INTERNATIONAL TAX DIGEST (MAY 2026)

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I. Permanent Establishment

Fixed place PE, Service PE, DAPE

1. Swiss Re Asia Pte Ltd. v. **DCIT (IT) [2026] 186 taxmann.com 60 (Mumbai - Trib.) [27-04-2026] - IT Appeal No. 8808 (Mum) of 2025 - [AY 2023-24]**

Where assessee, a non-resident reinsurer, received reinsurance premium from Indian cedents and retrocession premium from SRIB and was assessed on basis of alleged permanent establishment in India, since it was previously held that assessee did not have a fixed place, service or agent PE in India, no business profits could be taxed in India and all such additions were to be deleted [India – Singapore DTAA]

Assessee, a non-resident, rendered support services to SRIB and to SRGBS and received certain sum from them. It received reinsurance premium from Indian cedents and retrocession premium from SRIB. The AO held that assessee had a business connection in India under section 9(1)(i) and a permanent establishment (PE) in India under article 5 of India–Singapore tax treaty in respect of its reinsurance and retrocession business involving Indian parties, and taxed resulting profits in India by attributing profits to alleged PE. Tribunal followed its ruling in assessee's own case for earlier assessment years, wherein it was held that assessee did not have a fixed place PE, service PE or dependent agent PE (DAPE) in India and, therefore, its business profits could not be taxed in India under article 7. In the earlier years (AY 2018-19 to 2021-22), the Tribunal held that the assessee had no PE of any kind in India. There was **no fixed place PE** because the Indian premises belonged to and were used by SRIB and SRGBS for their own service business, with no material showing the assessee had any right to occupy or use those premises at its disposal or that any of its employees were seconded to India. There was **no service PE** because the assessee furnished no services in India.it was instead the recipient of services from SRIB/SRGBS and occasional stewardship visits were merely for oversight and protection of investment, not the furnishing of services to a customer. There was **no dependent agency PE** because the run-off portfolio contracts were originally concluded by the SRCL Singapore branch (with no Indian entity renegotiating them on the assessee's behalf), fresh reinsurance was written by SRIB in its own name and account, and the retrocession arrangement was concluded directly between SRIB and the assessee on a principal-to-principal basis, with no evidence that SRIB or SRGBS habitually concluded contracts or acted as brokers/agents for the assessee. Underlying all three, the core business of assuming risk and deploying capital was carried on in Singapore while the Indian affiliates were remunerated at arm's length on a cost-plus basis, so no income could be attributed to any alleged PE; consistent with the SRCL and RGA International rulings, the mere presence of associated enterprises in India does not by itself create a business connection or PE. [***Swiss Re Asia Pte. Ltd.* v. *Dy. CIT (International Taxation)* [2024] 159 taxmann.com 34 (Mumbai - Trib.), Swiss *Re Asia Pte Ltd.* v. *Dy. CIT (International Taxation)* [IT Appeal No. 1995/Mum/2022, dated 25-9-2025], *Swiss Re Asia Pte Ltd.* v. *Dy. CIT (International Taxation)* [IT Appeal Nos. 3178 & 4092 (MUM.) of 2023, dated 20-11-2025] *followed]***

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2. **Imax Theatre Services Ltd. v. ACIT (IT) [2026] 186 taxmann.com 526 (Delhi - Trib.) [13-05-2026] - I.T APPEAL NO. 1890 (DEL) OF 2025 - [TS-688-ITAT-2026(DEL)] - [AY 2022-23]**

   Where assessee, a Canadian company engaged in providing maintenance services for IMAX theatre systems globally including India, rendered services through remote access arrangements with support from an Australian vendor, and none of essential tests under Article 5(1) of India-Canada DTAA, namely place of business, disposal, permanence and business activity tests, were satisfied, Assessing Officer was unjustified in alleging existence of a Fixed Place PE in India [India – Canada DTAA]

   Assessee, a Canadian company, was engaged in providing maintenance services for IMAX Theatre Systems globally, including India. It had a separate agreement with an Australian vendor to provide maintenance services to its customers in India as well as other globally placed entities. AO alleged that assessee had a Fixed Place PE in India because maintenance services were provided through remote access to customers' theatre systems. Tribunal held that since none of tests provided for indicating existence of a fixed place PE i.e. place of business test, disposal test, permanence test and business activity test were found to be fulfilled, there was no fixed place PE under Article 5(1) of DTAA.

3. **Imax Theatre Services Ltd. v. ACIT (IT) [2026] 186 taxmann.com 526 (Delhi - Trib.) [13-05-2026] - I.T APPEAL NO. 1890 (DEL) OF 2025 – [TS-688-ITAT-2026(DEL)] - [AY 2022-23]**

   Where assessee, a Canadian company provided maintenance services for IMAX Theatre Systems in India through an Australian vendor, since on-site visits by individual in India aggregated to only 67 days and evidence showed said individual was employed by Australian vendor and not assessee, threshold prescribed under Article 5(2)(l) of India-Canada DTAA was not met and thus, no Service PE existed in India [India – Canada DTAA]

   Assessee, a Canadian company, was engaged in providing maintenance services for IMAX Theatre Systems globally, including India. It had a separate agreement with an Australian vendor to provide maintenance services to its customers in India as well as other globally placed entities. AO alleged a Service PE in India under Article 5(2)(l) on basis that an individual, SS visiting customer sites in India was an employee/dependent agent of assessee. Accordingly, AO attributed profits from maintenance services and sale of related goods to such alleged PE. It was noted that total period of visit by SS on specific sites of theatre systems was exactly 67 days. Furthermore, an affidavit was filed by Australian vendor explicitly mentioning employment status of said Shri Sunil Kumar. Tribunal held that concept of virtual PE on basis of services provided remotely could not be a valid construct for purposes of determining a service PE. Further it held that LinkedIn profile of SS could not be deciding factor in determining employment status. Thus, Since threshold of 90 days as per DTAA could not be crossed, there was no service PE in existence. ***[CIT, International Taxation v. Clifford Chance Pte Ltd [2025] 181 taxmann.com 254/ [2026] 485 ITR 407, Ernst and young (EMEIA) Services Ltd.***

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v. Asstt. CIT, International Taxation [2026]184 taxmann.com 671 (Delhi - Trib.) - followed]

<u>Service PE determination to be based on unique solar days and not cumulative man-days</u>

1. **ACIT** v. **Degolyer and Macnaughton Corporation [2026] 186 taxmann.com 118 (Delhi - Trib.) [30-04-2026] - IT Appeal No. 7615 (Delhi) of 2025 – [AY 2020-21]**

Where assessee, a US company providing petroleum consulting services in India, had employee presence for only 72 unique solar days, computation for determining Service PE under Article 5(2)(l) of India-USA DTAA was to be based on unique solar days and not cumulative man-days, and since 90-day threshold was not met, assessee did not have Service PE in India and receipts were not taxable under section 44BB. [India-USA DTAA]

Assessee, a USA incorporated non-resident, provided petroleum consulting services to ONGC and OIL under contracts. The AO held that assessee had a Service PE in India under Article 5(2)(l) of India-USA DTAA and taxed receipts under section 44BB. On appeal, CIT(A) found that employees' presence in India was only 72 unique solar days though cumulative man-days were 181 and held that Article 5(2)(l) requires computation on basis of unique solar days and not cumulative man-days. He further concluded that no Service PE arose and receipts were not taxable under section 44BB and deleted addition. The Tribunal noted the CIT(A) had followed the order of the Tribunal in Clifford Chance PTE Ltd. while deleting the addition. The said order of the Tribunal in Clifford Chance PTE Ltd. had been subsequently confirmed by the Jurisdictional High Court in CIT(IT) v. Clifford Chance Pte Ltd. ***[CIT, International Taxation v. Clifford Chance Pte Ltd [2025] 181 taxmann.com 254/[2026] 485 ITR 407/308Taxman 431 (Delhi)confirming Clifford Chance PTE Ltd. v. ACIT [2024] 160 taxmann.com 424 (Delhi -Trib.) followed]***

<u>No tangible material to believe existence of DAPE/Fixed place PE - reopening notice quashed</u>

1. **ACIT *v.* GE Steam Power Systems [2026] 186 taxmann.com 283 (SC) [27-04-2026] - SLP Appeal (C) Diary No. 15504 OF 2026**

SLP dismissed against order of High Court that where Assessing Officer 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 Assessing Officer clearly indicated that there was no tangible material for forming a belief that assessee had a DAPE or a Fixed Place PE in India during relevant assessment years, reopening notice issued against assessee was unjustified.

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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 Dependent Agent PE(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. The 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 DAPE or a Fixed Place PE in India during relevant assessment years. It held that, on facts, reopening notice issued against assessee was unjustified and same was to be set aside. The Supreme court opined the same and decided that no interference is to be made with impugned order of High Court and SLP was dismissed. [***SLP dismissed against GE Steam Power Systems* v. *Assistant Commissioner of Income-tax* [2026] 185taxmann.com 914 (Delhi)]**

2. **ACIT *v.* GE Steam Power Systems [2026] 186 taxmann.com 705 (SC) [15-05-2026] - SLP (CIVIL) DIARY NO. 16851 OF 2026 – [AYs 2013-14 to 2017-18]**

SLP dismissed against order of High Court that where Assessing Officer 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 Assessing Officer clearly indicated that there was no tangible material for forming a belief that assessee had a DAPE or a Fixed Place PE in India during relevant assessment years, reopening notice issued against assessee was unjustified.

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. AO 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. It was noted that on 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. Jurisdictional High Court held that, on facts, reopening notice issued against assessee was unjustified and same was to be set aside. Supreme Court held that no case for interference was made with impugned order of High Court, thus SLP was dismissed. ***[SLP dismissed against Ge Steam Power Systems v. Assistant Commissioner of Income-tax [2026] 185taxmann.com 914 (Delhi)]***

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II. BUISNESS PROFITS

Profits from offshore supply - not taxable in India

1. Siemens Aktiengesellschaft v. DCIT(IT) [2026] 185 taxmann.com 985 (Mumbai - Trib.) [29-04-2026] - IT Appeal Nos. 2159 and 5593 (Mum.) of 2017, 7322 (Mum.) of 2018, 7192 (Mum.) of 2019 and 1253 (Mum.) of 2021 - [AY 2012-13 to 2016-17]

Where assessee, a German based company, earned profits from offshore supply of equipment under DMRC contract, in view of Protocol to Article 7 of India-Germany DTAA, such profits were not taxable in India [India-Germany DTAA]

Assessee, a German based company, entered into a consortium arrangement with SL, India, for execution of DMRC project. The Assessee's scope covered offshore supply of equipment and offshore services, while SL undertook onshore supply and onshore services. Assessee asserted that offshore supplies were completed outside India and that no PE existed for such offshore supplies thus, profits from direct offshore supplies could not be attributed to such PE. AO treated arrangement as a single, indivisible contract with closely connected offshore and onshore elements and held that entire contract income, including offshore supplies, was taxable in India. It was noted that in case similar to assessee, Supreme Court held that income from such offshore supply of goods was not liable to tax in India under the Act. Further as per clause 1(a) of Protocol to Article 7 of India-Germany DTAA, in event of direct supply of equipment by head office or any other enterprise outside India, profits from same would not be attributable to PE of same entity in India and thus, were not chargeable to tax in India. ***[Ishikawajma-Harima Heavy Industries Ltd. v. DIT [2007] 158 Taxman 259/288 ITR 408 (SC) followed, Vodafone International Holdings B.V. v. Union of India [2012] 17 taxmann.com 202/204 Taxman 408/341ITR 1 (SC) distinguished]***

Arm's Length Remuneration to DAPE Bars Further Profit Attribution

1. FedEx Express International B.V. v. ACIT(IT) [2026] 186 taxmann.com 1229 (Mumbai - Trib.) [29-05-2026] - IT APPEAL NO. 3282 (MUM) OF 2023 - [AY 2020-21]

Where assessee, a Netherlands-based company, provided transportation services to its Indian group entities which constituted agency PEs, and transactions between assessee and these entities were found to be at arm's length, no further profit could be attributed to PEs, making additions made by Assessing Officer unsustainable. [India–Netherlands DTAA]

Assessee, a non-resident company incorporated in Netherlands, was engaged in providing global transportation and delivery services. It entered into agreements with two Indian group entities, FETSCS and TNT India, to provide outbound and inbound transportation services, for which it received international transport fees. Assessee filed a Nil return claiming refund and did not offer to tax receipts from Indian entities, contending these were business profits under Article 7 of India–

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Netherlands DTAA not taxable in India due to absence of a PE. Alternatively, even if an agency PE existed, no further profit was attributable since Indian transactions were at arm's length. AO, after examining agreements, held that FETSCS and TNT India constituted a DAPE under Article 5(5) of DTAA and attributed profits to PE by allocating 55% of outbound revenues and 22.5% of inbound revenues. Tribunal ruled that since transactions between Indian group entities, which were DAPEs of assessee, and assessee had been found to be at arm's length, no further profit could be attributed to PEs and, accordingly, deleted the addition. ***[Fedex Express International B.V. v. Asstt. CIT (International Taxation) [2023] 153 taxmann.com 319 (Mumbai - Trib.) Followed]***

III. DIVIDENDS

Refund of DDT more than rate under DTAA

1. JCIT v. Colorcon Asia (P.) Ltd [2026] 186 taxmann.com 774 (SC) [13-05-2026] - SLP APPEAL (C) NO.7546 OF 2026 – [AY 2016-17 to 2018-19]

Where assessee, an Indian subsidiary, paid dividend to its UK parent company and High Court by impugned order held that such payment was in nature of dividend covered under definition of 'dividend' under article 11 of India-UK DTAA and section 115-O, thus, assessee was entitled to restrict tax rate on dividends distributed by it to its UK parent company to 10 per cent under article 11,since correctness of said ruling was doubted in another case by coordinate bench and referred to larger bench, application was to be admitted. [India – UK DTAA]

Assessee-company, a wholly owned subsidiary of a UK company, paid dividend to its UK parent company and discharged DDT under section 115-O. Since cumulative dividend payout exceeded Rs. 100 crores, assessee sought an advance ruling to restrict tax rate on dividends distributed or distributable to its UK parent company to 10 per cent under article 11 of India-UK DTAA. BFAR held that DDT paid by assessee was outside scope of DTAA and rejected assessee's claim. The jurisdictional High Court by impugned order held that DDT is a tax on dividend income of shareholder and, being an additional income-tax, falls within ambit of article 2 of DTAA and Entry 82 of Union List. High Court further held that dividend paid by assessee to its UK parent company was covered under definition of 'dividend' under article 11(3) and, once article 11 stood attracted, India as source State could tax such dividend only subject to restriction under article 11(2) and thus, in view of section 90(2), provisions of DTAA, being more beneficial, were required to prevail over section 115-O and levy of DDT in excess of 10 per cent was contrary to DTAA. It was noted that correctness of impugned order of High Court had already been doubted by coordinate bench in *Foseco India Ltd. Company v. ACIT, in IT Appeal no. 1123 of 2025*, and referred to larger bench. The supreme court considering wider ramifications of issue and pendency of similar matters across High Courts, intervention applications were admitted. It was held that similar proceedings were to be **stayed** till issue was authoritatively settled. ***[SLP granted against Colorcon Asia (P.) Ltd. v. Joint Commissioner of Income-tax [2025] 181 taxmann.com301 (Bombay)/[2026] 486 ITR 476 (Bombay), Foseco India***

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Ltd. Company v. Asstt. CIT [2026] 185 taxmann.com 1015 (Bombay) (Para 2) - Followed]

2. **Foseco India Ltd. Company v. ACIT [2026] 185 taxmann.com 1015 (Bombay) [27-04-2026] - INCOME TAX APPEAL NOS. 1029, 1049, 1055, 1080, 1086, 1088 & 1123 OF 2025 - [TS-601-HC-2026(BOM)]**

Where an Indian company distributing dividends to UK-resident shareholders claimed refund of Dividend Distribution Tax (DDT) paid in excess of DTAA rate, but revenue rejected claim on ground that DDT is an additional tax on company not governed by India–UK DTAA, and there existed conflicting High Court decisions on whether DDT is a tax on company or, in substance, on shareholders' dividend income attracting DTAA benefit, matter was required to be referred to Larger Bench for resolution. [India–UK DTAA]

Assessee-company distributed dividend to its UK-resident shareholders and paid DDT under section 115-O, the assessee claimed that under article 11 of India–UK tax treaty. Since dividend to UK-resident beneficial owners was taxable at a lower rate, assessee company sought refund of excess. Revenue rejected the request for refund holding that DDT under section 115-O was an additional income-tax on domestic company, that article 11 of DTAA dealt with taxation of dividend income and not distribution of profits. Once DDT was paid, dividend was exempt in shareholders' hands under section 10(34); hence DTAA provisions were inapplicable to DDT and no refund was due. Tribunal dismissed assessee's appeals for relevant assessment years, following special bench view in ***Dy. CIT v. Total Oil India (P.) Ltd. [2023] 149 taxmann.com 332/ (ITA No. 6997/Mum/2019, dated 20-04-2023)*** that DDT under section 115-O was an additional income tax on distributing company and not governed by DTAA rates applicable to shareholders' dividend income. On further appeal to High Court, it was noted that there was a difference of opinion between Division Benches of High Court on whether DDT under section 115-O was an additional income-tax on distributing domestic company and therefore not governed by India–UK DTAA rate, or whether it was, in substance, a tax on dividend income of non-resident shareholders so that beneficial rate under article 11 of India–UK DTAA applied. The reference turns on whether DDT under section 115-O is a tax on the company or the shareholder. ***Godrej & Boyce*** (as confirmed by the Supreme Court) ***[247 Taxman 361 (SC) /394 ITR 449]*** held it is an additional income-tax on a *component of the company's profits*, paid by the company in discharge of its own liability and not on behalf of the shareholder, so Article 11 of the India–UK DTAA, dealing only with tax on dividend income, has no application and no refund is due. ***Colorcon Asia [2025] 181 taxmann.com 301/[2026] 486 ITR 476 (Bombay)]*** took the contrary view that DDT is, in substance, a tax on the shareholder's *dividend income* with only the incidence of collection shifted to the company for administrative convenience, bringing it within section 2(43), section 4 and hence section 90 and the DTAA, so the beneficial treaty rate applies regardless of who pays. In light of the aforesaid conflicting views, matter was referred to Larger Bench.

3. **Metal One Corporation India (P.) Ltd. *v.* Dy CIT [2026] 186 taxmann.com 315 (Delhi - Trib.) [08-05-2026] - IT APPEAL NOS. 4710 AND 4711 (DEL) OF 2025 - [AYs 2017-18 AND 2018-19]**

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Where assessee-company distributed dividends to its non-resident shareholders resident in Japan and Thailand and shareholders were beneficial owners of dividend income eligible for DTAA benefits, DDT payable undersection 115-O was to be restricted to 10 per cent as prescribed under the DTAA [India–Japan DTAA and India–Thailand DTAA]

Assessee, a private limited company engaged in import, export and trading of steel and allied products distributed dividends to its two non-resident shareholders resident in Japan and Thailand and paid DDT at effective rate of 17.304 per cent under section 115-O. It contended that, by virtue of India–Japan and India–Thailand DTAAs, tax on such dividends was to be restricted to 10 per cent and sought refund of excess. Tribunal held that since DDT is a levy on dividend distributed by payer company, being an additional tax covered within 'Tax' as defined in Section 2(43) and, being chargeable as per Section 4 which is subject to Section 90(2) and is squarely covered under Article 11, thereby triggering restriction in rate of tax under Article 11(2). Thus, DDT payable under section 115-O on dividends distributed by assessee to its non-resident shareholders resident in Japan and Thailand was restricted to rate prescribed under applicable India–Japan DTAA and India–Thailand DTAA. ***[Colorcon Asia (P.) Ltd. v. Jt. CIT [2025] 181 taxmann.com 301/ [2026] 486 ITR 476 (Bombay) - followed]***

IV. ROYALTY

Software

1. **CIT *v.* Engineering Analysis Centre of Excellence (P.) Ltd [2026] 186 taxmann.com 775 (SC) [11-05-2026] - REVIEW PETITION (C) NOS. 1422-1497/2021 - [TS-708-SC-2026]**

   Review petition dismissed against order of Supreme Court that amount paid by resident Indian end-user/distributors to non-resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreement, was not payment of royalty for use of copyright in computer software, and thus, same did not give rise to any income taxable in India [India – USA/Singapore DTAA]

   Supreme Court by impugned order held that licence for use of a product under an EULA (End-user licence agreement) cannot be construed as licence spoken of in section 30 of Copyright Act, as such EULA only imposes restrictive conditions upon end-user and does not part with any interest relatable to any rights mentioned in section 14(a) and 14(b) of Copyright Act. Thus, amounts paid by resident Indian end-users/distributions to non-resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreements, was not payment of royalty for use of copyright in computer software, and that same did not give rise to any income taxable in India, as a result of which persons referred to in section 195 of Income-tax Act were not liable to deduct any TDS under section 195.Revenue filed review petitions seeking reconsideration of impugned order. The Supreme court ruled that earlier review petition *Commissioner of Income-tax v. GE India Technology Centre (P.) Ltd.* against same judgment had

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already been dismissed on merits and it would not be proper to reopen issue again and accordingly present review petitions were also dismissed. ***[Engineering Analysis Centre of Excellence (P.) Ltd. v. Commissioner of Income-tax [2021] 125 taxmann.com42 (SC)/[2021] 281 Taxman 19 (SC)/[2021] 432 ITR 471 (SC) – Affirmed, Commissioner of Income-tax v. GE India Technology Centre (P.) Ltd. [2024] 161 taxmann.com 707(SC)/[2024] 469 ITR 389 (SC) – Followed]***

2. **Siemens Aktiengesellschaft *v.* DyCIT (IT) [2026] 185 taxmann.com 985 (Mumbai - Trib.) [29-04-2026] - IT Appeal Nos. 2159 and 5593 (Mum.) of 2017, 7322 (Mum.) of 2018, 7192 (Mum.) of 2019 and 1253 (Mum.) of 2021 - [AY 2012-13 to 2016-17]**

   Where assessee, German based company, received consideration from supply or licensing of standard software, whether bundled with hardware or supplied separately, such receipts were not taxable as royalty under Article 12 of India-Germany DTAA [India-Germany DTAA]

   Assessee, a German based company, supplied standard off shelf software to Indian customers under non-exclusive, non-transferable end-user licences with strict usage restrictions, the AO characterized receipts from software as royalty. The Tribunal followed the decision of the co-ordinate bench in the assessee's own case for earlier assessment year wherein it was held that consideration received from supply/licensing of standard software, whether bundled with hardware or supplied separately, was not 'royalty'. ***[Siemens Aktiengesellschaft v. Dy. DIT (Int. Tax.) [IT Appeal Nos. 2153 & 2179 (Mum.) of 2014, dated 7-6-2024] (para 6) followed]***

Acquisition of Live rights

1. **ACIT** v. **Lex Sportel Vision (P.) Ltd. [2026] 186 taxmann.com 58 (Delhi - Trib.) [27-04-2026] - IT Appeal No. 7775 (Delhi) of 2025 [AY 2018-19]**

   Where assessee made payments to overseas rightsholders for 'Live Rights' without TDS and such payments were held not to be royalty as they were neither for use of copyright nor of any process, and jurisdictional High Court also affirmed non-taxability of such rights, disallowance under section 40(a)(i) was not sustainable

   Assessee made payments to overseas rights holders for acquisition of 'Live Rights' without deduction of tax at source, AO treated payments as royalty under section 9(1)(vi) and disallowed expenditure under section 40(a)(i). On appeal the CIT(A) deleted disallowance holding that payments were neither for use of copyright nor for use of any 'process' and hence not royalty, and that consequently section 195 was not attracted. Since the jurisdictional High Court had also held that such 'Live Rights' payments were not taxable as royalty, the Tribunal upheld the order of CIT(A) deleting the disallowance. ***[CIT- International Taxation-3 v. Sri Lanka Cricket [2026] 182 taxmann.com 537/309 Taxman 200 (Delhi)] (followed)]***

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Bandwidth services

1. **Cognizant Technology, Solutions India (P.) Ltd. *v.* ACIT [2026] 186 taxmann.com 161 (Madras) [30-04-2026] - T.C. NO. 597 OF 2008 – [AY 2002-03]**

   Where assessee made payment to a non-resident for international private leased circuits or internet bandwidth, such payment did not constitute royalty under section 9 and, therefore there was no requirement of tax deduction at source under section 195.

   The High Court held that the payment for International Private Leased Circuits/internet bandwidth made to a non-resident would not constitute 'royalty' under Section 9 so as to mandate deduction of tax at source under Section 195 and attract disallowance under Section 40(a)(i) for non-deduction. ***[[Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42 (SC)/[2021] 432 ITR 471 (SC), Cognizant Technology Solutions India (P.) Ltd. v.CIT [2025] 180 taxmann.com 822 (Madras)- followed, Orders of Income Tax Appellate Tribunal Chennai in I.T.A. No.1536/Mds/2009 andI.T.A. No.460/Mds/2010, dated 09.06.2014 - set aside]***

2. **Cognizant Technology Solutions India (P.) Ltd. *v.* ITO (TDS)/DyCIT [2026] 186 taxmann.com 162 (Madras) [30-04-2026] - TAX CASE (APPEALS) NOS. 651 TO 653 OF 2016 – [AY 2002-03 to 2003-04]**

   Where assessee made remittances towards IPLC/bandwidth services to a US company without deduction of tax at source, since Explanations 4 to 6 to section 9(1)(vi) inserted by Finance Act, 2012 were prospective in operation and payments were not chargeable to tax in India, disallowance undersection 40(a)(i) and action under sections 201(1) and 201(1A) could not be sustained.

   Assessee was engaged in business of software exports. It remitted certain amount to a US company towards International Private Leased Circuit (IPLC)/bandwidth services without deducting tax at source. The AO treated remittances as royalty for use/right to use equipment under section 9(1)(vi) and held assessee to be in default under sections 201(1) and 201(1A). On appeal, CIT(A) held that payments were not royalty and, in absence of permanent establishment of recipient in India, there was no obligation to deduct tax under section 195. On further appeal, Tribunal reversed order of CIT(A). Tribunal held that Explanations 4 to 6 to section 9(1)(vi) inserted by Finance Act, 2012 with effect from 1-4-2012 were not clarificatory in nature but expanded definition of term 'royalty' prospectively. Since remittance to non-resident company was not chargeable to tax in India, need to deduct tax at source under section 195 did not arise and consequently, disallowance under section 40(a)(i)and action under section 201 was not sustained. ***[Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42 (SC)/[2021] 432 ITR 471 (SC), Cognizant Technology Solutions India (P.) Ltd. v.CIT [2025] 180 taxmann.com 822 (Madras)- followed, Income-tax Officer v. Cognizant Technology Solutions India (P.) Ltd. [2014] 47 taxmann.com 409/33 ITR(T)382***

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(Chennai - Trib.), Orders of Income Tax Appellate Tribunal Chennai in I.T.A. No.1536/Mds/2009 andI.T.A. No.460/Mds/2010, dated 09.06.2014 - set aside]

Aviation rentals - not taxable as royalty

1. **Sky high Xxxiv Leasing Company Ltd. *v.* ACIT (IT) [2026] 186 taxmann.com 231 (Mumbai - Trib.) [30-04-2026] - IT APPEAL NOS. 1308, 1327, 1328, 1348, 1349, 1350, 1351, 1805, 1859 (MUM.) OF 2025 – [AY 2022-23]**

   Where assessee, an Irish-resident aircraft leasing company, leased an aircraft to an Indian airline and received lease rentals, said lease rentals were not taxable in India in terms with article 8 of India-Ireland DTAA, as such lease rentals were taxable in country of residence of recipient [India-Ireland DTAA]

   Assessee, an Irish-resident aircraft leasing company, leased an aircraft on a dry operating lease to an Indian airline and received lease rentals of about Rs. 27.51 crores. It filed a NIL return in India on basis that article 8(1) of India–Ireland DTAA allocates exclusive taxing rights to residence State for profits from rental of aircraft in international traffic. On scrutiny, AO rejected article 8 claim, invoked MLI Principal Purpose Test to deny treaty benefits, and taxed lease rentals in India as royalty under section 9(1)(vi) read with article 12(3). The DRP agreed and additionally held that aircraft constituted a fixed place PE in India, providing an alternative basis to tax income as business profits. Tribunal held that lease rentals were not taxable in India in terms with article 8 of India-Ireland DTAA, as such lease rentals were taxable in country of residence of recipient, which in instant case was Ireland. ***[Sky High Appeal XLIII Leasing Company Ltd. v. Asstt. CIT (Int. Tax.) [2025] 177 taxmann.com 579 (Mumbai- Trib.), Kosi Aviation Leasing Ltd. v. Asstt. CIT (Int. Tax.) [2025] 179 taxmann.com 166 (Delhi -Trib.)-followed]***

Intellectual Property Licence

1. **Amphenol Fci Asia Pte. Ltd. v. ACIT [2026] 186 taxmann.com 621 (Delhi - Trib.) [13-05-2026] - IT APPEAL NOS.1851 (DELHI) OF 2022 AND OTHERS - [TS-703-ITAT-2026(DEL)] - [AYs 2018-19 TO 2022-23]**

   Where assessee, a Singapore-based company, licensed intellectual property to Indian AEs and claimed that royalty attributable to export sales was exempt under section 9(1)(vi)(b) on ground that export contracts and sales were concluded outside India with foreign payers, since situs of income was relevant for determining taxability and no factual findings existed regarding place of execution of contracts, matter required fresh examination regarding location of contract execution and taxation thereof. [India - Singapore DTAA]

   Assessee, a Singapore company, licensed intellectual property to its Indian AEs engaged in manufacturing in India and earned royalty. It offered royalty attributable to domestic sales to tax in India. However, royalty linked to export sales was claimed as exempt under section 9(1)(vi)(b) claiming that export contracts and sales were concluded outside India and payer was outside India. AO opined that royalty

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arose from intellectual property, patents and know-how used by Indian AEs for manufacturing products in India. AO, thus, held that royalty received on export sales was taxable in India on ground that foreign buyers could only be treated as source of receipts and not source of income, as actual source of income was manufacturing activity carried on in India. Tribunal held that situs of income, as against receipts, could be the deciding factor in case any taxability under section 9(1) had to be determined. Since there was absence of fact finding by AO regarding place of signing of contracts, both for sales within India and sales outside, matter was remanded back to AO for examining to what extent contracts had been signed outside or inside India and where such 'exempt' royalty income was taxed. **[CIT v. Aktiengesellschaft Kuhnle Kopp and Kausch W. Germany by BHEL [2002] 125 Taxman928/[2003] 262 ITR 513 (Madras), CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 (SC) Distinguished, Amphenol FCI Asia Pte. Ltd. v. ACIT IT Appeal No. 9659 (Delhi) of 2019, dated 21-11-2023 Followed]**

Note: Also see case no.2 under Fees for Technical Services – Management Support Services

Taxable on receipt basis - not accrual basis

1. **Siemens Aktiengesellschaft *v.* DyCIT (IT) [2026] 185 taxmann.com 985 (Mumbai - Trib.) [29-04-2026] - IT Appeal Nos. 2159 and 5593 (Mum.) of 2017, 7322 (Mum.) of 2018, 7192 (Mum.) of 2019 and 1253 (Mum.) of 2021 [AY 2012-13 to 2016-17]**

   Where assessee, a German based company, received income on account of royalty and FTS, such income would be taxable on receipt basis as per India-Germany DTAA [India-Germany DTAA]

   Assessee, a Germany based company, had taxable income in India, the AO taxed royalty and FTS on accrual basis, whereas assessee had offered such income on receipt basis in line with India-Germany DTAA. In assessee's own case for earlier assessment year, the Tribunal held that royalty and FTS income should be taxable only upon payment i.e. on receipt basis. Since facts in year under consideration were identical, the Tribunal held that findings and directions contained in the aforesaid order would be squarely applicable to present assessment year and accordingly directed the AO to give effect to same. ***[Siemens Aktiengesellschaft v. Dy. DIT (Int. Tax.) [IT Appeal Nos. 2153 & 2179 (Mum.) of 2014, dated 7-6-2024] (para 5) followed]***

V. FEES FOR TECHNICAL SERVICES

Management / Support services

1. **ITO(IT)** v. **Aecom Technical Services Inc. [2026] 186 taxmann.com 348 (SC) [04-05-2026] - SLP (CIVIL) Diary No(s). 22401 of 2026**

   SLP dismissed against order of High Court that where assessee, a US company, provided support services to Indian AEs, cross charges received

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by assessee from its AEs were not taxable as FTS/FIS or royalty under India-US DTAA, as services did not make available technical knowledge nor involved transfer of copyright. [India -US DTAA]

Assessee, a company incorporated in USA, was engaged in business of design and consultancy services, construction management and infrastructure development. It had entered into agreements with its Indian associate enterprises (AEs). In terms of said agreements, assessee provided management and governance supports functions in area of legal, tax, treasury, finance, information technology, human resources, enterprise risk management, etc. Assessee filed application under section 197 seeking 'NIL' withholding tax certificate in respect of cross charges received from its AEs for services rendered by it. AO rejected said application and held that charges paid to assessee by its AEs were taxable as fees for technical services (FTS) and fees for included services (FIS). The High Court noted that assessee rendered wide range of services to its AEs but none of services could be considered as 'included services' within meaning of article 12 of India-US DTAA as same was not ancillary and subsidiary to application or enjoyment of right, property or information for which assessee received royalty as covered under article 12(3) of India-US DTAA. Further, services rendered by assessee did not make available technical knowledge, experience, skill, know-how, or processes to AEs. On appeal, the High Court held that since service provided did not confer any right in favour of recipient in respect of knowledge, experience, skill or know-how, condition that services 'make available' such technical knowledge, know-how, skill, or process so as to fall with sweep of FIS would not be satisfied. Further, given fact that AEs did not acquire any copyright in software, cross charges paid by them could not be construed as royalties within scope of article 12(3) of India-US DTAA. Therefore, order u/s 197 was set aside, and AO was to be directed to issue necessary certificate or 'NIL' withholding Tax Certificate in respect of cross-cost charges as received by assessee from its AEs. Since no case for interference was made with impugned order of High Court, SLP was dismissed. ***[SLP dismissed against Aecom Technical Services Inc. v. Income-tax Officer, IT [2025] 174 taxmann.com 1173(Delhi)/[2025] 305 Taxman 234 (Delhi)/[2026] 485 ITR 357 (Delhi)]***

2. **Amphenol Fci Asia Pte. Ltd. v. ACIT [2026] 186 taxmann.com 621 (Delhi - Trib.) [13-05-2026] - IT APPEAL NOS.1851 (DELHI) OF 2022 AND OTHERS - [TS-703-ITAT-2026(DEL)] - [AYs 2018-19 TO 2022-23]**

Where assessee, a Singapore based company, provided management support services to Indian AEs and received management service fees, said receipts were not taxable as FTS under Article 12, thus, Assessing Officer's order treating fees as taxable was to be set aside [India - Singapore DTAA]

Assessee, a Singapore based company, licensed intellectual property to its Indian AEs engaged in manufacturing in India and earned royalty. It also provided management support services to its Indian AEs and received management service fee. Assessee claimed that said fee was not taxable in India. However, AO treated management service fee as taxable FTS under Article 12(4)(a)/(b). The Tribunal in assessee's own case for earlier assessment year on similar issue held that management service fee was not taxable in India as FTS under Article 12. Further,

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the Tribunal kept the two contracts (w.r.t IP licence & management support) conceptually separate and thus the FTS-by-association argument under Article 12(4)(a) failed because the management services had no nexus with the IP licence, ran independently, and the licence's own ancillary-services component was already remunerated within the royalty. Thus, impugned order passed by AO was set aside ***[CIT v. Aktiengesellschaft Kuhnle Kopp and Kausch W. Germany by BHEL [2002] 125 Taxman928/ [2003] 262 ITR 513 (Madras), CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 (SC) Distinguished, Amphenol FCI Asia Pte. Ltd. v. ACIT IT Appeal No. 9659 (Delhi) of 2019, dated 21-11-2023 Followed]***

Note: Also see case no.1 under Royalty - Intellectual Property Licence

3. **Swiss Re Asia Pte Ltd.** v. **DyCIT (IT) [2026] 186 taxmann.com 60 (Mumbai - Trib.) [27-04-2026] - IT Appeal No. 8808 (Mum) of 2025 - [AY 2023-24]**

   Where assessee rendered support services to Indian affiliates without transferring any technology, process or know-how nor enabling Indian entities to perform such functions independently, income received did not qualify as FTS under India–Singapore treaty and was also not taxable as business income in the absence of permanent establishment. [India – Singapore DTAA]

   Assessee, a non-resident, rendered support services to SRIB and to SRGBS and received certain sum from them. The AO treated above consideration as taxable in India as Fees for Technical Services (FTS) under article 12 of India–Singapore DTAA. Tribunal held that since the services did not equip Indian entities to perform such functions by themselves without assessee's ongoing involvement and AO had not identified any specific technology, process or know how that was transferred/made available nor had he shown that SRIB or SRGBS could dispense with assessee's services and continue to apply such technology independently, service income received by assessee from SRIB and SRGBS did not qualify as FTS under article 12 of India-Singapore DTAA and was also not taxable as business income in absence of any PE.

Reimbursement of salary cost - not FTS

1. **Honda R & D Company Ltd. v. ACIT (IT) [2026] 186 taxmann.com 1061 (Delhi - Trib.) [27-05-2026] - IT Appeal Nos. 548, 912 & 913 (Delhi) of 2025 - [TS-777-ITAT-2026(DEL)] - [AYs 2018-19 and 2022-23]**

   Where assessee, a Japanese company, received reimbursement of salary cost of employees seconded to its Indian affiliate under a secondment agreement, and such employees worked under control and supervision of Indian company with salary determined and paid by Indian company, reimbursement received by assessee on cost-to-cost basis was not in nature of FTS and, thus, was not taxable in India[India – Japan DTAA]

   Assessee, a company incorporated in Japan, was engaged in research and development of Honda products. It received about Rs. 21.53 crores from its Indian group company during relevant year towards reimbursement of salary cost of

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seconded employees on cost-to-cost basis without any markup under a Basic Secondment Agreement. AO treated reimbursement of salary cost of seconded employees as FTS. Tribunal noted that during period of secondment, seconded employees were placed under sole control, direction and supervision of Indian company and were subject to all rules, regulations, policies, guidelines and other practices applicable to employees of Indian company. Salary of seconded employees was determined and paid by Indian company. Tribunal ruled that since nothing in agreement or any other document on record showed that payment received by assessee from its Indian AE was in nature of FTS, impugned addition made by Assessing Officer was deleted.

No TDS on Consultancy Payments where there is no (a) FTS Article or (b) PE

1. **Chowringhee Residency (P.) Ltd. *v.* ITO(IT) [2026] 186 taxmann.com 942 (Kolkata - Trib.) [20-05-2026] - IT Appeal No. 2642 (KOL) OF 2025 - [TS-735-ITAT-2026(Kol)] - [AY 2018-19]**

   Where assessee remitted payments to a UAE company for advisory and consultative construction services without transfer of technical know-how and UAE DTAA had no separate FTS provision, such income could not be taxed as FTS by applying domestic law, and in absence of a PE in India, remittances were not taxable and assessee could not be treated as assessee in default under section 201.[India – UAE DTAA]

   Assessee, engaged in real estate development, entered into a Technical Consultancy Agreement with Arabian Construction Co. WLL (UAE) for advisory and consultative services related to construction of a residential tower. During FY 2017-18, assessee made remittances to UAE company without deducting tax at source, treating sums as business profits under Article 7 of India-UAE DTAA. AO treated remittances as FTS taxable in India under section 9(1)(vii)(b), held tax was deductible at source under section 195 at 20 per cent, and treated assessee as an assessee in default under section 201(1) with consequential interest under section 201(1A). Tribunal noted that services provided were advisory and consultative only, with no transfer of technical know-how, processes, designs, or methodologies to assessee. Tribunal opined that since DTAA between India and UAE did not contain any specific article dealing with FTS, such income could not be brought to tax by resorting to domestic law provisions of section 9(1)(vii) and since services did not result in transfer of technical knowledge or skill enabling independent application, consideration could not be treated as FTS. Further it was ruled that since foreign company did not have any Permanent Establishment (PE) in India, remittances were not taxable in India and assessee could not be treated as an assessee in default under section 201.

Taxable on receipt basis - not accrual basis

1. **Siemens Aktiengesellschaft *v.* DyCIT (IT) [2026] 185 taxmann.com 985 (Mumbai - Trib.) [29-04-2026] - IT Appeal Nos. 2159 and 5593 (Mum.) of 2017, 7322 (Mum.) of 2018, 7192 (Mum.) of 2019 and 1253 (Mum.) of 2021 [AY 2012-13 to 2016-17]**

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Where assessee, a German based company, received income on account of royalty and FTS, such income would be taxable on receipt basis as per India-Germany DTAA [India-Germany DTAA]

Please refer to the case discussed under the heading **"Royalty - Taxable on Receipt Basis and Not on Accrual Basis."**

VI. CAPITAL GAINS

Carry forward of losses - not barred for treaty-exempt capital gains

1. **Alibaba.com Singapore E Commerce (P.) Ltd. vs. Dy CIT [2026] 186 taxmann.com 711 (Mumbai - Trib.) [11-05-2026] - IT Appeal No. 2070 (MUM) of 2025 - [TS-680-ITAT-2026(Mum)] - [AY 2022-23]**

Where assessee, a Singapore tax resident, earned exempt long-term capital gains on sale of shares acquired before 01.04.2017 and also incurred long-term capital losses on other shares, assessee was justified in claiming exemption under Article 13(4A) of India-Singapore DTAA in respect of long-term capital gains arising from transfer of shares acquired prior to 01.04.2017 and simultaneously claiming carry forward/set off of long-term capital loss under provisions of Act in respect of other transactions.[India-Singapore DTAA]

Assessee, a Singapore tax resident, earned long-term capital gain of Rs. 638.29 crores on transfer of PayTM shares acquired before 01.04.2017 and claimed exemption under India-Singapore DTAA. It also incurred long-term capital loss of Rs. 1,402.18 crores on transfer of Snapdeal shares acquired before 01.04.2017, which it set off against long-term capital gains of Rs. 578.16 crores (Xpressbees) and Rs. 1,162.64 crores (Bigbasket) on shares acquired after 01.04.2017. AO denied treaty benefit and aggregated all transactions, resulting in addition of Rs. 1,402.18 crores. Tribunal held that since each investment/transaction giving rise to capital gains or capital losses constitutes a separate source of income and assessee was entitled to avail benefit of provisions of Act or applicable DTAA, whichever was more beneficial, in terms of section 90(2), qua each such source of income. Further, capital gains arising from transfer of shares acquired prior to 01.04.2017, being governed by Article 13(4A) of India-Singapore DTAA, did not form part of taxable income in India and consequently, such exempt gains could not be forced into computation mechanism under Act for purpose of setting off losses arising from other transactions. Thus, assessee was justified in claiming exemption under Article 13(4A) of India-Singapore DTAA in respect of long-term capital gains arising from transfer of shares acquired prior to 01.04.2017 and simultaneously claiming carry forward/set off long-term capital loss under provisions of Act in respect of other transactions.***[Prashant Kothari v. Int. Tax [2025] 174 taxmann.com 1244 (Mumbai - Trib.), Joint CIT v. Montgomery Emerging Markets Fund [2006] 100 ITD 217 (Mumbai) - followed]***

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No Set-Off of LTCL Against Exempt Capital Gains Under India–Mauritius DTAA

1. **Matrix Partners India Investment Holdings v. Dy CIT (IT) [2026] 186 taxmann.com 1230 (Mumbai - Trib.) [29-05-2026] - IT APPEAL NO. 8788 (MUM) OF 2025 - [AY 2022-23]**

   Where assessee, a Mauritius tax resident, earned and claimed exemption on long-term capital gains from sale of Indian shares acquired prior to 01.04.2017 under Article 13(4) of India-Mauritius DTAA, such exempt LTCG does not enter computation of total income and set off of long-term or short-term capital losses under domestic law against such gains is not permissible, hence LTCL from sale of shares acquired prior to 01.04.2017 could not be set off against exempt LTCG on such shares.[India-Mauritius DTAA]

   Assessee, a non-resident corporate entity incorporated and tax resident in Mauritius, was covered by India-Mauritius DTAA and carried on investment activity in shares of Indian companies. For relevant year, it sold various shares, resulting in LTCG and LTCL. In its return, relying on a Tax Residency Certificate, it claimed exemption under Article 13(4) of DTAA for LTCG on shares acquired prior to 01.04.2017 and sought carry forward of LTCL. AO held that capital gains/losses must be computed on an aggregate basis and set off LTCL on shares acquired prior to 01.04.2017 against LTCG on shares acquired prior to 01.04.2017. It was ruled that once an item of income does not form part of total income, it does not enter computation of total income at all. Further, the Tribunal held that since LTCG is exempt under Article 13(4) of Treaty, it does not enter computation mechanism and set off of LTCL and STCL as provided under domestic law against such gain is not permissible. Therefore, LTCL for sale of shares acquired prior to 01.04.2017 could not be set off against LTCG from sale of shares acquired prior to 01.04.2017.

Capital gains earned by BVI co from properties in UK -not taxable in hands of Indian Shareholders (by treating them as beneficial owners)

1. **PCIT *v.* Pradeep Wig [2026] 185 taxmann.com 1002 (Delhi) [24-04-2026] - IT Appeal Nos. 681, 725, 726, 727, 697, 698, 700, 701, 702, 703, 708, 709, 710 & 712 of 2025 - [TS-605-HC-2026(DEL)] - [AYs 2011-12 to 2017-18]**

   Where Indian residents held shares in a foreign company incorporated in British Virgin Islands which owned properties in UK, rental income and capital gains earned and taxed abroad by company could not be assessed in hands of shareholders in India by treating them as beneficial owners or by lifting corporate veil, since only dividend income, if any, received by shareholders is taxable in India and there is no provision under Act to tax company's income in shareholders' hands merely on account of residency or investment.

   The assesses were residents of India and held shares in a company incorporated in the British Virgin Islands, which owned properties in the United Kingdom. The

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said company earned rental income and generated capital gains on sale of properties and paid applicable taxes in the United Kingdom. AO held that the assessees were real and beneficial owners of assets of company and treated income of company as their income of by invoking doctrine of substance over form and lifting corporate veil. The High Court noted that the said company was registered in British Virgin Islands and the properties were situated in the United Kingdom; shares in company were acquired through banking channels under permitted Liberalised Remittance Scheme of RBI; company had also obtained loans from banks in United Kingdom for purchase of properties; company earned rental income and generated gains on sale of properties in its own right and paid taxes thereon It held that respondents, being shareholders of company, even if holding entire shareholding, were only owners of shares of company and not owners of properties as such, further the income earned by company could, by no stretch of imagination, be treated to be income of its shareholders and only dividend income, if and when received by shareholders, could be subjected to tax and not income of company itself. In finality it was held that, AO was wrong in invoking doctrine of substance over form and lifting corporate veil to tax income of company in hands of respondents as it was not backed by statutory framework and was thus, unsustainable.

VII. DEPENDENT PERSONAL SERVICES

Salary and Per-Diem for UK Assignment - Not Taxable in India

1. **Sachin Saxena v. DCIT/ACIT (IT) [2026] 186 taxmann.com 1231 (Delhi - Trib.) [29-05-2026] - IT APPEAL NO. 4037 (DELHI) OF 2025 - [TS-782-ITAT-2026(DEL)] - [AY 2017-18]**

   Where assessee, an employee of Ernst & Young LLP India, was seconded to UK and qualified as non-resident in India, since assessee furnished UK tax residency certificate, per-diem/salary received in India for employment exercised in UK was taxable only in UK under Article 16(1) of India- UK DTAA and section 90 and addition made in India was not sustainable. [India- UK DTAA]

   Assessee, an employee of Ernst & Young LLP, India, was assigned to United Kingdom to work with Ernst & Young, UK. Assessee stayed in India for less than 60 days and accordingly qualified as a non-resident in India for relevant assessment year. In original return, assessee declared salary income of Rs. 27.45 lakh. Subsequently, a revised return was filed claiming exemption of Rs. 27.10 lakh under Article 16(1) of India–UK DTAA and offering only Rs. 35,506 to tax in India. AO rejected claim by invoking section 5(2)(a). Accordingly, reduction of income from salary amounting to Rs. 17.25 lakhs was disallowed and was added back to total income of assessee. Tribunal noted that assessee had offered a sum of Rs. 10.84 lakhs as his taxable income in UK. Further, assessee had filed a copy of Tax Residency Certificate of UK issued to assessee for period 6-4-2016 to 5-4-2017 by HM Revenue and Customs. Tribunal ruled that by virtue of Article 16(1) of India UK

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DTAA and section 90 of Act, amount being received on account of per- diem if at all, would be taxable in UK and not in India. Therefore, in view of facts, addition made by AO was not sustainable and same was deleted.

VIII. FOREIGN TAX CREDIT

Delay in filing Form 67

1. **Ramachandran Prasanna *v.* ITO [2026] 186 taxmann.com 431 (Chennai - Trib.) [06-05-2026] - IT APPEAL NO. 644 (CHNY) OF 2026 – [AY 2021-22]**

   Where assessee did not file Form 67 with return of income within due date prescribed and submitted same after intimation under section 143(1), requirement of timely filing of Form 67 under Rule 128 was held directory and not mandatory, and delayed filing by itself did not disentitle assessee from claiming Foreign Tax Credit (FTC)

   Assessee, a resident individual, was temporarily employed in United Kingdom and claimed Foreign Tax Credit (FTC) of about Rs. 14.06 lakhs under section 90 but Form 67 was not filed on or before due date prescribed under section 139(1), Thus the Return was processed under section 143(1) and FTC was denied on ground that Form 67 had not been filed within time. Assessee filed rectification application under section 154 enclosing Form 67, which was rejected. The First Appellate Authority held that filing Form 67 within time prescribed was mandatory and in absence of Form 67 filed by due date and without any condonation under section 119(2)(b), relief undersections 90/90A could not be allowed. Tribunal held that filing of Form 67 under Rule 128 within prescribed time is only directory in nature and not mandatory. Further it held that First Appellate Authority was not justified in not examining whether Form 67 filed by assessee was in accordance with rules prescribed. Therefore, matter was **restored to file of AO** to examine Form 67 filed by assessee and take a decision in accordance with law.

2. **Rahul Singhal *v.* Dy CIT [2026] 186 taxmann.com 330 (Delhi - Trib.) - IT APPEAL NOS. 8394 & 8395 (DELHI) OF 2025 - [AYs 2017-18 AND 2018-19]**

   Where assessee claimed foreign tax credit but filed Form 67 belatedly, since filing of Form 67 was treated as directory and not mandatory, assessee remained entitled to FTC despite delayed filing

   Assessee had filed its return of income and claimed credit for taxes retained by several countries. The AO disallowed the claim of assessee on ground that Form No. 67 was not filed within prescribed time limit as per the provisions of rule 128(9). It was noted that in case similar to assessee, Tribunal held that filing of Form 67 was a directory condition and not mandatory and rule nowhere provided that if said Form No. 67 was not filed within required time frame, relief as sought by assessee under section 90 would be denied. Tribunal ruled that merely because Form 67 was filed belatedly relief could not be denied to assessee. Thus, Assessing Officer was directed to verify claim of FTC and grant same to assessee even if Form 67 had

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been filed belatedly. ***[Swapan Bhttacharya v. ACIT [2025] 175 taxmann.com 591 (Kolkata - Trib.) - followed, Pr. CIT v. Wipro Ltd. [2022] 140 taxmann.com 223 (SC)/ [2022] 446 ITR 1 (SC) - distinguished]***

3. **Hrishikesh Sunil Shende v. Circle 32(1) [2026] 186 taxmann.com 1067 (Mumbai - Trib.) [14-05-2026] - IT APPEAL. NO.8149 (MUM) OF 2025 - [AY 2017-18]**

Where assessee claimed foreign tax credit under section 90 in respect of taxes paid in USA relating to ESOP income, delayed filing of Form 67 as per Rule 128 cannot be sole basis to deny such credit, and tax credit claimed in Form 67 is allowable.

Assessee, an individual salaried employee who had ESOP perquisites, filed return of income for relevant assessment year declaring total income of about Rs. 1.24 crores. Assessee claimed FTC of about Rs. 25.47 lakhs under section 90 in respect of taxes paid in USA, related to ESOP income. AO withdrew FTC claimed under section 90 due to non-filing of Form 67. Tribunal ruled that since delay in filing of Form 67 could not be sole reason for denial of tax credit for taxes paid outside India, AO was directed to allow tax credits claimed in Form 67 filed by assessee. ***[Vinodkumar Lakshmipathi v. CIT (Appeals) NFAC, Delhi [2022] 145 taxmann.com 235 (Bangalore -Trib.) followed.]***

IX. OTHERS

Claim of Treaty Rates on Dividends - Remanded Due to Lack of Supporting Documents

1. **Britannia Industries Ltd. vs. DCIT [2026] 186 taxmann.com 839 (Kolkata - Trib.) [18-05-2026] - IT Appeal Nos. 301, 302 & 303 (Kol) of 2026 – [TS-715-ITAT-2026(Kol)] - [AYs 2016-17, 2020-21 and 2021-22]**

Where assessee claimed that dividends distributed to UK and Singapore shareholders should be taxed at beneficial DTAA rates instead of section 115-O, in absence of necessary details such as TRCs, PE declarations and related documents, applicability of treaty benefits could not be verified, thus, matter was remanded to Assessing Officer for fresh examination. [India – UK & Singapore DTAA]

Assessee company declared and paid dividend to all shareholders, including non-residents, after paying tax under section 115-O. During assessment, it claimed that dividend distributed to non-resident shareholders should be taxed at beneficial DTAA rates with UK and Singapore instead of section 115-O. AO did not deal with this claim in assessment order. It was noted that even though assessee had raised claim that dividend distribution of non-residents was to be charged as per rates provided in agreement for avoidance of double taxation with respective countries, but no specific details of non-resident shareholders viz., their TRCs, no PE declarations, financials, details of income-tax filings in respective foreign countries etc. had been placed on record. Since in absence of these factual details, provisions

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of DTAA would apply or not, was not verifiable. Thus, issue was remanded back to AO for proper verification.

Previous Section 263 orders quashed; profit attribution restricted to original value

1. **DCIT(IT) *v.* MFE Formwork Technology SDN BHD [2026] 186 taxmann.com 329 (Mumbai - Trib.) [04-05-2026] - IT APPEAL NO. 126 (MUM) OF 2026 – [AY 2022-23]**

   Where assessee, a Malaysian non-resident company, operated in India through its subsidiary constituting a DAPE and Assessing Officer enhanced income relying solely on revision orders under section 263 which were subsequently quashed, Commissioner (Appeals) rightly accepted assessee's original profit attribution at 24 per cent and deleted consequential addition, since very basis for enhancement no longer existed

   Assessee, a non-resident company incorporated in Malaysia, operated in India through its subsidiary constituting a DAPE/business connection. Under dual taxpayer approach, assessee attributed profits to Indian operations at 24 per cent and offered Rs. 17.30 lakhs as DAPE profit in India. The AO enhanced profit attribution from 24 per cent to 35 per cent and made addition of Rs. 10.53 crores relying solely on revision orders passed under section 263 by CIT (IT). CIT(A) noted that section 263 orders forming basis of attribution adjustment no longer survived as same had been quashed by a co-ordinate bench ***in MFE Formwork Technology SDN BHD v. CIT, International Taxation [2023] 149 taxmann.com 188 (Mumbai - Trib.)/ITA No.1578/MUM/2022*** and directed Assessing Officer to accept profit attribution at 24 per cent as offered by assessee. The section 263 orders were quashed because both conditions for revision were not satisfied i.e. the original order was not erroneous and the original order was not prejudicial to the revenue. Tribunal ruled that since very basis for addition no longer existed, CIT(A) rightly deleted addition.

S. 40(a) (i) disallowance w.r.t reimbursement of salary of seconded employees - Remanded

1. **Federal Mogul Goetze (India) ltd. *v.* Acit [2026] 185 taxmann.com 1014 (Delhi - Trib.) [27-04-2026] - IT APPEAL NOS. 1909 (DELHI) OF 2016 & 3186 (DELHI) OF 2017- [AY 2011-12]**

   Where rectification order under section 154 regarding disallowance under section 40(a)(i) (w.r.t reimbursement of salary of seconded employees) incorporating DRP-directed additions was passed without affording proper opportunity of hearing, same was to be set aside for breach of natural justice and matter was to be remanded to DRP for fresh adjudication

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Assessee, a manufacturer of automotive components (pistons and piston rings), where assessed income at Rs. 7.53 crores against returned income of Rs. 1.76 crores, inter alia disallowing ALP adjustment and advances written off. DRP directed enhancement of assessee's income by Rs. 10.40 crores out of which Rs. 8.35 crore were towards reimbursement of salary of seconded employees and related expenditure such as travel cost and relocation charges to its group entities by holding same as FTS on which assessee had failed to deduct TDS under section 195 and hence disallowance under section 40(a)(i). The Assessing Officer inadvertently did not incorporate DRP directed additions in final assessment order. Thereafter, by rectification order under section 154 r.w.s. 143(3)/144C, Assessing Officer added Rs. 10.40 crores, stating that notice under section 154 had been issued and that assessee neither appeared nor filed a response; rectification proceeded ex parte. Assessee disputed receipt of section 154 notice and contended lack of opportunity. It was observed that assessee had moved an application before Tribunal for admission of additional evidence, which contained Secondment agreements and documents with respect to reimbursements. Since principles of natural justice were breached as proper and adequate opportunity of hearing was not provided to assessee before passing rectification order, matter was set aside and **remanded** **back** to file of DRP for fresh determination of issue after giving proper opportunity of being heard to assessee.

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