154 taxmann.com 99 (Mumbai - Trib.) followed]***

XII. DEPENDENT PERSONAL SERVICES

i. ***Salary of deputed employee for services rendered outside India not taxable in India***

1. Kachana Raghunatha Reddy vs. DCIT/ACIT [2026] 189 taxmann.com 512 (Bangalore - Trib.) [12-08-2026] - TS-1270-ITAT-2026(Bang) - IT Appeal No. 2405 (BANG) of 2026 - [AY 2019-20]

Where assessee, a non-resident employee deputed to South Korea, rendered services outside India and salary for such services was paid by an Indian employer with TDS, such salary cannot be regarded as income earned in India merely due to payment or tax deduction in India, as only income received or accruing for services rendered in India is taxable in India under section 5(2) and 9(1)(ii). [India-Korea DTAA]

Assessee, an individual employee of Samsung R&D Institute India, Bangalore, was deputed to Samsung Electronics, South Korea, from 14-04-2018 to 13-04-2019. Salary of about Rs. 41.03 lakhs was paid by Indian employer with TDS of about Rs. 10.27 lakhs. In return, assessee offered about Rs. 0.93 lakhs attributable to 25 days’ stay in India and claimed refund. Assessee claimed to be a non-resident and asserted that salary for services rendered in Korea was not taxable in India and, alternatively, was exempt under Article 15(1) of the DTAA. Scrutiny was initiated by notice under section 143(2). Assessee furnished some documents but did not produce Korea tax return as required by AO. AO, without disputing assessee’s non-resident status, completed assessment under section 143(3) and added about Rs. 38.22 lakhs being salary claimed as attributable to Korea to total income on account of non-furnishing of Korea tax return. Before Tribunal, assessee produced Korean Tax Residency Certificates, Korea tax return, and proof of taxes paid in Korea in support of DTAA relief under article 15(1), and Revenue sought verification of these documents. Tribunal ruled that once assessee was accepted as a non-resident, scope of his total income was governed by Section 5(2). Section 5(2) provides that, in case of a non-resident, only such income is chargeable to tax in India as is received or deemed to be received in India, or accrues or arises, or is deemed to accrue or arise, in India. Further, section 9(1)(ii) of Act provides that salary is deemed to accrue or arise in India only if it is earned for services rendered in India. Explanation to section 9(1)(ii) makes it clear that salary is regarded as earned in India where services are rendered in India. Therefore, where a non-resident renders services outside India, salary relatable to such services ordinarily cannot be regarded as income earned in India merely because salary is paid by an Indian employer or tax has been deducted at source in India. Since assessee had now placed these documents before Tribunal, matter was remanded to AO for verification of these documents the Tribunal directed that if, upon such verification, the AO finds that the assessee was entitled to the benefit of Article 15(1) of the DTAA and that the salary relates to services rendered in Korea during the period in which the assessee was a non-resident, the exemption claimed shall be allowed in accordance with law.

2. **Kapil Gupta vs. ITO [2026] 188 taxmann.com 1103 (Delhi - Trib.) [30-06-2026] - TS-974-ITAT-2026(DEL) - IT APPEAL No. 1543 (Delhi) of 2026 - [AY 2020-21]**

   Where assessee, an Indian resident, rendered employment services in Australia and earned salary taxed in Australia, such salary was not taxable in India under article 15 of the DTAA and, consequently, foreign tax credit in India was not admissible; therefore, Australian salary was excluded from assessee's total income. [India–Australia DTAA]

   Assessee, an Indian resident, rendered services in Australia to an Australian employer and inadvertently offered salary earned and taxed in Australia to tax in India while claiming FTC. CPC rejected assessee's section 154 application seeking exclusion of said salary from taxation in India. Tribunal ruled that salary received in Australia for services rendered in Australia was not taxable in India under article 15 of the DTAA and, consequently, FTC was not admissible. AO was directed to exclude said Australian salary from assessee's total income.

XIII. NON-DISCRIMINATION

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i. ***<u>Disallowance u/s 40a(i) restricted to 30 % being discriminatory in respect of payments made to non-residents in USA & China</u>***

1. **GE India Industrial (P.) Ltd. vs. ACIT (OSD) [2026] 188 taxmann.com 1110 (Delhi - Trib.) [31-07-2026] - TS-1174-ITAT-2026(DEL) - IT Appeal Nos. 3019 & 3020 (Delhi) of 2022 - [AY 2017-18 to 2018-19]**

Where assessee invoked non-discrimination clauses under India–USA and India–China DTAAs, disallowance under section 40(a)(i) in respect of payments made to non-residents without deduction of tax at source was to be restricted to 30 per cent and not 100 per cent. [India–USA DTAA and India–China DTAA]

The assessee–company made payments to non-residents without deducting tax at source during the relevant years and disclosed the same in the tax audit report. Invoking the non-discrimination clauses of the India–USA DTAA and India–China DTAA read with section 90, it restricted the disallowance under section 40(a)(i) to 30 per cent in its return. In the impugned intimation, the disallowance under section 40(a)(i) was enhanced from 30 per cent to 100 per cent. In the decision of the Co-ordinate Bench in ***LinkedIn Technology Information v. PCIT*** it was held that it is discriminatory in so far as the quantum of disallowance is concerned. Tribunal ruled that in view of non-discrimination clause contained in article 26(3) of India-USA DTAA and article 24(5) of India-China DTAA read with section 90, disallowance under section 40(a)(i) in respect of payments made to non-residents without deduction of tax at source was to be restricted to 30 per cent and not 100 per cent. ***[LinkedIn Technology Information v. PCIT [2026] 182 taxmann.com 472 (Delhi - Trib.) followed]***

XIV. MOST FAVOURED NATION (MFN)

i. ***<u>MFN benefit not available in light of SC judgement in case of Nestle SA</u>***

1. **Saint Gobain India (P.) Ltd. vs. Dy CIT [2026] 188 taxmann.com 336 (Chennai - Trib.) [03-07-2026] - [TS-1072-ITAT-2026(CHNY)] - IT Appeal No. 3002 and 3242 (CHNY) OF 2025 - [AY 2015-16]**

Where assessee claimed benefit of Most Favoured Nation (MFN) clause under the DTAA in respect of export commission paid to a Belgium entity but conceded, in view of Supreme Court decision in AO (IT) v. Nestle SA that such claim was no longer sustainable, disallowance under section 40(a)(i) for non-deduction of tax at source was upheld. [India–Belgium DTAA]

Assessee-company, engaged in manufacturing processed sand, processed dolomite and various glass products, paid export commission to Saint-Gobain Exprover, Belgium. AO held payment taxable in India as FTS under Explanation 2 to section 9(1)(vii) as well as under the DTAA and, for non-deduction of tax at source, disallowed

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expenditure under section 40(a)(i). During hearing before Tribunal, assessee fairly conceded that, in view of Supreme Court's decision in ***Assessing Officer (International Taxation) v. Nestle SA (2023) 155 taxmann.com 384/296 Taxman 580/458 ITR 756 (SC)***, its claim based on Most Favoured Nation (MFN) clause under the DTAA between India and Belgium was no longer sustainable. Accordingly, disallowance under section 40(a)(i) was upheld. ***[MRF Ltd. v. Dy. CIT [IT(TP)A No. 68 (Chny) of 2018] followed]***

XV. FOREIGN TAX CREDIT

i. <u>Delay in filing form 67</u>

1. Kusum Healthcare (P.) Ltd. vs. Dy CIT [2026] 188 taxmann.com 381 (Delhi - Trib.) [03-07-2026] - IT Appeal Nos. 8522 and 8523 (DEL) OF 2025 - [AY 2018-19 and 2019-20]

Where assessee filed Form 67 belatedly for claiming Foreign Tax Credit, denial of FTC solely on account of delay in procedural filing was not justified

Assessee, a manufacturer of pharmaceuticals and botanical parts, claimed FTC in its returns. CPC disallowed the FTC on the ground that Form 67 was not filed within the prescribed time. On appeal, the CIT(A) sustained the denial of FTC for both assessment years. Tribunal ruled that filing of Form 67 for claiming FTC is a mere procedural requirement, and its delayed filing cannot be fatal to claim of a taxpayer. Further, where assessee filed Form 67 belatedly, FTC could not be denied merely on account of belated filing of Form 67 and, thus, AO was directed to allow assessee its claim of FTC under section 90. ***[Manoj Kumar Srivastava v. ACIT [2024] 163 taxmann.com 296 (Delhi - Trib.); Navin Vishwanath v. Dy. CIT [IT Appeal Nos. 8428, 8429 and 8442 (Del) of 2025 Followed]***

2. ITO vs. Farhan Khan [2026] 188 taxmann.com 421 (Indore - Trib.) [10-07-2026] - IT Appeal No.985 (Ind) of 2025 - [AY 2024-25]

Where assessee declared foreign income earned from UK and claimed foreign tax credit under section 90, denial of credit solely on the ground of belated filing of Form 67 was not justified as all requisite details were furnished, and foreign tax credit could not be refused merely for delay in filing Form 67. [India – UK DTAA]

Assessee, an individual, filed return of income declaring total income of Rs. 97.05 lakhs, including Rs. 96.67 lakhs earned from UK, on which foreign tax of Rs. 25.55 lakhs was paid. In return, FTC was claimed under section 90. Form 67, containing details of foreign tax credit, was filed belatedly. Prior to filing Form 67, return was processed under section 143(1) denying FTC. Tribunal ruled that since Form 67 though belated contained all required details, FTC could not be denied merely on ground of belated filing of Form 67.

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3. **Shiwangi Shah vs. DCIT, ACIT [2026] 188 taxmann.com 770 (Kolkata - Trib.) [20-07-2026] - IT Appeal No(s). 2031 (KOL) of 2024 - [AY 2021-22]**

   Where assessee claimed foreign tax credit for taxes paid in USA but it was denied due to procedural non-compliance and change in residential status, as per section 90 and article 22(2) of DTAA, such credit is a vested right and cannot be disallowed merely for failure to meet procedural or directory requirements like Form No. 67, thus credit for foreign taxes paid must be allowed as per substantive law. Though change in residential status was not permissible at original assessment stage but could be considered in appellate proceedings u/s 254, enabling correction of status to non-resident with consequential tax recomputation or DTAA relief. [India – USA DTAA]

   Assessee-individual filed return of income declaring total income of about Rs. 1.41 crores and claimed FTC of about Rs. 48.50 lakhs under section 90 for taxes paid outside India. Return was processed under section 143(1) by CPC in status of resident and claimed FTC was not granted. Assessee sought rectification under section 154 to correct residential status to non-resident and to allow relief; CPC rejected it for want of an apparent mistake. She then filed an updated return under section 139(8A) reducing originally returned income; CPC rejected it as it showed a tax liability lower than earlier return. In appeal, Commissioner (Appeals) held that any change of status and consequential relief could be effected only through a valid revised return; with processing under section 143(1) already completed and without condonation under section 119(2)(b), appeal against intimation did not survive. Commissioner (Appeals) confirmed processing and did not allow alternate plea for FTC. Tribunal ruled that section 90 read with article 22(2) of DTAA provides that tax paid in USA shall be allowed as a credit against tax payable in India but limited to proportion of Indian tax. Neither section 90 nor DTAA provides that FTC shall be disallowed for non-compliance with any procedural requirement. Also, foreign tax credit is an assessee's vested right as per article 22(2) of DTAA read with section 90 and same cannot be disallowed for non-compliance with procedural requirement that is prescribed in rules. Filing of Form No. 67 is a procedural/directory requirement and is not a mandatory requirement and violation of procedural norm does not extinguish substantive right of claiming credit of FTC. As regards change in residential status, the Tribunal held that absence of revised return, assessee’s residential status could be corrected to ‘non-resident’ in appellate proceedings under section 254 with consequential recomputation of tax liability or, in alternative, relief under section 90 read with applicable DTAA. Therefore, AO was directed to allow credit of FTC as per law and Form No. 67. ***[Goetze (India) Ltd. v. CIT [2006] 157 Taxman 1/284 ITR 323 (SC), National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383/97 Taxman 358 (SC), Ramakrishna Rao Chintalapudi v. ITO ITA No.541(KOL) OF 2024 followed]***

4. **Gopal Ramkrishnan vs. Dy CIT [2026] 188 taxmann.com 687 (Mumbai - Trib.) [15-07-2026] - IT Appeal Nos. 2661 & 2662 (MUM) of 2026 - [AY 2019-20 and 2020-21]**

   Where assessee claimed FTC for taxes paid abroad but Form 67 was not filed within prescribed time and authorities denied relief solely due to delay, such procedural lapse cannot override substantive right under section 90 and

relevant DTAAs, and administrative remedy under section 119(2)(b) does not curtail appellate jurisdiction to grant relief if substantive conditions are met.

Assessee, an individual, received director's sitting fees from companies outside India which was offered to tax in India. Foreign taxes were paid in Malaysia, Singapore and Sri Lanka. Assessee claimed FTC under section 90/90A read with applicable DTAAs. CPC disallowed FTC claim solely on ground that Form 67 had not been furnished within time prescribed under Rule 128. CIT(A) upheld disallowance for both years, holding that, because Rule 128(9) uses word “shall,” furnishing Form 67 on or before due date under section 139(1) was mandatory, and that in absence of condonation under section 119(2)(b), appellate authority could not grant FTC. Tribunal ruled that remedy under section 119(2)(b) is administrative in character and cannot curtail appellate jurisdiction to grant relief where assessee otherwise satisfies substantive conditions prescribed under Act. Further it opined that denial of FTC merely on account of delayed filing of Form No.67 would elevate a procedural requirement over a substantive statutory right and would defeat very object underlying section 90 and relevant DTAAs. Therefore, matter was restored to file of AO with a direction to examine assessee's claim of FTC on merits after taking on record Form No.67 and supporting evidences furnished by assessee. ***[Nirmala Murli Relwani v. Asstt. DIT [2022] 145 taxmann.com 293/ [2023] 198 ITD 603 (Mumbai - Trib.), Aparna Girish Hebbani v. ITO [IT Appeal No. 5061 (MUM) of 2025], Sonakshi Sinha v. CIT (Appeals) [2022] 142 taxmann.com 414/197 ITD 263 (Mumbai - Trib.), 42 Hertz Software India (P.) Ltd. v. Asstt. CIT [2022] 139 taxmann.com 448 (Bangalore - Trib.), Ms. Brinda RamaKrishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 (Bangalore - Trib.) followed]***

ii. *FTC not admissible, Australian salary excluded*

1. **Kapil Gupta vs. ITO [2026] 188 taxmann.com 1103 (Delhi - Trib.) [30-06-2026] - TS-974-ITAT-2026(DEL) - IT APPEAL No. 1543 (Delhi) of 2026 - [AY 2020-21]**

   Where assessee, an Indian resident, rendered employment services in Australia and earned salary taxed in Australia, such salary was not taxable in India under article 15 of the DTAA and, consequently, foreign tax credit in India was not admissible; therefore, Australian salary was excluded from assessee's total income. [India–Australia DTAA]

   Assessee, an Indian resident, rendered services in Australia to an Australian employer and inadvertently offered salary earned and taxed in Australia to tax in India while claiming FTC. CPC rejected assessee's section 154 application seeking exclusion of said salary from taxation in India. Tribunal ruled that salary received in Australia for services rendered in Australia was not taxable in India under article 15 of the DTAA and, consequently, FTC was not admissible. AO was directed to exclude said Australian salary from assessee's total income.

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iii. *FTC in respect of income eligible for deduction under sections 10A/10AA*

1. **HCL Technologies Ltd. vs. Dy CIT [2026] 189 taxmann.com 11 (Delhi - Trib.) [30-07-2026] - IT Appeal Nos. 1842 (DEL) of 2014 and others - [AY 2009-10 to 2011-12]**

   Where assessee claimed foreign tax credit in respect of income eligible for deduction under sections 10A/10AA and sought enhanced credit by way of additional grounds and evidence, additional evidence was to be admitted and matter was to be remitted to Assessing Officer to verify and allow claim as per law

   Assessee, a software and IT services company, undertook various international transactions with its AEs, including advancing foreign-currency loans, furnishing corporate guarantees and providing BPO/ITES services. Tribunal ruled that assessee was entitled to claim FTC in respect of income which was deductible in India under sections 10A/10AA. Further, where assessee claimed FTC and sought enhanced FTC by way of additional grounds and evidence, additional evidence was to be admitted, and matter was remitted to AO to verify and allow assessee's claim as per law.

iv. *Tax credit allowed to UK company for taxes paid by its Indian PE in respect of its advertisement income*

1. **BBC Global News Ltd. vs. Dy CIT, IT [2026] 189 taxmann.com 436 (Delhi - Trib.) [10-08-2026] - IT Appeal No. 1847 (Delhi) of 2025 - [AY 2017-18 to 2022-23]**

   Where assessee, a UK resident, operated a channel and website and had a dependent agent PE in India through BGNIPL, and prior MAP years allowed tax credit for Indian PE's taxes paid in respect of its advertisement income, credit cannot be denied in subsequent years merely due to absence of MAP if there is no change in facts, so assessee is entitled to such credit subject to verification of tax paid by Indian PE.

   Assessee, a UK tax resident, operated BBC World News channel and bbc.com. It had a DAPE in India through BGNIPL. Under MAP for AYs 2004-05 to 2014-15, it was agreed that taxes paid by Indian PE in relation to advertisement income would be credited to assessee in proportion to profits from advertisement revenue. For AY 2022-23, assessee claimed credit of taxes paid by BGNIPL. DRP directed AO to examine assessee's submissions regarding grant of such tax credit and pass a speaking order. In final assessment order, AO recorded earlier MAP methodology but denied credit solely on ground that there was no MAP in current year and did not give effect to DRP's direction. Tribunal ruled that MAP resolutions are not binding on assessment years not covered under MAP. However, there is no reason to deviate from MAP resolutions in assessment years not covered under MAP where there is no change in facts. Once in principle it has been agreed that benefit of taxes paid by PE in relation to

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advertisement income shall be allowed to assessee, same benefit can be extended to assessee in subsequent assessment year i.e. assessment year not covered by MAP as no material was available on record to show that credit of tax paid by DAPE of assessee could not be allowed to assessee. Therefore, assessee would be entitled to credit of taxes paid in India by assessee's Indian PE/AE in relation to advertisement income against assessee's tax liability and issue was restored back to AO for verification and quantification of credit of tax paid by Indian PE in relation to advertisement income.

XVI. OTHERS

i. ***Tax rates under DTAA's being more beneficial would prevail over higher domestic rates u/s 206AA***

1. CIT (IT) vs. Adani Wilmar Ltd. [2026] 189 taxmann.com 898 (Gujarat) [20-08-2026] - R/TAX APPEAL NOS. 1037, 1038, 1039, 1044 AND 1045 OF 2018 AND OTHRS - [FY 2015-16/ AY 2016-17]

Where assessee deducted tax at source on royalties or fees for technical services paid to non-residents at rates specified in applicable DTAAs, such rates, being more beneficial, prevail over higher domestic rate of section 206AA, as DTAA provisions override domestic law under section 90(2).

The assessee, a public limited company, filed its TDS return in Form 27Q for Quarter 1 of FY 2015-16 and received an intimation under section 200A. It made payments covered by section 194A to various non-resident parties and deducted tax at source at 10% and 15%, being the rates prescribed in the applicable DTAAs with the countries of the deductees. The AO invoked section 206AA due to non-availability of PAN with the deductees and, upon completion of proceedings, raised a demand of about Rs. 9.39 lakhs for short deduction of TDS and interest of about Rs. 0.22 lakhs. The CIT(A) and tribunal decided the issue in favour of the assessee. On revenue's appeal, the High court held that assessee had deducted the tax at source on payment made to non-residents on account of royalty and/or FTS at the rates prescribed in respective DTAAs between India and respective countries of non-residents and such rate of tax being lower than rate of 20% as provided under section 206AA of the Act, CIT (A) and the Tribunal had rightly arrived at concurrent findings to the effect that as per section 90(2) of the Act, the provisions of DTAA would override the provisions of the Domestic Act where the provisions of the DTAA are more beneficial to the assessee. Accordingly, Revenue's appeals were dismissed.

ii. ***Second proviso to section 40(a)(i) inserted by Finance (No.2) Act, 2019, with effect from 01.04.2020 -to be applied retrospectively***

1. **Cyberstar Infocom LLP vs. ITO [2026] 189 taxmann.com 299 (Bangalore - Trib.) [05-08-2026] - IT Appeal No. 1926 (Bang.) of 2025 - [AY 2014-15]**

   Where assessee made purchases from India branch of a foreign company constituting its Permanent Establishment in India without deducting tax at source, as all conditions of first proviso to section 201(1) were met, assessee could not be treated as assessee in default and immunity under second proviso to section 40(a)(i), being retrospective, applied, making the disallowance unsustainable.

   Assessee, engaged in trading of networking cables and equipment, made purchases from India Branch Office of a foreign company, which constituted that foreign company's PE in India. AO noted that tax was not deducted at source under section 195 on payments for such purchases and disallowed Rs. 14.99 crores under section 40(a)(i). It was noted that second proviso to section 40(a)(i) was inserted by Finance (No.2) Act, 2019, with effect from 01.04.2020. Tribunal ruled that said amendment was carried out in order to remove anomalies in sections similar to section 40(a)(ia), therefore, second proviso to section 40(a)(i) is applicable retrospectively from 01.04.2015. Since all conditions of first proviso to section 201(1) were satisfied in present case, assessee could not be deemed to be an 'assessee in default' and, thus, assessee was covered by immunity granted under second proviso to section 40(a)(i) and, thus, impugned disallowance made under section 40(a)(i), being unsustainable, was deleted. ***[Celltick Mobile Media (India) (P.) Ltd. v. Dy. CIT [2021] 127 taxmann.com 598/188 ITD 883 (Mumbai - Trib.) followed, Academy of Medical Sciences v. CIT [2018] 91 taxmann.com 293/254 Taxman 419/403 ITR 74 (Kerala) distinguished]***

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