

INTERNATIONAL TAX DIGEST (October 2026)

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I. PERMANENT ESTABLISHMENT

i. Project office PE-Force of attraction Rule -Not applicable

1. **Where assessee, a German company, derived income from multiple infrastructure consultancy contracts and its personnel were present in India for less than 183 days under 3 contracts, such revenues were rightfully taxable as FTS at 10 percent under Article 12 of the DTAA, and project office PE could not attract force of attraction rule to other contracts as PO did not play any role in them. [India-Germany DTAA]**

   Lahmeyer International GmbH vs. DCIT (IT) [2026] 190 taxmann.com 1045 (Delhi - Trib.) [07-09-2026] - IT Appeal No. 2534 (Del) of 2017 & IT Appeal No. 515 (Del) of 2018 - [AY 2013-14 and 2014-15]

   Assessee, a German company, was engaged in technical consultancy for infrastructure projects. In relevant assessment years, assessee derived revenues from four contracts, namely, Baglihar (Jammu and Kashmir State Power Development Corporation "JKSPDC"), Lahmeyer International India Private Limited (LII), Himachal Pradesh Power Corporation Limited (HPPCL) and Uttarakhand Jal Vidyut Nigam Limited (UJVNL). Assessee offered revenue from Baglihar project to tax at 20 per cent on gross basis treating Baglihar as having a PE in India (and revenue from other three projects to tax at 10 per cent under Article 12 as FTS.) AO held that services of technical personnel and engineering/consultancy services were covered by definition of FTS under the DTAA, and further that assessee admittedly had a PE in India in form of Baglihar (JKSPDC) project office. Applying force of attraction principle, AO treated Baglihar project office as constituting a PE for other projects as well and taxed entire receipts as business income under Article 7 at 20 per cent on a gross basis). Tribunal noted that in respect of contracts with LII & UJVNL, assessee's personnel (expatriates) did not visit India and in respect of contract with HPPCL, assessee's personnel were in India only for 44 days. Tribunal ruled that since technical and consultancy services rendered in India in respect of each contract, namely, UJVNL, HPPCL and LII, was for a period less than 183 days, provisions of Article 5(2) and Article 15(2) of the DTAA would not apply and therefore, revenue from these contracts was rightly offered as FTS under Article 12 of DTAA chargeable to tax at 10 per cent. Further, Baglihar project PE did not play any role and was not involved in any other contract/project in India and, thus, force of attraction rule would not apply to LII, HPPCL and UJVNL projects.

ii. DAPE / Subsidiary PE

1. **High Court dismissed Revenue's appeal against the Tribunal's order disposing of the assessee's miscellaneous application, holding that no substantial question of law arose since the Tribunal's unamended finding that the sale**

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transaction with the Indian subsidiary had already been subjected to transfer pricing adjustment, so the dependent agent permanent establishment question did not arise, remained untouched by the modification under challenge.

PCIT-IT vs. Qliktech International AB [2026] 190 taxmann.com 604 (Karnataka) [10-09-2026] - IT Appeal No. 27 OF 2026 – [AY 2021-22]

Assessee, a Swedish company, received Rs. 55.91 crores from its Indian subsidiary, Qliktech India Pvt. Ltd (QIPL), but did not offer it to tax. AO treated QIPL as a DAPE and attributed 30 per cent of its revenue as assessee's income (No reasoning given by AO). Tribunal, based on TPO's order in QIPL's case, held transaction was accepted as sale and purchase and subjected to transfer pricing adjustment; thus, question of treating QIPL as a DAPE did not arise. Tribunal remanded matter to AO for verification of the TPO order of the Indian subsidiary (QIPL) that was filed as additional evidence and was not verified at the level of the lower authorities. Assessee filed a Miscellaneous Application seeking modification, arguing an open-ended remand was unnecessary and AO needed only to verify arm's length nature of transaction. Tribunal modified its order to clarify that upon aforesaid verification, Revenue should not treat QIPL as a DAPE, retaining earlier finding and remanding issue to Assessing Officer. Revenue filed appeal. The Hon'ble High Court ruled that since impugned order did not alter Tribunal's earlier finding that transaction was accepted as sale and purchase, and that treating QIPL as a DAPE did not arise, no substantial question of law arose for consideration. Therefore, appeal filed by revenue was dismissed. *[Order of the Income Tax Appellate Tribunal, Bangalore Bench MA No.06/BANG/2025 in IT(IT)A No.990/BANG/2023, dated 22.05.2025 affirmed]*

2. **In a reference to TPO u/s 92CA, AO cannot delegate his duty to TPO qua determination of PE since Assessing Officer made assessment solely on basis of TPO's findings without independently verifying existence of PE, assessment could not be sustained. [India-Singapore DTAA]**

Ingram Micro (India) Exports pte. ltd vs. Dy. CIT (IT) [2026] 190 taxmann.com 542 (Mumbai - Trib.) [15-09-2026] - IT Appeal No. 1746 (MUM) of 2016 - CO No. 70 (MUM) of 2017 - [AY 2008-09]

Assessee, a Singapore based company, carried on management and day-to-day operations from Singapore and obtained sales processing, marketing and bookkeeping support from its wholly owned Indian subsidiary, Ingram Micro India Private Limited (IMIPL). IMIPL received remuneration in form of rebate incentives paid by third-party vendors on sales made in India by assessee. Assessee filed a nil return under protest (stated by the assessee themselves), stating it had no PE in India under Article 5 of the DTAA, and its business profits were not taxable in India under Article 7. AO passed a draft assessment order making 100 per cent addition of rebate incentives received by IMIPL for services provided by IMIPL that were paid directly by vendors to IMIPL, by treating IMIPL as assessee's PE in India. Tribunal set aside assessment and restored matter to AO with directions to verify issue of existence of a PE before finalising draft assessment. During remand, AO referred case to TPO under section 92CA (1). TPO concluded that assessee had a PE in India and proposed a TP adjustment. On receipt of TPO's order, AO in draft assessment held that IMIPL

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constituted assessee's PE and proposed to assess income by attributing 100 per cent of revenue earned by IMIPL to activities of assessee in India. DRP upheld existence of a PE in India and held that 95 per cent of profits arising in India were attributable to Indian PE, but accepted that any TP adjustment could not exceed assessee's entire profits from Indian operations, quantified at about Rs. 11.07 crores. AO passed final assessment. Tribunal ruled that reference made by AO, insofar as it sought to transfer determination of existence of a PE to TPO, was beyond scope of Tribunal's remand directions. Independently, TPO exceeded jurisdiction conferred upon him under section 92CA by determining existence of a PE and consequent taxability of assessee's profits, without confining himself to determination of ALP of a specific international transaction referred to him. Findings recorded by TPO on existence of a PE and consequent taxability of profits, therefore, could not be sustained. Consequently, since AO did not independently verify issue, and addition was proposed merely on basis of order passed under section 92CA (3), assessment proceedings, being founded solely on said order without any independent verification or application of mind by AO, had no legs to stand in eyes of law. Accordingly, the addition was deleted. ***[National Thermal Power Co. Ltd. v. CIT [1998] 97 Taxman 358/229 ITR 383 (SC), Jute Corporation of India Ltd. v. CIT [1990] 53 Taxman 85/ [1991] 187 ITR 688 (SC) followed]***

3. **Commission received from Indian customers by assessee, a Swiss company - Not taxable In India - As assessee's Indian affiliate did not constitute DAPE as per article 5(5) of the DTAA. [India–Switzerland DTAA]**

   Expedia Lodging Partner Services Sarl vs. ACIT IT [2026] 190 taxmann.com 926 (Delhi - Trib.) [21-09-2026] - IT Appeal No. 1943 (Delhi) of 2025 - [AY 2018-19]

   Assessee, a company incorporated in Switzerland, was engaged in providing Strategic Lodging Services to group entities outside India, including technology platforms and data enabling lodging opportunities to be displayed on Point of Sale (PoS) websites of other Expedia Group entities outside India. It earned gross revenue as commission from Indian lodging suppliers and declared nil income in India on ground that it had no PE in India. AO held that Indian affiliate, (Expedia Online Travel Services India Private Limited "EXP-IN"), constituted a DAPE of assessee in India, applied a global net profit rate of 6.3% to compute net profit on Indian revenue, and attributed 60% thereof to activities in India, determining certain income attributable to India. It was noted that Tribunal in assessee's own case for assessment year 2022-23 on identical facts had held that EXP-IN did not constitute a DAPE of assessee in India as per article 5(5) of India–Switzerland DTAA (holding that article requires the agent to possess and habitually exercise authority to negotiate and conclude contracts for the foreign enterprise, and mere AE status or back-office support does not suffice. On facts, the Indian personnel's role was confined to liaison and communicating pre-approved terms, with all material terms negotiated and approved by overseas leadership; they had no authority to conclude contracts, acted on a principal-to-principal basis. The Revenue having failed to establish the Article 5(5) conditions, EXP-IN was held not to be a DAPE). Therefore, following aforesaid decision, Tribunal ruled that EXP-IN did not constitute a DAPE of assessee in India and, consequently, business profits of

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assessee were not taxable in India. ***[Expedia Lodging Partner Services Sarl v. ACIT [ITA 1886/Del/2025, dated 21.09.2026] followed]***

iii. Fixed place PE / DAPE

1. **Finding of AO that there existed Fixed Place PE merely on the basis of information from group website or information in Form 10-K was Rejected as the AO failed to establish that the impugned premises were at the assessee's disposal – Assessee i.e. UK entity's Indian subsidiary could not be treated as DAPE as AO failed to establish that subsidiary had authority to conclude contracts or habitually secured orders on behalf of assessee.**

   Donaldson Company Inc. vs. ACIT, IT [2026] 190 taxmann.com 1197 (Delhi - Trib.) [23-09-2026] - IT Appeal No. 2327 (DEL) OF 2023 - [AY 2020-21] - [TS-1582-ITAT-2026(DEL)]

   Assessee, a US tax-resident company, was engaged in manufacturing filtration systems and sold machinery, raw material and finished goods to its Indian subsidiary, Donaldson India Filter Systems Pvt. Ltd. (DIFS). It had entered into an Information Technology Services Agreement and a Patent, Trademark and Know-how Licence Agreement with DIFS, under which royalty and fees for technical services were offered to tax in India, whereas no income was offered to tax from sales of machinery, raw material and finished goods to DIFS. AO held that assessee had a fixed place PE in India in form of Regional Headquarters at Manesar, Gurgaon, (which was actually the manufacturing unit of the Indian subsidiary (DIFS)) relying upon information from group website and Form 10-K and further alleged that DIFS constituted assessee's DAPE by referring to a clause of licence agreement relating to promotion of assessee's business. AO attributed profits from sales to DIFS to alleged PE by taking 50 per cent of income from sale of machinery and finished goods and 70 per cent of income from sale of raw material and made an addition of Rs. 2.42 crores. Tribunal ruled that reliance on Form 10-K was misplaced as it referred to worldwide activities of group and information gathered from website was insufficient to establish that premises at Manesar were at disposal of assessee for carrying on its business in India. Further, since DIFS was economically independent, transactions between assessee and DIFS were on principal-to-principal basis and AO had failed to bring on record any material to show that DIFS had authority to conclude contracts or habitually secured orders on behalf of assessee, mandatory conditions for constitution of DAPE were not satisfied. Therefore, assessee neither had fixed place PE nor DAPE in India and, consequently, question of attribution of profits did not arise.

II. BUSINESS PROFITS

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i. No further attribution when PE remunerated at ALP

1. **Where a UK company engaged in providing technology and internet advertising services to Indian customers through an Indian subsidiary/PE which was remunerated at arm's length - no further profit was attributable to the Indian PE. [India-UK DTAA]**

   UK Trade Desk Ltd. vs. ACIT, IT [2026] 191 taxmann.com 690 (Mumbai - Trib.) [06-10-2026] - IT APPEAL NO. 3350 (MUM) OF 2026 - [AY 2023-24]

   Assessee, a UK company, was engaged in providing technology and internet advertising-related services. It had purchased media space from overseas suppliers and provided same to Indian customers. For marketing, sales and post-sales support in India, it operated through its Indian subsidiary under a Master Service Agreement. It had remunerated its Indian PE/AE at cost plus 15%, and arm's length nature of such remuneration was not disturbed in assessment. AO examined Indian subsidiary's functions, held that it constituted a DAPE under Article 5 of the DTAA and a business connection under section 9(1)(i), noted that no India-specific profit and loss account was furnished, and invoked Rule 10, he attributed 25% of revenue from Indian operations to India and estimated 25% of such attributable revenue as business profits, resulting in an addition of about Rs. 4.23 crores (On Ad-hoc basis). Tribunal ruled that since Indian AE had been remunerated at arm's length and such arm's length remuneration had neither been disputed nor disturbed by AO, no further profit was attributable to PE in India. Therefore, impugned ad-hoc attribution of profit to PE in India could not be sustained. ***[UK Trade Desk Ltd. vs. ACIT (International Taxation) [2026] 183 taxmann.com 660 (Mumbai - Trib.), DIT (International Taxation) v. Morgan Stanley & Co. [2007] 292 ITR 416/162 Taxman 165 (SC), Honda Motor Co. Ltd. v. Assistant Director of Income-tax, Noida [2018] 92 taxmann.com 353/255 Taxman 72 (SC) followed]***

ii. Commission

1. **Sales commission paid to non-resident foreign agents (who operated entirely outside India and had no business connection or establishment in India) - did not accrue or arise in India**

   CIT vs. Asiatic Colour Chem Inds. Ltd. [2026] 191 taxmann.com 742 (Gujarat) [21-10-2026] - R/TAX APPEAL NOS. 702, 703 & 704 OF 2015 - [TS-1741-HC-2026(GUJ)]

   Assessee-company had paid sales commission to non-resident foreign agents in foreign exchange without deducting tax at source. ITO passed order under sections 201 and 201(1A) treating assessee as in default for failure to deduct TDS. CIT (A) and Tribunal set aside demand holding that commission was paid to foreign agents operating entirely outside India with no business connection in India and income did

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not accrue or arise in India. High court ruled that since income that arose to foreign agent as sales commission paid by assessee could not be said to have arisen or been received in India, as no activity was carried out in Indian territory and such foreign agents also did not have any permanent or non-permanent establishment in India, no question of law arose from impugned order of Tribunal. ***[Order of the Income Tax Appellate Tribunal, Ahmedabad C Bench in ITA No.3934/AHD/04, dated 19-2-2025 affirmed]***

2. **Commission paid to US entity having no business operations or PE in India - Not Taxable [India-USA DTAA]**

   Thrius Pharma Expertize LLP vs. ITO [2026] 191 taxmann.com 437 (Mumbai - Trib.) [12-10-2026] - IT APPEAL NO. 40 (MUM.) OF 2025 - [AY 2020-21] - [TS-1659-ITAT-2026(Mum)]

   Commission income was earned by a US entity from Indian assessee for services rendered outside India without any business operations or Permanent Establishment in India. Tribunal held that, such income was not taxable in India notwithstanding that the nomenclature of the same in Form 15CB was "consulting services" as nomenclature cannot by itself determine the true character of the payment. Consequently, assessee had no obligation to deduct tax at source under section 195; thus, no disallowance could be made under section 40(a)(i) for non-deduction of tax. ***[CIT v. Toshoku Ltd. [1980] 125 ITR 525 (SC) followed]***

iii. Consultancy fees to non-residents having no PE in India

1. **Consultancy fees paid by assessee to non-residents in UAE and Kenya not having PE in India -disallowance for non-deduction of tax under section 195 was unwarranted. [India–UAE DTAA & India–Kenya DTAA]**

   GMP Technical Solutions (P.) Ltd. vs. Dy. CIT [2026] 190 taxmann.com 928 (Mumbai - Trib.) [21-09-2026] - IT APPEAL NO. 6155 (MUM) OF 2025 - [AY 2014-15] - [TS-1572-ITAT-2026(Mum)]

   Tribunal held that the UAE based entity and Kenya based entity, did not have a PE India. As India–UAE DTAA, it noted that the same does not have a separate Article taxing technical services. In the absence of a specific Article in the treaty, the amount may fall under business profits under Article 7 and such business profits are taxable in India only where the enterprise has a permanent establishment in India which was not so in the instant case Further, as per Article 7 of the India – Kenya DTAA, only such profit where the Kenyan enterprise carries on business in India through a permanent establishment situated in India and only to that extent attributable to that permanent establishment is taxable in India. In the absence of a permanent establishment in India, payment to the Kenya-based entity was not chargeable to tax in India. Hence, disallowance under Section 40(a)(i) for non-deduction of tax under Section 195 was not warranted.

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iv. Offshore supplies

1. **Siemens Germany and Siemens Ltd. executing consortium contracts in India involving offshore/onshore supplies and services, with independent and separate scopes of work, did not constitute an AOP and income from offshore supply of goods made by Siemens Germany to Indian customers was not taxable in India, as title to goods passed outside India and no part of income from such offshore supplies accrued or arose in India.**

   Siemens Aktiengesellschaft vs. ACIT (IT) [2026] 190 taxmann.com 416 (Mumbai - Trib.) [08-09-2026] - IT Appeal Nos. 4393 and 6728 (MUM) of 2024 - [AY 2020-21]

   Assessee, a German non-resident, executed consortium contracts in India with entities including Power Grid Corporation of India Ltd. (PGCIL) and Delhi Metro Rail Corporation (DMRC), alongside Siemens Ltd. (India), involving offshore/onshore supplies and services. AO held that assessee and Siemens Ltd. constituted an Association of Persons (AOP) in relation to aforesaid contracts. It was noted that under MoU with DMRC, arrangement was for limited representation with independent and separate scopes of work; nothing created a partnership, joint venture or other entity; each party was solely responsible for its scope and entitled to invoice and receive payment directly for its own scope. Tribunal ruled that since there was neither joint management nor joint execution, no sharing of profits and losses, and each party received separate consideration; joint and several liability was only to safeguard DMRC with inter se indemnities, no AOP was constituted between assessee and Siemens Ltd. Thus, income arising from such contracts was taxed in the hands of respective parties and income from offshore supply of goods made by assessee i.e. Siemens Germany to Indian customers was not taxable in India, as title to goods passed outside India and no part of income from such offshore supplies accrued or arose in India. ***[Siemens Aktiengesellschaft v. Dy. CIT (International Taxation)-4(2)(2) [2026] 185 taxmann.com 985 (Mumbai - Trib.) followed]***

2. **Where a Finnish company entered into a three-part contract for a TCR System, comprising offshore supplies by assessee and onshore supplies and services by its Indian associate, and authorities treated contracts as artificially split and Indian associate as assessee's PE and taxed profits from such offshore supply receipts at presumptive rate of 10 per cent under section 44BBB - since Tribunal, following decisions in sister concern's cases, held that there was no artificial splitting, no business connection or PE and title in offshore-supplied goods passed outside India, offshore supply receipts were not taxable in India. Thus, profits from such offshore supply receipts could not be computed at presumptive rate of 10 per cent under section 44BBB.**

   Grid Solutions OY Ltd. vs. ACIT, IT [2026] 190 taxmann.com 1103 (Delhi - Trib.) [29-09-2026] - IT Appeal No. 1049 (Delhi) of 2025 - [AY 2022-23]

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Assessee, a Finland-based company, entered into an arrangement with Power Grid Corporation of India Ltd (PGCIL) for supply of Thyristor Controlled Reactor (TCR) system at 400 kV Kurukshetra. Arrangement was structured into three parts: (i) offshore supply from abroad by assessee, (ii) onshore supply in India, and (iii) onshore services in India to be executed by GE T&D India Ltd. (GETDIL) as proposed associate. Contract incorporated a cross-fall-breach clause making assessee overall responsible; first contract was with assessee and second and third with GE India as permitted assignee; contract documents were to be read as an integral whole. Acceptance tests during erection and commissioning and a performance bank guarantee were stipulated; offshore supplies were on Cost, Insurance, and Freight (CIF) terms. Assessee claimed that income as not taxable in India. AO held that income from the offshore supplies accrued in India under section 9(1)(i) and Article 7 of the India-Finland DTAA. AO treated arrangement as a single composite contract artificially split and held that acceptance testing, performance guarantee and CIF terms showed that title did not pass outside India and that assessee remained responsible until final commissioning. AO held that business income from offshore supplies accrued in India under section 9(1)(i) and Article 7 and attributed 10 per cent of offshore receipts to India, drawing guidance from section 44BBB. Tribunal ruled that since Indian associate's non-involvement in offshore transaction excluded it from being part of cause of income itself, there was no business connection, and offshore supply receipts were not taxable in India. Since Indian entity had its own separate business and was not legally, economically or otherwise dependent on assessee, it did not constitute DAPE of assessee in India. Further, since Indian entity was a separate business entity, and conditions for constitution of fixed-place PE were not satisfied, assessee did not have fixed-place PE in India. Tribunal concluded by following its own decisions in the assessee's sister/group concerns that, section 44BBB was not applicable to compute profits at 10 per cent of offshore supply receipts (as section 44BBB is founded on a foreign company's engagement in the construction, erection, testing or commissioning of a turnkey power project and presupposes a PE not a mere "supply"; the assessee, only made offshore supplies with title passing outside India, earned income that was not taxable here in the absence of a business connection or PE) ***[UK Grid Solutions Ltd. v. DCIT (International Taxation) [2024] 160 taxmann.com 694 (Delhi - Trib.), UK Grid Solution Ltd. v. Dy. CIT, International Taxation [2023] 149 taxmann.com 209 (Delhi - Trib.), UK Grid Solutions Ltd. v. Dy. CIT, International Taxation [2025] 180 taxmann.com 388 (Delhi - Trib.), Ge Hydro France v. Dy. CIT IT Appeal No. 1881 (Delhi) of 2023, dated 6-11-2024, GE Hydo France v. DCIT ITA 2085, 2086/Del/2022, dated 13-3-2024 followed]***

v. Management fees earned through a PE abroad

1. **Where assessee earned management fees from Hotel Meena House Oberoi, Cairo, constituting business profits derived through a permanent establishment in UAR under Article 5(2)(a) of India-UAR DTAA, exemption under Article 24 read**

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with Article 7 was available and denial of such exemption by revenue authorities was unjustified

Oberoi Hotels (P.) Ltd. vs. Dy. CIT [2026] 191 taxmann.com 79 (Kolkata - Trib.) [11-09-2026] - IT Appeal Nos. 796 & 1565 (KOL) of 2025 - [AY 2011-12]

Assessee–company received management fees of Rs. 5.07 crores from Hotel Meena House Oberoi, Cairo, against which it allocated pro-rata expenses of Rs. 25.89 lakhs and claimed the net amount of Rs. 4.81 crores as exempt in India under Article 24 read with Article 7 of the DTAA between India and United Arab Republic, treating the income as business profits derived through its permanent establishment in UAR. AO, observing that the assessee had failed to furnish evidence that the income had been taxed in UAR, added Rs. 4.81 crores to its total income. The CIT(A) confirmed the addition. Tribunal ruled that management fees (business profits) earned from Hotel Meena House Oberoi, Cairo, were exempt in India under Article 24 read with Article 7 of India-UAR DTAA as revenue had all along accepted the claim of exemption of management fees under Article 7 read with Article 24 of the DTAA in all the preceding AYs as well as the succeeding AYs. The revenue was unable to controvert this admitted factual position. Further, since 'place of management' constituted a 'permanent establishment' under Article 5(2)(a) of DTAA, assessee had a permanent establishment in UAR. Therefore, AO was unjustified in disturbing settled view and CIT(A) wrongly upheld denial of exemption of management fees.

vi. Income attributable to foreign branches constituting PEs outside India

1. **Where income was attributable to foreign branches constituting permanent establishments outside India, such income could not be taxed in India in view of mandate in Article 7(1) of DTAA, thus profits attributable to those foreign PEs fall outside Indian tax jurisdiction for AY 1997-98 and 1998-99, but Notification No. 91 of 2008 provided for inclusion of income where treaty used expression 'may be taxed' applies prospectively from AY 2009-10, thus assessee's claim was rejected for AY 2012-13 & 2013-14**

   DCIT vs. State Bank of India [2026] 190 taxmann.com 274 (Mumbai - Trib.) [07-09-2026] – IT Appeal Nos. 2189, 2190, 2290 and 2291 (MUM) of 2019 – AY 1997-98 and 1998-99

   State Bank of India vs. ACIT [2026] 190 taxmann.com 515 (Mumbai - Trib.) [11-09-2026] – IT Appeal Nos. 2390 (Mum) of 2015 and 3395 (Mum) of 2018 and others – AY 2012-13 and 2013-14

   The assessee is a banking company carrying on business in India and, inter alia, through branches outside India that are permanent establishments there. It claimed that the income of these branches was not taxable in India under the applicable DTAAs. In both sets of appeals the AO brought the foreign-branch income to tax in India, relying on **CBDT Notification No. 91/2008** issued under section 90(3). The CIT(A) upheld the additions. The Tribunal followed a coordinate bench in the

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assessee's own case for **AY 2009-10**, which held the notification applicable prospectively from AY 2009-10. For AY **1997-98 and 1998-99**, which precede that year, the notification could not apply. The Tribunal followed the assessee's own case for AY **2008-09** and the case of ***Bank of India***, affirmed by the Bombay High Court. It held that where a treaty says income "may be taxed" in one State, the other State is implicitly barred from taxing it. Income of the foreign PEs therefore cannot be taxed in India, and the grounds were allowed. For **AY 2012-13 and 2013-14,** which fall after that cut-off date, the notification applies. The Tribunal followed a coordinate bench in the assessee's own case for **AY 2011-12.** Under that order, it was held that where the DTAA says income "may be taxed" in the other country, the notification requires it to be included in total income chargeable in India, with relief as per the DTAA. The word "term" in section 90(3) includes the phrase "may be taxed". The assessee's contentions were rejected and the grounds dismissed for **AY 2012-13 & 2013-14**.

For AY 1997-98 and 1998-99: [State Bank of India, ITA Nos. 3664 & 4563/Mum/2016, order dated 03/02/2020 (AY 2008-09); Bank of India v. ACIT [2012] 27 taxmann.com 335 (Mumbai. Trib.), affirmed [2015] 64 taxmann.com 215 (Bombay) followed.]

For AY 2012-13 and 2013-14: [ITA 3717 & 4431/MUM/2017 order dated 29/06/2026 followed]

vii. Interest payments qua transactions between branch and HO

1. **Interest received by PE/branch of foreign bank from its overseas head office or other branches constitutes taxable business income in India and cannot be disregarded as a payment to self or shielded by mutuality - Consequently, though the interest payment was deductible in the hands of the Indian PE/ Branch, disallowance u/s 40(a)(i) of the said interest payment made without deduction of tax at source was justified. [India-Netherlands DTAA]**

   Royal Bank of Scotland, N.V. vs. DIT, IT [2026] 190 taxmann.com 829 (Calcutta) [22-09-2026] - IT Appeal No. 4 of 2011 – [AY 2004-05]

   Appellant, a non-resident foreign banking company with a PE in India, earned interest from its overseas head office/other foreign branches in AY 2004-05. In the current proceedings, it contended that if interest paid to the head office was not allowable, the corresponding interest received from the head office/branches should be excluded from the computation of the PE's profits. Tribunal did not direct exclusion of such interest received from the computation of the PE's taxable profits. High court ruled that under Article 7 of India-Netherlands DTAA, a legal fiction treats PE and overseas head office as separate and distinct enterprises for purpose of determining profits. Further, under this 'separate entity' framework, branch and head office are recognised as independent establishments. Just as interest paid by PE to head office is an allowable deduction in hands of PE (subject to statutory compliance like TDS), similarly, interest received by PE from head office or other foreign branches represents taxable business

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income earned by Indian PE. Thus, because PE operates as a separate establishment for tax purposes under DTAA, interest received cannot be characterised as an excludable 'payment to self' or shielded under principle of mutuality. Consequently, interest income received by PE from its foreign head office and other branches must be included in computing its taxable profits in India. Consequently, though interest payment was deductible in the hands of the Indian branch /PE, disallowance u/s 40(a)(i) for making payment of interest without deduction of tax was justified.

viii. Head office expenditure u/s 44C

1. **Where foreign bank's Indian PE was allocated Head Office and global system/data-processing charges, for allowing deduction of such expenses under section 44C, nature and character had to be first factually analysed to determine if they qualified as head office expenditure, and only thereafter to examine if payments could be classified as royalty, requiring remand for detailed examination.**

   Dy. DIT (IT) vs. American Express Bank Ltd. [2026] 191 taxmann.com 249 (Mumbai - Trib.) [08-10-2026] - IT Appeal Nos. 5667 & 9414 (MUM) of 2004 - [AY 2000-01]

   Assessee, a foreign bank, incurred/was allocated Head Office/overseas branch expenses for its Indian PE, including global system/data-processing charges of about Rs. 4.24 crores and other Head Office expenditure of about Rs. 2.76 crores. CIT(A) treated global system charges as 'royalty' and invoked section 40(a)(i) for non-deduction under section 195, disallowing claim. CIT(A) held other Head Office expenditure to be specifically for employees/personnel of Indian branches and, therefore, outside section 44C, allowing that amount. Tribunal noted that in case of *Director of Income Tax (IT)-I, Mumbai v. American Express Bank Ltd*, Supreme Court held that section 44C did not make any distinction merely on basis that expenditure was "common" or "exclusive"; however, expenditure must first satisfy statutory definition of "head office expenditure". Tribunal ruled that since nature and character of expenditure had to be identified for determining whether they qualify as 'head office expenditure' in terms of clause (iv) of Explanation to section 44C and such identification required detailed factual analysis of expenditure incurred by assessee which had not been done either at stage of assessment or by CIT(A), issue required fresh examination at end of AO, after analysing in detail nature of expenditure, at first instance, nature and character of expense, whether falls within meaning of head office expenses in terms with clause (iv) under Explanation to section 44C had to be determined and in case, it was found that expenditure did not fall within ambit of head office expenses, as defined under section 44C, then only issue, whether payment made was in nature of royalty or not could be examined. Therefore, matter was remanded to AO for de novo adjudication. ***[DIT (IT) v. American Express Bank Ltd. [2025] 181 taxmann.com 433/308 Taxman 246/484 ITR 137 (SC) followed]***

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2. **Where assessee incurred expenditure on overseas training of employees of its Indian branch, such expenditure did not relate to employees employed in or managing affairs of an office outside India and could not be restricted under section 44C as head office expenditure**

   Citi Bank N.A. vs. ADIT (IT) [2026] 191 taxmann.com 250 (Mumbai - Trib.) [08-10-2026] - IT APPEAL NOS. 4970 & 4981 (MUM.) OF 2007 - CO No. 284 (MUM.) of 2007 - [AY 2002-03] - [TS-818-ITAT-2026(Mum)-TP]

   Assessee, a non-resident banking company with Indian branches, incurred expenditure of Rs. 1.13 crores on sending officers employed in India to Regional Training Centres at Istanbul and the Philippines during assessment year 2002-03. AO treated the expenditure as head office expenditure within section 44C and restricted the deduction accordingly. CIT(A) allowed the claim following the view taken in the preceding year. Following the principles in the case of *DIT (IT) v. American Express Bank Ltd.* which held that for an expenditure to fall within the Explanation to section 44C, following conditions must be satisfied: (i) it must be incurred outside India, (ii) must be in the nature of executive and general administration expenditure, and (iii) must fall within one of the specific species enumerated in the Explanation or otherwise prescribed. Tribunal ruled that expenditure incurred on overseas training of employees of Indian branch is not in respect of employees employed in, or managing affairs of, an office outside India and does not fall within any prescribed category of head office expenditure. Therefore, such expenditure cannot be restricted under section 44C. ***[DIT (IT) v. American Express Bank Ltd. [2025] 181 taxmann.com 433/308 Taxman 246/484 ITR 137 (SC) followed.]***

3. **Direct expenses, such as credit risk assistance, EDP assistance and HO System Implementation/ISIS and ISAP charges, incurred by Head Office or Overseas Branches on behalf of Indian branch were allowable under section 37(1) and not subject to restriction under section 44C, subject to verification**

   Credit Agricole Corporate and Investment Bank vs. ACIT (IT) [2026] 191 taxmann.com 251 (Mumbai - Trib.) [08-10-2026] - IT Appeal Nos. 6805 (Mum.) of 2024 and 3453 (Mum.) of 2026 - [AY 2021-22 and 2022-23] - [TS-817-ITAT-2026(Mum)-TP]

   Assessee, a France-based banking company, carried on corporate and investment banking in India through branches constituting its PE. AO made disallowances in respect of expenses incurred by HO/OB towards credit risk assistance, EDP assistance, HO System Implementation/ISIS and ISAP charges, treating them as subject to restriction under section 44C and not allowable under section 37(1). It was noted that Tribunal, in assessee's own case for earlier assessment years, had held that direct expenses incurred by HO/OB on behalf of Indian branch were allowable under section 37(1) and not to be restricted under section 44C. Following aforesaid decision, direct expenses incurred by HO/OB on behalf of Indian branch were allowable under section 37(1), subject to verification of supporting invoices and allocation to Indian branch, and not to be restricted merely by invoking section 44C. Accordingly, the matter was remanded. ***[assessee's own case for AYs 2010-11 to 2019-20 dated 20/03/2025]***

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III. DIVIDENDS

i. Refund of DDT in excess of rate under DTAA

1. Claim of refund of DDT in excess of rate under DTAA -matter restored to AO for consideration of claim after decision of larger Bench of Supreme Court was warranted. [India-Singapore DTAA]

WPP Media India (P.) Ltd. vs. ACIT [2026] 191 taxmann.com 124 (Mumbai - Trib.) [17-09-2026] - ITA Nos. 9297 and 9197 (MUM) OF 2025 - C.O. No. 57/MUM/2026 - [AY 2013-14 and 2016-17]

Assessee-company had distributed dividend to its Singapore shareholder and had paid DDT at 16.225 per cent. It contended that for dividend paid to Singapore shareholder, applicable tax should have been 10 per cent under Article 10(2) of the DTAA and that section 115-O did not apply to such dividend and furnished a working of excess DDT paid of about Rs. 6.16 crore. No such claim was made before AO in return or by filing a revised computation. Assessee raised this claim for first time as an additional ground before CIT(A). CIT(A) called for a remand report from AO but did not admit additional ground for adjudication. Tribunal ruled that additional ground of appeal raised by assessee was to be admitted and restored back to file of AO to consider claim of assessee and to pass order in accordance with law after decision of larger Bench of Apex Court ***in Colorcon Asia (P.) Ltd. v. JCIT [2025] 181 taxmann.com 301 (Bom.).***

IV. INTEREST

i. Interest payments qua transactions between branch and HO

1. Interest paid by Indian PE to its Head Office or overseas branches could not be taxed independently in hands of HO/OB under Article 12 read with Article 7 of the DTAA. [India-France DTAA]

Credit Agricole Corporate and Investment Bank vs. ACIT (IT) [2026] 191 taxmann.com 251 (Mumbai - Trib.) [08-10-2026] - IT Appeal Nos. 6805 (Mum.) of 2024 and 3453 (Mum.) of 2026 - [AY 2021-22 and 2022-23] - [TS-817-ITAT-2026(Mum)-TP]

Assessee, a France-based banking company, was operating in India through its branches constituting its PE in India. In relevant assessment years, assessee filed its returns of income. AO held that interest payment made by Indian branch to its Head

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Office/overseas branches (HO/OB) was taxable in India in hands of HO/OB under Article 12 of the DTAA. It was noted that Tribunal, in assessee's own case for earlier assessment years, had held that, in view of amendment to section 9(1)(v) and Article 12(5) read with Article 7 of India-France DTAA, interest paid by Indian PE to HO/OB could not be brought to tax independently in hands of HO/OB. Following aforesaid decision, impugned addition made by AO was deleted.

2. **Where interest paid by Indian branch of a non-resident banking company to its Head Office or overseas branches was, in law, a payment to self and was not chargeable to tax in India, failure to deduct tax under section 195 could not be alleged and disallowance under section 40(a)(i) was not sustainable.** ***[Sumitomo Mitsui Banking Corpn. v. Deputy DIT (IT) [2012] 19 taxmann.com 364/136 ITD 66 (Mumbai) followed.]***

   Citi Bank N.A. vs. ADIT (IT) [2026] 191 taxmann.com 250 (Mumbai - Trib.) [08-10-2026] - IT APPEAL NOS. 4970 & 4981 (MUM.) OF 2007 - CO No. 284 (MUM.) of 2007 - [AY 2002-03] - [TS-818-ITAT-2026(Mum)-TP]

3. **Where assessee, a foreign bank, received interest on NOSTRO and inter-branch transactions with its Head Office or overseas branches - such interest did not constitute income under domestic law, and could not be regarded as exempt income to attract Section 14A**

   Dy. DIT (IT) vs. American Express Bank Ltd. [2026] 191 taxmann.com 249 (Mumbai - Trib.) [08-10-2026] - IT Appeal Nos. 5667 & 9414 (MUM) of 2004 - [AY 2000-01]

   Assessee, a foreign bank, received interest on NOSTRO and other inter-branch transactions with its Head Office/overseas branches and treated both interest received and paid as 'self-to-self' transactions not giving rise to income under domestic law. CIT(A) accepted tax neutrality but invoked section 14A to disallow expenditure of Rs. 32.71 crores as relatable to such non-taxable receipts. Tribunal noted that in case of *J.P. Morgan Chase Bank, N.A. (formerly The Chase Manhattan Bank) v. DCIT, it was held* that interest received from and paid to Head Office and overseas branches by an Indian PE represented a transaction with "self" under domestic law, falling under doctrine of mutuality, and did not give rise to taxable income. Following said decision, interest arising from transaction between Indian PE and its Head Office/overseas branches, being a transaction with self under domestic law, did not give rise to taxable income in hands of assessee rather than merely "exempt income," thus, provisions of section 14A could not be invoked to disallow expenses against such transactions. ***[DDIT(IT) v. American Express Bank Ltd. [2026] 187 taxmann.com 866 (Mumbai - Trib.) (para 9.1), J.P. Morgan Chase Bank, N.A. (formerly The Chase Manhattan Bank) v. DCIT [2026] 188 taxmann.com 999 (Mumbai - Trib.) followed]***

ii. <u>Interest on income-tax refund under section 244A</u>

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1. **Where a France-based banking company received interest under section 244A on an income-tax refund, Assessing Officer was to recompute tax on such interest at applicable treaty rate under Article 12 of the DTAA, following binding precedent in assessee's own case for an earlier assessment year. [India-France DTAA]**

   Credit Agricole Corporate and Investment Bank vs. ACIT (IT) [2026] 191 taxmann.com 251 (Mumbai - Trib.) [08-10-2026] - IT Appeal Nos. 6805 (Mum.) of 2024 and 3453 (Mum.) of 2026 - [AY 2021-22 and 2022-23] - [TS-817-ITAT-2026(Mum)-TP]

iii. Interest taxable at special rate under section 115A – section 14A disallowance-Not Applicable

1. **Where assessee, a US banking company, earned interest on foreign currency loans taxable at special rate under section 115A - s.14A disallowance - Not applicable**

   Dy. DIT (IT) vs. American Express Bank Ltd. [2026] 191 taxmann.com 249 (Mumbai - Trib.) [08-10-2026] - IT Appeal Nos. 5667 & 9414 (MUM) of 2004 - [AY 2000-01]

   Assessee, a banking company incorporated in USA, carried on banking business in India through branches constituting its PE. It earned interest of about Rs. 4.10 crores from foreign currency loans, taxable at 20% under section 115A. AO held that expenditure incurred to earn such interest could not be allowed against other business income and estimated disallowance of about Rs. 2.66 crores as attributable to such income. Tribunal in view of decision in assessee's own case for earlier AY, ruled that Section 14A does not apply to income chargeable to tax at a lower/special rate under section 115A, but applies only to income that is not at all chargeable to tax (exempt income). Thus, proportionate expenditure incurred for earning interest on foreign currency loans taxable under section 115A could not be disallowed. ***[CIT v. Bhor Industries Ltd. [2003] 128 Taxman 626/264 ITR 180 (Bombay), CIT v. Simpson & Co. Ltd. [1997] 91 Taxman 115/[1998] 230 ITR 794 (Madras), Employers in Relation to the Management of Indian Cable Co. Ltd. v. Their Workmen AIR 1972 SC 2195; (1974) 3 SCC 11 followed]***

iv. Surcharge and cess not leviable beyond treaty ceiling

1. **Applicable Articles of India-France DTAA prescribe maximum rate at which interest and fees for technical services may be taxed in India Surcharge and health and education cess cannot be separately levied beyond treaty ceiling,**

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and Assessing Officer must recompute tax at applicable treaty rate without separately adding such surcharge and cess. [India-France DTAA]

Credit Agricole Corporate and Investment Bank vs. ACIT (IT) [2026] 191 taxmann.com 251 (Mumbai - Trib.) [08-10-2026] - IT Appeal Nos. 6805 (Mum.) of 2024 and 3453 (Mum.) of 2026 - [AY 2021-22 and 2022-23] - [TS-817-ITAT-2026(Mum)-TP]

V. FEES FOR TECHNICAL SERVICES (FTS/FIS)

i. Software migration services

1. **Software migration services provided by Singapore company - not taxable in India as FTS under the DTAA. [India-Singapore DTAA]**

   DCIT(IT) vs. Murex Southeast Asia (P.) Ltd. [2026] 190 taxmann.com 1048 (Mumbai - Trib.) [17-09-2026] - IT Appeal No. 6796 (MUM) of 2026 - [AY 2020-21]

   Assessee, a Singapore-resident company, was engaged in providing licensing software and related services. Assessee rendered additional services in relation to sub-licensed software to Indian customers. Assessee claimed that in absence of PE in India, income was not taxable under the DTAA. AO accepted that sub-licensing income was not royalty. However, AO treated receipts from additional services as taxable in India as FTS under section 9(1)(vii) read with article 12 of DTAA. Tribunal noted that additional services rendered by assessee were only to extent of migration of software from old version to new version. Tribunal ruled that since AO had not brought on record any material or evidence to demonstrate that in course of rendition of such services, assessee had transferred or made available any technical knowledge, know-how, skill etc. to its clients in India so as to enable them to perform such services independently without requiring aid and assistance of assessee, receipts were not taxable in India. ***[Murex Southeast Asia (P.) Ltd. v. Dy. CIT, International Taxation [2025] 170 taxmann.com 410/211 ITD 106 (Mumbai - Trib.) followed]***

2. **Receipts by a Singapore resident for providing software sub-licensing accompanied with maintenance, support and training services to Indian customers - as FTS under section 9(1)(vii) read with article 12 of the DTAA. [India-Singapore DTAA]**

   DCIT(IT) vs. Murex Southeast Asia (P.) Ltd. [2026] 190 taxmann.com 1048 (Mumbai - Trib.) [17-09-2026] - IT Appeal No. 6796 (MUM) of 2026 - [AY 2020-21]

   Assessee, a Singapore-resident company, was engaged in providing licensing software to financial sector entities and rendering related maintenance/support and training services. During relevant year, assessee entered into agreements with Indian customers for sub-licensing software and for maintenance/support and training in

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relation to that software. Assessee claimed non-taxability under India-Singapore DTAA in absence of a PE in India, which was accepted by AO. However, AO treated receipts from maintenance/support services and from training services as taxable in India as FTS under section 9(1)(vii) read with article 12 of DTAA. It was noted that Tribunal in assessee's own case for earlier assessment years on similar issue had held that since assessee was providing identical nature of services year on year, had technical knowledge been made available, there would not have been any requirement to provide such services on a recurring basis. It was further held that resolving problems on software sub-licensed by assessee did not per se mean that any technology had been transferred or any know-how had been made available which could enable in-house team of customer to acquire technology. Tribunal ruled on facts, receipts from maintenance/support services and from training services were not taxable in India as FTS under section 9(1)(vii) read with article 12 of DTAA. ***[Murex Southeast Asia (P.) Ltd. v. Dy. CIT, International Taxation [2025] 170 taxmann.com 410/211 ITD 106 (Mumbai - Trib.) followed]***

ii. IT and allied support services

1. Payments received by US entity from its Indian group entity for IT and allied support and project services could not be treated as royalty or FIS. [India-USA DTAA]

Atos IT Solutions and Services INC. vs. Dy. CIT (IT) [2026] 190 taxmann.com 464 (Mumbai - Trib.) [10-09-2026] - IT Appeal No. 670 (Mum) of 2022 - [AY 2018-19]

Assessee, a company incorporated and tax resident in USA, was engaged in providing information technology and allied services. During relevant year, assessee received Rs. 1.20 crores for services rendered to its Indian group entity, comprising approximately Rs. 37.43 lakhs for Tower Watson service-desk/coordination support, Rs. 82.59 lakhs for McGraw Hill Cap IQ project-support services (including Microsoft licence cost recharges), and Rs. 9.26 lakhs for MHS storage-support services. AO held that services involved specialised and technical knowledge, information, software and intellectual inputs, enabling payer to utilise assessee's technical knowledge and experience, and characterised consideration as royalty under Article 12. Alternatively, he held that technical knowledge, experience, skill and processes were made available to payer, attracting Article 12(4)(b) as FIS, and proposed to tax receipts under Article 12 of DTAA. Tribunal noted that nothing in nature of McGraw Hill Cap IQ Project or MHS Storage services demonstrated that Indian group entity acquired any proprietary right to exploit a copyright, patent, process or proprietary information of assessee or that any industrial, commercial or scientific experience belonging to assessee was imparted to Indian group entity for its independent use. Tribunal ruled that since no use of, or right to use, any copyright, patent, process, know-how or information concerning industrial, commercial or scientific experience had been shown to have been granted to Indian group entity, consideration could not be characterised as royalty under Article 12(3). Further, since rendition of services had not resulted in

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technical knowledge, experience, skill, knowhow or processes being made available to Indian group entity in sense contemplated by treaty and explained in Memorandum of Understanding, receipts could not be regarded as FIS under Article 12(4)(b). Consequently, entire consideration of Rs.1.20 crore received by assessee retained character of business profits under Article 7 of the DTAA and, there being no PE of assessee in India to which such profits could be attributed, same could not be brought to tax in India. ***[Atos IT Solutions and Services Inc v. Deputy Commissioner of Income-tax (IT) [2023] 153 taxmann.com 104 (Mumbai - Trib.), Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC), and CIT v. De Beers India Minerals (P.) Ltd. [2012] 21 taxmann.com 214/208 Taxman 406/346 ITR 467 (Karnataka) followed]***

2. **Amounts received by assessee, a Netherlands tax resident, for providing cloud application services and IT support services to Indian group entities -could not be categorized as royalty or fees for technical services under article 12 of the DTAA. [India-Netherlands DTAA]**

   Atos Nederland BV vs. Dy. CIT (IT) [2026] 191 taxmann.com 671 (Mumbai - Trib.) [06-10-2026] - I.T.A. NO. 2328 (MUM) OF 2022 - [AY 2019-20] - [TS-1694-ITAT-2026(Mum)]

   Assessee, a company incorporated in and tax resident of Netherlands, provided support/IT services, including cloud application services and IT/project and IT support services, to Indian group entities. It received about Rs. 12.87 crores from these services during year. Receipts were not offered to tax in return, though Indian payers deducted tax at source and assessee claimed TDS refund of about Rs. 1.35 crores. AO noted that no income from above services was offered to tax and proposed to treat receipts as royalty and/or FTS. Tribunal ruled that since there was no provision of equipment by assessee-company to Indian entities, consideration received by assessee towards cloud application services and IT support services would not qualify as 'royalty' within meaning of Article 12(4) of the DTAA. Further it was ruled that since there was nothing on record to suggest that Indian entities could use any technical knowledge, experience, skill, know-how or process independently on its own, consideration received by assessee towards cloud application services and IT support services would not qualify as 'FTS' under Article 12(5) of the DTAA. ***[Atos Information Technology Singapore Pte. Ltd. v. DCIT [IT Appeal Nos. 7144 (Mum) of 2017 & 5744 (Mum) of 2018, dated 30-3-2021] followed]***

iii. Reimbursement of seconded employee costs

1. **Cost-to-cost reimbursements by US entity from Indian AEs towards salary and other expenses for seconded employees - Not FTS/FIS. [India-USA DTAA]**

   Goldman Sachs and Co. LLC vs. ACIT [2026] 190 taxmann.com 1024 (Mumbai - Trib.) [16-09-2026] - ITA No. 6670 (MUM) OF 2024 - [AY 2021-22]

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Assessee, a US based company received reimbursements aggregating about Rs 40.98 crores from its Indian AEs, comprising Rs 20.45 crores towards salary cost and Rs 20.53 crores towards other employee-related expenses for seconded employees, claimed as cost-to-cost without any mark-up and not taxable in India. AO held that seconded employees continued to have an employment relationship with assessee and that their technical, managerial and consultancy skills were made available to Indian AEs; accordingly, receipts were treated as fees for included services under India–USA DTAA. Since Tribunal in assessee's own case for earlier assessment year on similar issue held that amount in dispute could not be treated as FIS/FTS under the DTAA, impugned addition was deleted. In the earlier year in *Goldman Sachs & Co. LLC v. Dy. Commissioner of Income-tax, International Taxation [2023] 152 taxmann.com 251/201 ITD 670* (Mumbai - Trib.), the case of Goldman Sachs Services (P.) Ltd. vs. Dy CIT (IT) [2022] 138 taxmann.com 162 (Bangalore - Trib.) was followed wherein it was held that reimbursement was in the nature of salary, thus not in the nature of FTS, article 12 of the DTAA specifically excludes payments made towards services rendered by an 'employee' of the enterprise since services rendered under employment are covered by article 16 on Dependent Personal Services. Mere supply of skilled manpower is not managerial/technical/consultancy service, thus the amount reimbursed by the assessee to the overseas entity could not be subjected to tax in India as the same did not involve any element of income embedded in it. ***[NTPC Ltd. v. CIT [1998] 97 Taxman 358/229 ITR 383 (SC), CIT v. Pruthvi Brokers and Shareholders Pvt. Ltd. [2012] 23 taxmann.com 23/208 Taxman 498/349 ITR 336 (Bombay), and Goldman Sachs & Co. LLC v. Dy. Commissioner of Income-tax, International Taxation [2023] 152 taxmann.com 251/201 ITD 670 (Mumbai - Trib.) followed]***

iv. Recruitment, legal and tariff filing charges

1. Payments to non-residents for recruitment, legal services in Brazil and US tariff filing charges were not chargeable to tax in India, disallowance under section 40(a)(i) for non-deduction of TDS was unwarranted.

Sarjak Container Lines (P.) Ltd. vs. Dy. CIT [2026] 190 taxmann.com 980 (Mumbai - Trib.) [16-09-2026] - IT Appeal No. 1791 (MUM) of 2026 - [AY 2022-23] - [TS-754-ITAT-2026(Mum)-TP]

Assessee, a private limited company engaged in shipping and project logistics as a Non-Vessel Operating Common Carrier (NVOCC), made following payments to non-residents during year. Rs. 11.23 lakhs to MRIN Brazil Group for recruitment/placement services in Brazil; Rs. 4.49 lakhs to Logitrade for legal and extrajudicial services rendered in Brazil; and Rs. 1.86 lakhs to DPI, USA, towards filing/publication of its freight tariff as required by U.S. Federal Maritime Commission. AO disallowed an aggregate of about Rs. 17.58 lakhs under section 40(a)(i) on ground that tax was not deducted under section 195.Tribunal ruled that obligation to deduct tax under section 195 arises only where sum paid to non-resident is chargeable to tax in India. As

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material placed on record supported distinction between these services and managerial/technical/consultancy services contemplated by section 9(1)(vii). Further, in particular, in relation to U.S. tariff filing charges, material showed that service consisted of publication of tariff entries required for an NVOCC and did not make available technical knowledge, skill, know-how or process to assessee. Accordingly, on facts and material placed on record, impugned payments were not shown to be chargeable to tax in India in hands of respective non-residents. Consequently, no obligation to deduct tax under section 195 arose and corresponding disallowance under section 40(a)(i) could not survive.

v. ***Commission***

1. **Commission earned by Netherlands based company for referring potential customers to its Indian group company - Not FTS [India-Netherlands DTAA]**

   Mitsubishi Electric Europe B.V. vs. ACIT IT [2026] 190 taxmann.com 1217 (Delhi - Trib.) [30-09-2026] - IT APPEAL NO. 1948 (DELHI) OF 2025 - [AY 2022-23] - [TS-1609-ITAT-2026(DEL)]

   Assessee, a company incorporated and tax resident in Netherlands, was engaged in business of sale of industrial, electrical and electronic equipment and earned commission/referral fees from its Indian group company, MEI, for referring potential customers, computed at a fixed percentage of gross sales made by MEI to such referred customers. Assessee filed return declaring nil income and disclosed commission as income not chargeable to tax under DTAA read with Article 7. AO treated commission as FTS taxable in India under section 9(1)(vii) and Article 12 of DTAA.Tribunal ruled that assessee, earning commission income for referring potential customers, was not providing any services relating to design/technical or otherwise to MEI and did not 'make available' any technical knowledge, skill or know-how to MEI such that MEI could apply technology on its own without recourse to assessee in future and, therefore, consideration received for provision of referral services did not qualify as FTS under Article 12(5)(b) of the DTAA as well as section 9(1)(vii). Thus, commission income earned by assessee was in nature of business income in its hands and was not taxable as per Article 7 of Netherlands Treaty in absence of any PE in India. ***[Guy Carpenter and co Ltd, CIT (International Taxation) v. Bio-Rad Laboratories (Singapore) Pte. Ltd. [2023] 155 taxmann.com 646/296 Taxman 167/459 ITR 5 (Delhi), Tungsten Automation England Ltd. v. Dy. CIT (International Taxation) [2025] 176 taxmann.com 497/480 ITR 93 (Delhi) followed]***

2. **Where assessee made payment of sales commission to its US associated enterprise for marketing and support services, since such commission was not income chargeable to tax in India under Act or article 12 of India-USA DTAA, no tax was deductible at source under section 195 and disallowance under section 40(a)(i) was not sustainable. *[SPI Technologies India (P.) Ltd. v. Dy. CIT [ITA Nos. 843 & 844/Chny/2023, dated 27.09.2024] (para 13) followed]***

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SPI Technologies India (P.) Ltd. vs. Dy. CIT [2026] 191 taxmann.com 715 (Chennai - Trib.) [12-10-2026] - IT Appeal No. 531 (Chny) OF 2017 - [AY 2012-13] - [TS-835-ITAT-2026(CHNY)-TP]

vi. Educational services

1. **Where assessee, a US not-for-profit university, provided structured online educational courses to Indian students and employees, receipts from such courses constituted amounts paid for teaching by an educational institution and thus fell within exclusion under Article 12(5)(c) of the DTAA, not taxable as Fees for Included Services in India. [India-US DTAA]**

   Cornell University vs. Dy. CIT (Int. Tax) [2026] 191 taxmann.com 453 (Mumbai - Trib.) [12-10-2026] - IT APPEAL NO. 2195 (MUM.) OF 2025 - [AY 2022-23] - [TS-1669-ITAT-2026(Mum)]

   Assessee, a not-for-profit research university incorporated in USA, provided online educational courses in fields like Data Science, HR, Law, Engineering, etc. to Indian students/employees of Indian corporates and earned receipts of INR 17,23,12,909. Assessee claimed exclusion from FIS under Article 12(5)(c) as amounts paid for teaching in or by an educational institution. AO and DRP held that courses were tailor-made for skill enhancement and made available specialised knowledge, thus taxable as FIS. Tribunal ruled that since assessee was an educational institution and services comprised structured courses in recognised academic/professional disciplines, receipts fell within exclusion provided under Article 12(5)(c) and could not be taxed in India as FIS under Article 12.

vii. Surcharge and cess not leviable beyond treaty ceiling

1. **Applicable Articles of India-France DTAA prescribe maximum rate at which interest and fees for technical services may be taxed in India Surcharge and health and education cess cannot be separately levied beyond treaty ceiling, and Assessing Officer must recompute tax at applicable treaty rate without separately adding such surcharge and cess. [India-France DTAA]**

   Credit Agricole Corporate and Investment Bank vs. ACIT (IT) [2026] 191 taxmann.com 251 (Mumbai - Trib.) [08-10-2026] - IT Appeal Nos. 6805 (Mum.) of 2024 and 3453 (Mum.) of 2026 - [AY 2021-22 and 2022-23] - [TS-817-ITAT-2026(Mum)-TP]

VI. ROYALTY

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i. Software

1. Consideration received by assessee, a German non-resident, towards supply of standard, off-the-shelf software to Indian customers -Not Royalty under Article 12 of the DTAA. [India-Germany DTAA]

Siemens Aktiengesellschaft vs. ACIT (IT) [2026] 190 taxmann.com 416 (Mumbai - Trib.) [08-09-2026] - IT Appeal Nos. 4393 and 6728 (MUM) of 2024 - [AY 2020-21]

Assessee, German non-resident, received consideration towards supply of standard, off-the-shelf software to Indian customers. AO treated consideration as royalty taxable under Article 12 of the DTAA. Tribunal ruled that consideration received for supply of standard, off-the-shelf software could not be treated as royalty under Article 12 of the DTAA and, therefore, could not be brought to tax in India (as the same was not for use of copyright in the computer software as by held Hon'ble Supreme Court held in *Engineering Analysis Centre of Excellence Private Limited* v. *CIT* (2021) 432 ITR 471 (SC). ***[Siemens Aktiengesellschaft v. Dy. CIT (International Taxation)-4(2)(2) [2026] 185 taxmann.com 985 (Mumbai - Trib.) followed]***

ii. IT and allied support services

1. Payments received by US entity from its Indian group entity for IT and allied support and project services could not be treated as royalty or FIS. [India-USA DTAA]

Atos IT Solutions and Services INC. vs. Dy. CIT (IT) [2026] 190 taxmann.com 464 (Mumbai - Trib.) [10-09-2026] - IT Appeal No. 670 (Mum) of 2022 - [AY 2018-19]

Assessee, a company incorporated and tax resident in USA, was engaged in providing information technology and allied services. During relevant year, assessee received Rs. 1.20 crores for services rendered to its Indian group entity, comprising approximately Rs. 37.43 lakhs for Tower Watson service-desk/coordination support, Rs. 82.59 lakhs for McGraw Hill Cap IQ project-support services (including Microsoft licence cost recharges), and Rs. 9.26 lakhs for MHS storage-support services. AO held that services involved specialised and technical knowledge, information, software and intellectual inputs, enabling payer to utilise assessee's technical knowledge and experience, and characterised consideration as royalty under Article 12. Alternatively, he held that technical knowledge, experience, skill and processes were made available to payer, attracting Article 12(4)(b) as FIS, and proposed to tax receipts under Article 12 of DTAA. Tribunal noted that nothing in nature of McGraw Hill Cap IQ Project or MHS Storage services demonstrated that Indian group entity acquired any proprietary right to exploit a copyright, patent, process or proprietary information of assessee or that any industrial, commercial or scientific experience belonging to assessee was imparted to Indian group entity for its independent use. Tribunal ruled that since no use of, or right to use, any copyright, patent, process, know-how or

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information concerning industrial, commercial or scientific experience had been shown to have been granted to Indian group entity, consideration could not be characterised as royalty under Article 12(3). Further, since rendition of services had not resulted in technical knowledge, experience, skill, knowhow or processes being made available to Indian group entity in sense contemplated by treaty and explained in Memorandum of Understanding, receipts could not be regarded as FIS under Article 12(4)(b). Consequently, entire consideration of Rs.1.20 crore received by assessee retained character of business profits under Article 7 of the DTAA and, there being no PE of assessee in India to which such profits could be attributed, same could not be brought to tax in India. ***[Atos IT Solutions and Services Inc v. Deputy Commissioner of Income-tax (IT) [2023] 153 taxmann.com 104 (Mumbai - Trib.), Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC), and CIT v. De Beers India Minerals (P.) Ltd. [2012] 21 taxmann.com 214/208 Taxman 406/346 ITR 467 (Karnataka) followed]***

2. **Amounts received by assessee, a Netherlands tax resident, for providing cloud application services and IT support services to Indian group entities -could not be categorized as royalty or fees for technical services under article 12 of the DTAA. [India-Netherlands DTAA]**

   Atos Nederland BV vs. Dy. CIT (IT) [2026] 191 taxmann.com 671 (Mumbai - Trib.) [06-10-2026] - I.T.A. NO. 2328 (MUM) OF 2022 - [AY 2019-20] - [TS-1694-ITAT-2026(Mum)]

   Assessee, a company incorporated in and tax resident of Netherlands, provided support/IT services, including cloud application services and IT/project and IT support services, to Indian group entities. It received about Rs. 12.87 crores from these services during year. Receipts were not offered to tax in return, though Indian payers deducted tax at source and assessee claimed TDS refund of about Rs. 1.35 crores. AO noted that no income from above services was offered to tax and proposed to treat receipts as royalty and/or FTS. Tribunal ruled that since there was no provision of equipment by assessee-company to Indian entities, consideration received by assessee towards cloud application services and IT support services would not qualify as 'royalty' within meaning of Article 12(4) of the DTAA. Further it was ruled that since there was nothing on record to suggest that Indian entities could use any technical knowledge, experience, skill, know-how or process independently on its own, consideration received by assessee towards cloud application services and IT support services would not qualify as 'FTS' under Article 12(5) of the DTAA. ***[Atos Information Technology Singapore Pte. Ltd. v. DCIT [IT Appeal Nos. 7144 (Mum) of 2017 & 5744 (Mum) of 2018, dated 30-3-2021] followed]***

iii. Market data charges

1. **Market data charges received by US entity from Indian associated enterprises - not taxable in India as 'royalty' under Article 12(4) of the DTAA. [India-USA DTAA]**

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Goldman Sachs and Co. LLC vs. ACIT [2026] 190 taxmann.com 1024 (Mumbai - Trib.) [16-09-2026] - ITA No. 6670 (MUM) OF 2024 - [AY 2021-22]

Market data charges, received by the assessee, a US entity from its Indian AEs claimed as not taxable in India being pure reimbursements of third-party market data and communication/technology costs incurred on behalf of the AEs, without any mark-up, AO examined the receipts and held them to be consideration for access to proprietary databases taxable as royalty under Article 12(4) of the DTAA. Tribunal following the coordinate bench in assessee's own case held that when payment made for the usage of the database does not fall within the ambit of royalty, recovery of costs by the assessee from the AEs for the usage of the database cannot also result in royalty in the hands of the assessee. Thus, the said market data charges received by assessee was held to be not taxable in India as 'royalty' under Article 12(4) of the DTAA. ***[NTPC Ltd. v. CIT [1998] 97 Taxman 358/229 ITR 383 (SC) (SC), CIT v. Pruthvi Brokers and Shareholders PVt. Ltd. [2012] 23 taxmann.com 23/208 Taxman 498/349 ITR 336 (Bombay) (Bom.) (para 4), and Goldman Sachs & Co. LLC v. Dy. Commissioner of Income-tax, International Taxation [2023] 152 taxmann.com 251/201 ITD 670 (Mumbai - Trib.) followed]***

iv. Broadcasting services

1. Payments made by assessee-company to an overseas rights holder for broadcasting services – Not Royalty

PCIT vs. Lex Sportel Vision (P.) Ltd. [2026] 191 taxmann.com 617 (Delhi) [13-10-2026] - IT Appeal No. 821 of 2026

Assessee company has made foreign remittances to an overseas rights holder for the acquisition of 'Live Rights'. The department had filed the present appeal challenging the Order of ITAT in *Asstt. CIT v. Lex Sportel Vision (P.) Ltd. [2026] 186 taxmann.com 58 (Delhi - Trib.)*. The High court noted that questions of law raised in current matter were also considered in *CIT v. Lex Sportel Vision (P.) Ltd. [IT Appeal No. 334 of 2026, dated 27-4-2026]*, i.e. "Whether since said payments were not made for use of any process as defined under section 9(1)(vi), same could not be charged to tax as 'royalty' in hands of overseas rights holder". In the said case, the Hon'ble High Court relied on the reasoning of *Commissioner of Income Tax - International Taxation-3 v. Sri Lanka Cricket 2026 SCC OnLine Del 242* ruling that 'live feed' does not attract royalty as the payment was only made for live telecast of matches being held in a time period of 12 months, and not any subsequent matches. Royalty presupposes enduring benefits. Thus, the questions raised in the current appeal had already been answered against the revenue. ***[Asstt. CIT v. Lex Sportel Vision (P.) Ltd. [2026] 186 taxmann.com 58/218 ITD 452 (Delhi - Trib.) affirmed]***

v. Assignment of Trademark

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1. **Assignment of Trademark - Not Royalty but Capital gain under Article 13(6) - not taxable in India**

   Novartis AG vs. ACIT (IT) [2026] 191 taxmann.com 446 (Mumbai - Trib.) [12-10-2026] - IT APPEAL NO. 1027 (MUM) OF 2023 - [AY 2020-21] - [TS-1671-ITAT-2026(Mum)]

   Assessee, a company incorporated in Switzerland, was engaged in pharmaceutical business. During relevant previous year, it entered into transactions to assign trademarks to Indian companies. It claimed that aggregate consideration of about Rs. 433.15 crores was for an outright sale of trademarks and, being gains from alienation of capital assets, was not taxable in India under Article 13(6) of India–Switzerland DTAA. AO, referring to restrictions in assignment deeds on territory, specified pharmaceutical preparations, trade dress, packaging and protection outside India, and to prior commercial association of Indian purchasers with Novartis group, treated consideration as payment for continued use and proposed to tax about Rs. 433.15 crores as royalty under section 9(1)(vi) read with Article 12 of DTAA. Tribunal ruled that consideration in question was for alienation of trademark rights and not for use of, or right to use, property continuing to belong to assessee in India. Since alienation of capital assets in question fell for consideration under Article 13(6), assessee being a resident of Switzerland, resulting gains were taxable only in Switzerland under that provision. Therefore, addition of Rs. 433.15 crore made by treating sale consideration as royalty was deleted.

vi. Taxability on receipt basis

1. **Royalty and FTS arising to a non-resident under India-Germany DTAA - is taxable in India on receipt basis and not on accrual basis under Article 12 of the DTAA as the language used in article 12 is "paid", "payments of any kind received" and "payments of any amount". [India-Germany DTAA] *[Siemens Aktiengesellschaft v. Dy. CIT (International Taxation)-4(2)(2) [2026] 185 taxmann.com 985 (Mumbai - Trib.) followed]***

   Siemens Aktiengesellschaft vs. ACIT (IT) [2026] 190 taxmann.com 416 (Mumbai - Trib.) [08-09-2026] - IT Appeal Nos. 4393 and 6728 (MUM) of 2024 - [AY 2020-21]

VII. CAPITAL GAINS

i. Buy back of shares

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1. **Where assessee, Dutch shareholder, alienated shares of Indian company through buy-back, gains arising were not taxable in India in view of Article 13(5) of India–Netherlands DTAA**

   Perfetti Van Melle Holding B.V. vs. ACIT, IT [2026] 191 taxmann.com 908 (Delhi - Trib.) [07-10-2026] - IT APPEAL NO. 1804 (DEL) OF 2023 - [AY 2020-21] - [TS-1604-ITAT-2026(DEL)]

   Assessee–shareholder held about 99.9% of equity in an Indian company (PVM India). During year, PVM India bought back 92,91,300 shares from assessee at Rs. 10 per share, and assessee received about Rs. 9.29 crores as consideration. In assessment, AO treated buy-back as taxable in assessee's hands as capital gains. Relying on FMV of Rs. 298.30 per share (as per details obtained from PVM India), AO held that, besides Rs. 9.29 crores actually received on buy-back, an accrued gain arose due to appreciation in value of remaining shares, computing such accrual at about Rs. 267.86 crores and determined total capital gains at about Rs. 277.16 crores. Alternatively, AO applied Sections 46A read with 50CA to deem FMV as full value of consideration and computed a similar gain. Tribunal ruled that buy-back of shares by an Indian company from its Dutch parent is not taxable in India as per Article 13(5) of DTAA and, accordingly, capital gains in hands of assessee pursuant to buy-back of shares by PVM India are not chargeable to tax under Article 13(5A) of DTAA. Since Revenue had not rebutted assessee's contention that income of shareholder pursuant to buy-back was exempt under Section 10(34A) and that transfer of capital asset by a company to its wholly owned subsidiary was exempt from capital gains tax as per Section 47(iv), impugned addition was deleted. ***[Huntsman Investment [Netherlands] BV v. ADIT International Taxation [2026] 184 taxmann.com 602 (Delhi-Trib.) followed]***

ii. Assignment of Trademark

1. **Assignment of Trademark - Not Royalty but Capital gain under Article 13(6) - not taxable in India**

   Novartis AG vs. ACIT (IT) [2026] 191 taxmann.com 446 (Mumbai - Trib.) [12-10-2026] - IT APPEAL NO. 1027 (MUM) OF 2023 - [AY 2020-21] - [TS-1671-ITAT-2026(Mum)]

   Assessee, a company incorporated in Switzerland, was engaged in pharmaceutical business. During relevant previous year, it entered into transactions to assign trademarks to Indian companies. It claimed that aggregate consideration of about Rs. 433.15 crores was for an outright sale of trademarks and, being gains from alienation of capital assets, was not taxable in India under Article 13(6) of India–Switzerland DTAA. AO, referring to restrictions in assignment deeds on territory, specified pharmaceutical preparations, trade dress, packaging and protection outside India, and to prior commercial association of Indian purchasers with Novartis group, treated consideration as payment for continued use and proposed to tax about Rs. 433.15

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crores as royalty under section 9(1)(vi) read with Article 12 of DTAA. Tribunal ruled that consideration in question was for alienation of trademark rights and not for use of, or right to use, property continuing to belong to assessee in India. Since alienation of capital assets in question fell for consideration under Article 13(6), assessee being a resident of Switzerland, resulting gains were taxable only in Switzerland under that provision. Therefore, addition of Rs. 433.15 crore made by treating sale consideration as royalty was deleted.

iii. Treaty benefits w.r.t Capital gains claimed during assessment

2. Treaty benefits qua capital-gains claimed during assessment without revised return- can be adjudicated by CIT(A) - Remedy u/s 119 unwarranted - Matter remanded to AO

Varun Hemant Keskar vs. ITO [2026] 191 taxmann.com 438 (Pune - Trib.) [12-10-2026] - IT APPEAL NO. 133 (PUN) OF 2026 - [AY 2024-25]

Assessee, a non-resident, returned capital gain of Rs. 17.15 lakhs in return, which CPC accepted on 06.09.2024. Subsequent to filing, reliance was placed on coordinate Bench decision in *Mrs. Anushka Sanjay Shaha v. ITO [IT(IT)A No.174/MUM/2025, dated 26-03-2025]*, which treated such capital gains as exempt under India–Singapore DTAA, Article 13(5). On that basis, similar relief was sought before first appellate authority. First appellate authority dismissed appeal stating that since exemption had not been claimed in return, assessee ought to have filed a revised return or approached CBDT for condonation under Section 119(2)(b). Tribunal ruled that first appellate authority erred in dismissing appeal as non-maintainable and in refusing to entertain fresh claim for treaty relief on capital gains not made in return. Therefore, order of first appellate authority was set aside, and matter was remanded to AO for recomputation in accordance with law. ***[CIT v. Pruthvi Brokers & Shareholder [2012] 23 taxmann.com 23/208 Taxman 498/349 ITR 336 (Bombay) followed, Order of CIT(A)-1, Ahmedabad dated 01.12.2025 for AY 2024-25 set aside]***

VIII. NON-DISCRIMINATION

i. Foreign company PE not entitled to domestic company tax rates

1. Netherlands-based non-resident banking company operating in India through a PE - Not entitled to claim domestic company tax rates by invoking Article 24(2) of the DTAA. [India-Netherlands DTAA]

Royal Bank of Scotland, N.V. vs. DIT, IT [2026] 190 taxmann.com 829 (Calcutta) [22-09-2026] - IT Appeal No. 4 of 2011 – [AY 2004-05]

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Appellant, a non-resident foreign banking company incorporated in Netherlands, carried on banking operations in India through a branch recognised as a PE under Act and India–Netherlands DTAA. For AY 2004-05, it filed its return asserting that it should be taxed at rate applicable to domestic companies by invoking non-discrimination clause in Article 24(2), consistent with positions taken for earlier years including AY 1999-2000. AO taxed appellant at rate applicable to a foreign company and rejected claim to be assessed at domestic-company rate under Article 24(2) of DTAA. High court ruled that explanation to section 90, inserted by Finance Act, 2001, with retrospective effect from April 1, 1962, explicitly declares that charging a higher rate of tax on a foreign company shall not be regarded as "less favourable" treatment. Further, "same circumstances" requirement in Article 24(2) of DTAA is not met as a foreign company and a domestic company are not in identical circumstances because former is taxed only on Indian-sourced income, whereas latter is taxed on its global income. Consequently, differential tax rate does not constitute prohibited discrimination under treaty. Therefore, Tribunal was justified in law in holding that Appellant was liable to income tax at higher rate applicable to a foreign company and not at rate of tax applicable to a domestic company. ***[Royal Bank of Scotland N.V. v. CIT [2026] 494 ITR 171 followed]***

IX. FOREIGN TAX CREDIT

i. Delay / non-filing of Form 67

1. **Where assessee included ESOP gain taxed in Germany in Indian return and filed Form 67 within prescribed time, merely mentioning an incorrect DTAA Article originally and later correcting it does not warrant denial of foreign tax credit, as such filing requirement is procedural and the substantive right to FTC cannot be denied for inadvertent procedural errors or delays in filing a corrected form. [India-Germany DTAA]. *[Collector, Land Acquisition v. Mst. Katiji [1987] 167 ITR 471 (SC), and Deepak Shimoga Padmaraju v. Asstt DIT/ITO [2024] 162 taxmann.com 96/206 ITD 803 (Bang-Trib) followed]***

   Aditya Kapoor vs. ITO [2026] 191 taxmann.com 33 (Bangalore - Trib.) [22-09-2026] - IT Appeal No. 2925 (Bang) OF 2025 - [AY 2019-20]

2. **Where assessee's claim for Foreign Tax Credit was disallowed solely for not filing Form 67 with return but was later submitted with a rectification application, Tribunal held that filing of Form 67 is procedural and not filing it does not defeat substantive entitlement to FTC, so claim must be examined on merits after admitting Form 67. Matter remanded**

   Saurabh Sirohi vs. ACIT [2026] 190 taxmann.com 1207 (Delhi - Trib.) [25-09-2026] - IT Appeal No.2546 (DEL) of 2026 - [AY 2019-20]

ii. FTC claim already examined – Rectification quashed

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1. **Where assessee, an Indian company, claimed foreign tax credit on tax withheld in Nepal and claim was examined and accepted in assessment under section 143(3), subsequent rectification of FTC computation under section 154, involving further examination of claim, could not be treated as correction of a mistake apparent from record; hence, rectification order restricting FTC was quashed**

   Telecom Network Solution (P.) Ltd. vs. ACIT [2026] 191 taxmann.com 93 (Delhi - Trib.) [21-09-2026] - IT Appeal No. 9137 (Del) OF 2025 - [AY 2017-18] - [TS-1575-ITAT-2026(DEL)]

iii. Unutilised FTC cannot be claimed as deduction

1. **Where assessee engaged in shipping and project logistics had foreign tax withheld on overseas income already taxed in India in earlier years, unutilised foreign tax credit could not be claimed as business expenditure upon write-off in a subsequent year, and mere absence of sufficient Indian tax liability did not create entitlement to deduction or deferred credit, thus, claim for deduction or alternate foreign tax credit was not allowable.**

   Sarjak Container Lines (P.) Ltd. vs. Dy. CIT [2026] 190 taxmann.com 980 (Mumbai - Trib.) [16-09-2026] - IT Appeal No. 1791 (MUM) of 2026 - [AY 2022-23] - [TS-754-ITAT-2026(Mum)-TP]

   Assessee, engaged in shipping and project logistics, had foreign tax of Rs. 94,97,323 withheld from its income earned abroad. Corresponding gross receipts were offered to tax in India in earlier years, and withheld amounts were carried as a receivable. As assessee had no sufficient Indian tax liability to absorb credit, receivable was written off on 31.03.2022 and claimed as deduction in relevant year. AO and the DRP denied the assessee's claim for deduction/credit of the said amount. Tribunal ruled that statutory scheme of sections 90/91 read with Rule 128 cannot be enlarged by permitting an unutilised foreign tax credit pertaining to income offered in an earlier year to be converted into a business expenditure in a subsequent assessment year. Absence of sufficient tax liability for absorbing credit does not, by itself, alter character of foreign tax or create an independent deduction under section 37(1). Therefore, assessee's claim for deduction of Rs. 94,97,323 or, in alternative, claim for foreign tax credit in relevant year was rejected. ***[Lubrizol India Ltd. v. CIT [1991] 54 Taxman 363/187 ITR 25 (Bombay), Dy. CIT v. Elitecore Technologies (P.) Ltd. [2017] 80 taxmann.com 6/165 ITD 153 (Ahmedabad - Trib.) followed, Reliance Infrastructure Ltd. v. CIT [2016] 76 taxmann.com 257/ [2017] 390 ITR 271 (Bombay) distinguished]***

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X. OTHERS

i. Reassessment on alleged failure to deduct tax at source

1. Reassessment notices issued alleging failure to deduct tax at source under section 195 on remittances to associated enterprises and to make consequent disallowance under section 40(a)(i) - Unenforceable - when in separate proceedings u/s 201 ITAT held that no tax liability arose in hands of payee and assessee could not be treated as an assessee-in-default u/s 201.

Principal Officer LG Electronics India (P.) Ltd. vs. ACIT [2026] 191 taxmann.com 337 (SC) [07-10-2026] - Civil Appeal No. 18067 of 2017 – [AY 2006-07 to 2008-09] - [TS-1629-SC-2026]

Assessee, whose parent company was L.G. Electronics Korea, was issued notices under section 148 to reopen assessments under section 147 on allegation that L.G. Korea and other associated enterprises had a permanent establishment (PE) in India and that assessee failed to deduct tax at source under section 195 on remittances to them, attracting disallowance of corresponding expenses under section 40(a)(i). In separate proceedings under section 201, ITAT held that there was no tax liability in hands of payee, L.G. Korea, and, consequently, assessee was not liable to be treated as an assessee-in-default. Hon'ble Supreme Court held that where assessee could not be treated as an assessee-in-default under section 201, no disallowance could be made under section 40(a)(i). Since notice under section 147 related only to default under section 201 and consequential disallowance under section 40(a)(i), reassessment proceedings initiated for AYs 2006-07 to 2008-09 were held to be unenforceable.

2. Reassessment to make disallowance u/s 40(a)(i) based on change of opinion - Quashed

Eurofins Peenya Resources (P.) Ltd. vs. Dy. CIT [2026] 190 taxmann.com 1058 (Bangalore - Trib.) [28-09-2026] - IT Appeal No. 1116 (Bang) of 2023 - [AY 2016-17]

AO reopened assessment and disallowed expenses relating to payments to non-residents for AMC and allied services. It was held that pendency of the appeal against the order under section 201 did not bar reassessment u/s 148, since a disallowance of expenditure under section 40(a)(i) and recovery proceedings under section 201 concern distinct subject matters. However, the reassessment was quashed because the AO in the original assessment under section 143(3) had specifically called for and received the details of foreign remittances, nature of service and TDS particulars and completed the assessment without any section 40(a)(i) disallowance and thus reopening on the same information amounted to a change of opinion and was impermissible. ***[EIT Services India Private Limited v. Dy. CIT [2024] 159 taxmann.com 424/463 ITR 774 (Karnataka) distinguished]***

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