



INTERNATIONAL TAX DIGEST (September 2026)

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I. PERMANENT ESTABLISHMENT

i. Service PE

1. Notice issued in Revenue's SLP filed against impugned order of High Court that where assessee, Singaporean company, engaged in business of legal advisory services, had only rendered services to its Indian clients for 44 days, excluding vacation, business development days and common days, it did not meet 90 days criteria to constitute a service PE in India during relevant year. [India-Singapore DTAA]

**CIT, IT vs. Clifford Chance Pte. Ltd. [2026] 190 taxmann.com 37 (SC) [25-08-2026]
- SLP (CIVIL) DIARY NO(S). 38973 OF 2026 – [AY 2020-21]**

Assessee, a non-resident company engaged in legal advisory services, provided legal advisory services to Indian clients partly through two employees who visited India and were present for 120 days. AO held that assessee had a service PE in India owing to physical presence of its employees in India as aggregate duration of provision of services by assessee exceeded 90 days. Tribunal held that actual performance of services in India by employees physically present in country is necessary to constitute service PE and since assessee had only rendered services to its clients for 44 days, excluding vacation, business development days and common days, it did not meet 90 days criteria to constitute a service PE in India. High Court by impugned order held that since Article 5(6)(a) of the DTAA contemplates that an enterprise shall be deemed to have a permanent establishment in contracting state through its employees or other personnel only if activities within contracting state continue for a period aggregating to 90 days in any fiscal year and since assessee had only rendered services to its clients for 44 days, excluding vacation, business development days and common days spent by its employees in India, it did not meet 90 days criteria to constitute a service permanent establishment in India. Therefore, order passed by Tribunal did not require any interference. Hon'ble Supreme court ruled that notice was to be issued in SLP filed by revenue against impugned order. **[Notice issued in SLP against Commissioner of Income-tax, International Taxation v. Clifford Chance Pte Ltd. [2025] 181 taxmann.com 254 (Delhi)/[2026] 308 Taxman 431 (Delhi)/[2026] 485 ITR 407 (Delhi)]**

2. Notice issued in Revenue's SLP filed against impugned order of High Court that article 5(6) of India Singapore DTAA only contemplates rendering of services by employees present within country, concept of virtual service PE does not find mention in DTAA and, thus, cannot be read into DTAA. [India-Singapore DTAA]

**CIT, IT vs. Clifford Chance Pte. Ltd. [2026] 190 taxmann.com 37 (SC) [25-08-2026]
- SLP (CIVIL) DIARY NO(S). 38973 OF 2026 – [AY 2020-21]**

Assessee, a non-resident company engaged in legal advisory services, provided legal advisory services to Indian clients. The department argued that even when the employees were not physically present in India, services were continued to be

rendered virtually, for more than 90 days. It was the view of the AO that as a result of rapid digitalisation, services including consultancy services can be provided virtually without the physical presence of employees in the contracting state. AO issued draft assessment order proposing to tax a certain sum, alleging a virtual service PE. Tribunal rejected revenue's allegation of a virtual service PE in absence of such a concept in DTAA. Moreover, since concept of a virtual service permanent establishment did not find mention anywhere in DTAA, in absence of any such provision, contention of revenue that a virtual service permanent establishment of assessee had been established could not be accepted. High Court by impugned order held that Article 5(6) of DTAA only contemplates rendering of services by employees present within country, concept of virtual service PE does not find mention in DTAA and, thus, cannot be read into DTAA. Further, Assessee, a non-resident company engaged in legal advisory services, provided legal advisory services to Indian clients but no employee visited India and services to Indian clients were rendered from outside India. Therefore, order passed by Tribunal did not require any interference. Hon'ble Supreme court ruled that notice was to be issued in SLP filed by revenue against impugned order. **[Notice issued in SLP against Commissioner of Income-tax, International Taxation v. Clifford Chance Pte Ltd. [2025] 181 taxmann.com 254 (Delhi)/ [2026] 308 Taxman 431 (Delhi)/ [2026] 485 ITR 407 (Delhi)]**

3. **Where assessee, a US-resident company, received cost-to-cost reimbursements from Indian affiliates for services rendered remotely without any physical presence or employee travel to India, and activities were conducted electronically, none of the conditions for a service permanent establishment were satisfied, so such reimbursements were not taxed in India. [India-USA DTAA]**

Kohler Co. vs. DCIT, IT [2026] 190 taxmann.com 147 (Bangalore - Trib.) [27-08-2026] - IT Appeal No. 185 (BANG) of 2025 - [AY 2020-21]

Assessee, a US-resident foreign company, ultimate holding company of Kohler Group, received about Rs. 3.95 crores from its Indian associated enterprises, Kohler Power India Pvt Ltd and Kohler India Corporation Pvt Ltd. Assessee stated these were pure cost-to-cost reimbursements (including insurance, business promotion, legal/professional, travel and similar heads) with no mark-up, that no income accrued in India, and that the DTAA Article 12 "make available" condition was not satisfied. AO held assessee performed managerial functions by centrally planning services and treated receipts as consideration for managerial services taxable in India. CIT(A) held that, under Explanation 2 to section 9, receipts from managerial services were taxable under Act; under DTAA, services were not "included services" under Article 12 and were therefore taxable as business profits under Article 7(7) and further held that services were furnished for more than 90 days in a 12-month period and rendered through employees or other personnel of assessee and concluded that a service PE existed. It was noted that entire reimbursement process was carried out remotely and electronically and it did not require any physical presence in India or travel by any employee of assessee, as activities could be undertaken through online systems such as emails and calls. Tribunal ruled that since none of conditions of service permanent

establishment was satisfied in case of assessee, impugned reimbursement of expenditure was not taxed in India.

4. **Duration test for Service PE was to be applied project-wise and not employee-wise and common days could not be counted multiple times merely because several employees were present simultaneously - Mere presence of assessee's employees would not create a Supervisory PE unless supervisory activities were linked with a qualifying construction, installation or assembly project and continued beyond prescribed threshold period of six months**

Toyota Tsusho Corporation vs. Dy CIT (Int. Tax.) [2026] 190 taxmann.com 826 (Delhi - Trib.) [21-09-2026] - IT Appeal Nos. 1828 (Delhi) of 2018 and others - [AY 2013-14, 2015-16 and 2016-17] - [TS-1522-ITAT-2026(DEL)]

Assessee, a Japanese company, was engaged in trading activities and earned income from supervision services, software usage fees, technical fees, commission income and offshore supply of goods to Indian entities. AO held that assessee constituted a Supervisory PE in India under article 5(4) on account of presence of its employees/expatriates and attributed 75 per cent of revenue declared as FTS to such PE. CIT(A) held that no Supervisory PE existed in respect of most Indian customers but sustained existence of Supervisory PE in relation to Toyota Lakozy Auto (P.) Ltd. Tribunal noted that duration test was to be applied project-wise and not employee-wise and common days could not be counted multiple times merely because several employees were present simultaneously. Tribunal ruled that since expatriates had rendered services for various companies, except Toyota Lakozy Auto (P.) Ltd., for less than six months and, in case of Toyota Lakozy Auto (P.) Ltd., there was no evidence that services were rendered in connection with any building site, construction, installation or assembly project, assessee did not constitute a Supervisory PE in India. Mere presence of assessee's employees would not create a Supervisory PE unless supervisory activities were linked with a qualifying construction, installation or assembly project and continued beyond prescribed threshold period of six months. Therefore, no income was attributed to assessee on account of such PE. **[CIT v. Sumitomo Corporation [2017] 80 taxmann.com 247/ [2016] 382 ITR 75 (Delhi), FCC Co. Ltd. v. ACIT ITA Nos. 54 & 8960/Del/2019, National Petroleum Construction Company v. DIT (International Taxation) [2016] 66 taxmann.com 16/238 Taxman 40/383 ITR 648 (Delhi), GFA Anlagenbau GmbH v. Dy/Asstt. DIT (International Taxation) [2014] 47 taxmann.com 313 (Hyderabad - Trib.)/ [2014] 34 ITR(T) 73 (Hyd) followed]**

ii. Fixed PE/Service PE

1. **Where assessee, a Thailand-based company, made offshore supplies to its Indian group entity and there was no cogent evidence of its employees rendering services in India, mere presence of expatriates at Indian group entity did not establish a PE; therefore, no profits were attributed to assessee in India under the DTAA [India–Thailand DTAA]**

Honda Trading Asia Company Ltd. vs. Dy CIT (IT) [2026] 189 taxmann.com 1012 (Delhi - Trib.) [06-08-2026] - IT Appeal No. 876 (Delhi) of 2021 and others - [AY 2016-17 to 2019-20] - [TS-1194-ITAT-2026(DEL)]

Assessee, a Thailand-based company engaged in trading raw materials and spare parts, supplied raw materials and capital goods and provided technical services and royalty to its Indian group company, HCIL. Assessee offered technical-services and royalty receipts to tax in India. Following surveys at HCIL and statements of expatriate employees receiving salary in India and from Japanese parent, AO held that assessee had a business connection and PE in India and, since India-specific books were not maintained, invoked Rule 10 and attributed 25 per cent of profits to alleged PE activities in India. Assessee contended that supplies were made offshore, HCIL independently manufactured and sold vehicles and handled warranties, no employee of assessee was seconded to or visited India, and expatriates at HCIL worked under HCIL's control. Tribunal ruled that in absence of cogent material establishing any fixed place of business or that expatriates deputed by Japanese parent had rendered services in India on behalf of assessee, mere deployment of such expatriates at HCIL could not establish assessee's PE in India. Therefore, assessee had no PE in India, and no profits were attributed to it in India.

iii. Fixed PE

1. **Where assessee, an Italy based company, supplied plant, equipment and designs and rendered supervision for blast furnace projects to Indian customers, and all activities for offshore supply including passing of risk and title occurred outside India, profits from such sales were not taxed in India as no fixed place PE existed, and supervisory PE came into existence only after such supplies were completed. [India-Italy DTAA]**

Dy CIT vs. Paul Wurth Italia SPA [2026] 189 taxmann.com 1009 (Delhi - Trib.) [07-08-2026] - IT Appeal No. 5254 (Delhi) of 2017 and others - [AYs 2010-11, 2012-13, 2013-14, 2014-15 and 2015-16] - [TS-1219-ITAT-2026(DEL)]

Assessee, an Italy based company, was engaged in supply of plant and equipment, integrated designs/drawings and spares, and in rendering supervision and technical assistance for blast furnace projects. It entered into separate agreements with Indian customers. It offered technical assistance income to tax, admitted a supervisory PE for supervision services and offered such income on completed contract method, but claimed that consideration for offshore supply of equipment, integrated designs and spares was not taxable in India as title and risk passed outside India. AO held that a fixed place PE existed in India in form of business premises of its Indian affiliate and customer sites and invoked force-of-attraction rule in Article 7(1). Treating contracts as a composite arrangement, AO included offshore equipment supply and offshore designs, computed project profit and attributed 50% to alleged PE as business profits. It was noted that all activities relating to manufacture, design, fabrication etc. of plant and machinery had taken place in factory of assessee company in Italy. Further, as

per relevant terms of contract entered into with Indian customers, risk and title in goods had passed outside India. Tribunal ruled that since no evidence had been brought on record by AO to show that supervisory PE under Article 5(2)(j) had any role to play in activity of supply of goods, activities of which were carried on outside India, supervisory activities being a stage subsequent to completion of supply of goods and that PE came into existence only after offshore supplies were complete, attribution on that account was unwarranted. Further since assessee did not have a fixed place PE in India, business profits arising on sale of offshore equipment, drawing and designs taking place outside India were not taxed in India.

2. **Where assessee, a Korean tax resident, engaged in transactions with its Indian subsidiary, had expatriate employees working under employment agreements with and paid by Indian entity with tax withholding in India, requisite conditions for a fixed place PE under Article 5 of the DTAA were not satisfied and thus no PE could be constituted in India. [India-Korea DTAA]**

LG Electronics Inc. vs. A/DCIT IT [2026] 189 taxmann.com 1013 (Delhi - Trib.) [17-08-2026] - IT Appeal Nos. 7011 & 7012 (Delhi) of 2019, 179 (Delhi) of 2021 & 1034 (Delhi) of 2023 - [AY 2015-16, 2016-17, 2017-18 and 2020-21] - [TS-1337-ITAT-2026(DEL)]

Assessee, a tax resident of Korea, was engaged in manufacturing and sale of household electronic appliances. It entered into transactions with its Indian subsidiary, LGEIL, for sale of raw materials, finished goods, royalty and FTS. AO primarily on basis of statements recorded during course of survey on LGEIL concluded that assessee was pursuing its business in India through expatriate employees posted in Indian subsidiary, i.e. LGEIL. AO treated LGEIL as constituting a fixed place PE of the assessee under Article 5 and the AO attributed 25 per cent of profits to the alleged PE. Tribunal ruled that since expatriate employees from Korea entered into employment agreements with LGEIL under which expatriates from assessee were engaged by Indian AE and salary payments made by LGEIL to expatriate employees were subject to withholding tax under provisions of laws of India, necessary conditions set out in Article 5 of India-Korea DTAA to constitute fixed place PE in India were not satisfied. Therefore, assessee had no PE in India. **[L.G. Electronics India (P.) Ltd. v. ACIT [2023] 150 taxmann.com 365 (Delhi - Trib.) followed]**

iv. Subsidiary PE

1. **Where assessee, a US based company, sold products to an Indian subsidiary and other customers but Tribunal in earlier years under identical facts found no PE in India through subsidiary, no profits were taxable in India and addition by AO for deemed business profits was unwarranted**

Lubrizol Corporation vs. ACIT (Int. Taxation) [2026] 190 taxmann.com 939 (Mumbai - Trib.) [25-09-2026] - ITA No. 1672 (Mum) OF 2022 - [AY 2017-18]

Assessee, US based company, was engaged in manufacturing high-performance chemicals and related activities. It had an Indian subsidiary (LIPL). AO observed that Indian AE was manufacturing products developed by assessee and was involved in marketing products manufactured by assessee. AO concluded that LIPL constituted a PE of assessee in India and attributed 5 per cent of total India sales as profits and made additions to income of assessee. Tribunal ruled that since under identical facts and circumstances, Tribunal, while deciding issue in case of assessee in earlier assessment years, had negated revenue's stand regarding existence of PE in India, there being no PE in India, no part of business profits could be taxed in India and, thus, AO was directed to delete addition.

II. BUSINESS PROFITS

i. Mere payment by an Indian resident to non-resident in the absence of business connection – Not Taxable

1. **Where Teva Israel, a non-resident, received Rs. 1,851 crores from Ranbaxy India subject to TDS of Rs 784 crores and claimed the same as refund which was denied on protective basis in lieu notices issued u/s 148 to Teva USA – the High Court held that said receipt of 1851 Crores was not chargeable to tax in India in absence of business connection and refund due to Teva Israel could not be withheld merely on account of reassessment proceedings against Teva USA which were also quashed. [India – USA DTAA]**

Teva Pharmaceuticals Usa Inc. vs. Dy CIT [2026] 190 taxmann.com 547 (Delhi) [15-09-2026] - W.P.(C) Nos. 10711 & 10714 of 2017 & others, CM APPL. No. 52016 of 2019 & others – [AY 2012-13, 2013-14 and 2014-15] - [TS-1480-HC-2026(DEL)]

Teva USA, a US subsidiary of Teva Israel, and Ranbaxy USA entered into agreements in USA concerning 180-day exclusivity for generic Atorvastatin (a drug that Teva USA and Ranbaxy USA wanted to sell in the USA market). This agreement was in dispute in a US court. This exclusivity dispute, and the settlement that followed, was entirely a matter of US pharmaceutical regulation and US contract law, with no part of the underlying transaction taking place in India. In the original agreement it was agreed that 15% of the profits would be paid to Teva USA by Ranbaxy USA. But due to the dispute between the parties and pursuant to settlement of the dispute, an amended agreement was entered into by virtue of which 50 per cent of profits earned by Ranbaxy USA on sale of Atorvastatin during the exclusivity period was to be paid to Teva Israel. Although Teva USA was the entity contractually entitled to receive Ranbaxy's payment, but Teva USA assigned that entitlement to Teva Israel by a Letter of Assignment as Teva US was only the marketing company and manufacturing activities/rights were with Teva Israel. Further, it was also decided that Ranbaxy India, the parent company to Ranbaxy USA would remit the payment directly to Teva Israel. Consequently, Teva Israel (the non-resident manufacturer-parent in Israel) received

Rs. 1,851 crores from Ranbaxy India (parent company to Ranbaxy USA) subject to TDS of Rs. 784 crores (deducted by Ranbaxy India)

Teva Israel filed return declaring nil income and claimed refund of TDS. Revenue denied the refund and withheld the amount as it believed that income paid to Teva Israel, was actually accrued to Teva USA and, accordingly, protective assessment was framed in hands of Teva Israel and notices u/s 148 were issued against Teva USA. Teva Israel had also filed application under section 245Q seeking advance ruling that receipt was business income not chargeable to tax in India in absence of business connection/PE and was not taxable as royalty/FTS. AAR declined to pronounce ruling upon taxability in India, observed that income belonged to Teva USA and invoked clause (iii) of proviso to section 245R (2) treating transaction as prima-facie designed for avoidance of tax. Further, AAR had held that the agreement lacked commercial sense. AAR proceeded on a hypothesis or conjecture that there "might have been a tacit understanding" between Teva USA and Ranbaxy for the exclusivity period and proceeded to observe that "only such an understanding" could explain the enhancement of Teva's share from 15% to 50% in the settlement. Then, based on this conjecture, the AAR premised its conclusion that the arrangement was collusive and constituted a "sham and make belief arrangement", and was prima-facie designed for avoidance of tax. As against the a) ruling of the AAR, b) denial of refund to Teva Israel, c) notices issued u/s 148 to Teva USA, both Teva Israel and Teva USA filed writ petitions before the High Court.

Judgement

As regards taxability in hands of Teva Israel:

High court ruled that AAR, having admitted application under section 245R (2), was not justified in declining to answer questions raised by applicant by holding that income belonged to Teva USA and by treating transaction as prima-facie designed for avoidance of tax without any factual fulcrum and jurisdictional foundation. The High court ruled that AAR exceeded its jurisdiction by making findings regarding commercial wisdom, collusion and sham arrangement without determining whether receipt was chargeable to tax in India. It concluded that the Amount received by Teva Israel from Ranbaxy India was not chargeable to tax as it had no semblance or nexus with any activity in India in the absence of a business connection in India and that a singular factor that money had gone from India could trigger the charging section.

As regards Refund claim of Teva Israel:

The High Court noted that the refund claim of Teva Israel, was withheld on protective basis pending s.148 proceedings for AY's 2012-13, 2013-14 and 2014-15 against Teva USA. High court ruled that though protective assessment may be made where there is doubt as to recipient of income or assessee in whose hands income is assessable, there is no concept of protective recovery. It ruled that Refund due to Teva Israel could not be withheld merely because proceedings had been initiated against Teva USA. Teva Israel was entitled to refund of TDS along with applicable interest, subject to furnishing of guarantees/security.

As regards notices issued u/s 148 to Teva USA:

High court ruled that mere payment by an Indian resident to a non-resident ipso facto does not constitute income accruing or arising in India. Since Revenue had failed to demonstrate any nexus, much less a real and substantive nexus, between impugned receipt and territory of India, mere payment by an Indian resident to a non-resident ipso facto did not constitute an income accruing or arising in India and transaction neither fell within any of specific deeming provisions under section 5(2)(b) nor of section 9 and, in absence of both, jurisdictional foundation for issuance of notice under section 148 collapsed. **[BP Israel, In re [2021] 124 taxmann.com 133/434 ITR 283 (AAR - New Delhi) set aside, GVK Industries Ltd. v. ITO [2015] 54 taxmann.com 347/231 Taxman 18/371 ITR 453 (SC), CIT v. Phra Phraison Salarak (1928) 6 ILR 598, Johnson Matthey Public Ltd. Comapany v. CIT [2024] 162 taxmann.com 865/299 Taxman 334/465 ITR 649 (Delhi) (para 167), CIT v. Alpine Solvex Ltd. [2005] 144 Taxman 67/276 ITR 92 (Madhya Pradesh), and Authority for Advance Rulings (Income-tax) v. Tiger Global International II Holdings [2026] 182 taxmann.com 375/485 ITR 214 (SC) distinguished]**

ii. Design receipts inextricable to offshore equipment supply are business profits, not royalty/FTS

1. Where assessee, an Italian company, supplied designs for indigenous equipment and civil works from outside India under separate contracts with title and risk passing offshore and receipts in foreign currency, such consideration was akin to sale of a product, hence not taxed in India as royalty or fees for technical services under Article 13 of DTAA or section 9, but could only be characterized as business profits under Article 7. [India-Italy DTAA]

Dy CIT vs. Paul Wurth Italia SPA [2026] 189 taxmann.com 1009 (Delhi - Trib.) [07-08-2026] - IT Appeal No. 5254 (Delhi) of 2017 and others - [AYs 2010-11, 2012-13, 2013-14, 2014-15 and 2015-16] - [TS-1219-ITAT-2026(DEL)]

Assessee, a company incorporated in Italy, was engaged in business of providing plants and equipment for iron and steel industry. It entered into separate offshore supply agreements as well as agreements for supply of imported designs for indigenous equipment and for civil/structural works. It claimed non-taxability in India for offshore supplies, including aforesaid designs supplied from outside India, contending title/risk passed offshore and receipts were in foreign currency. For AY 2012-13, AO treated total receipts of about Rs. 371.06 crores (including offshore supply of about Rs. 334.60 crores and receipts for designs for indigenous equipment of about Rs. 26.80 crores and for civil works of about Rs. 9.66 crores) as revenue attributable to a PE and taxed profits accordingly. For later years, AO followed same approach of attributing profits on these receipts to a PE. In appeal for assessment year 2012-13, while granting relief on offshore supply of equipment (including integrated designs) on ground that no fixed place PE existed, CIT(A) held that receipts of about Rs. 26.80 crores for designs relating to indigenous equipment and about Rs. 9.66 crores for designs relating to civil works were taxable in India as royalty/FTS under

Article 13 and Act and taxed them at 10%, treating these as standalone design supplies not inextricably linked to equipment supply. Similar re-characterisation of such design receipts was made by CIT(A) for AY's 2013-14, 2014-15 and 2015-16. Tribunal ruled that since supply of designs was akin to sale of a product and as such, income thereof could only be characterised as business profits and assessed in terms of Article 7 of DTAA, consideration for supply of designs/drawings relating to indigenous equipment and civil works was not taxable in India as 'Royalty' or 'Fees for Technical Services' under Article 13 of the DTAA read with Section 9 but was treated as business income not taxable in India under Article 7 **[Outotec (Finland) Oy v. Dy. CIT (International Taxation) [2019] 109 taxmann.com 69 (Kol - Trib.) followed]**

iii. Offshore Supplies

1. Where profits from offshore supply of goods to Indian entities arose from contracts concluded outside India, with property and title passing and consideration received outside India under principal-to-principal transactions, and no part of operations relating to offshore supply was carried out in India, such profits could not be subjected to tax in India

Toyota Tsusho Corporation vs. Dy CIT (Int. Tax.) [2026] 190 taxmann.com 826 (Delhi - Trib.) [21-09-2026] - IT Appeal Nos. 1828 (Delhi) of 2018 and others - [AY 2013-14, 2015-16 and 2016-17] - [TS-1522-ITAT-2026(DEL)]

Assessee supplied goods to Indian entities under contracts entered into outside India; title/property in goods passed outside India, consideration was received outside India and buyers imported goods in their own capacity. Assessee was able to demonstrate that no part of operations relating to offshore supply was carried out in India. Tribunal held that income arising from such offshore supplies was not covered under sections 5(2) and 9(1)(i) and, therefore, profits arising therefrom could not be subjected to tax in India. **[Ishikawajima-Harima Heavy Industries Ltd. v. DIT [2007] 158 Taxman 259/288 ITR 408 (SC) followed]**

iv. FTC - not deductible under section 37

1. Where assessee paid foreign withholding taxes on income from multiple countries but could not claim FTC owing to nil Indian tax liability, such taxes are not allowable as deduction under section 37(1) as they are specifically disallowed by section 40(a)(ii) read with Explanation 1 and do not fall within permissible business expenditure, even to the extent credit is not granted.

Tata Communications Transformations Services Ltd. vs. Dy CIT [2026] 189 taxmann.com 949 (Mumbai - Trib.) [04-08-2026] - IT Appeal No. 5916 (Mum) of 2025 - [AY 2022-23] - [TS-1366-ITAT-2026(Mum)]

Assessee earned foreign-sourced income from Maldives, Oman and Singapore and paid foreign withholding taxes of about Rs. 50.42 lakhs. Due to losses and set-off of unabsorbed depreciation, gross total income and Indian tax liability were determined at Nil, and FTC was not allowed. Assessee claimed that foreign withholding taxes to extent credit could not be claimed should be allowed as deduction under section 37(1) treating them as business expenditure incurred in connection with export of services. Tribunal ruled that foreign withholding taxes paid abroad, to extent FTC is not allowed, stand disallowed by virtue of section 40(a)(ii) read with Explanation 1 and cannot be claimed as deduction under section 37. The scope of Explanation 1 to section 40(a)(ii) cannot be enlarged to allow deduction of foreign taxes not allowed as credit. **[Reliance Infrastructure Ltd. v. CIT [2016] 76 taxmann.com 257/[2017] 390 ITR 271 (Bombay) followed]**

v. Section 37 deduction for un-claimed FTC - remanded for verification

1. Where assessee earned foreign-sourced income from Sri Lanka, claimed partial foreign tax credit under sections 90/91 and sought deduction under section 37 for the balance foreign tax paid, matter was remanded for verification of assessee's claim as per law after providing proper hearing.

BBC Global News India (P.) Ltd. vs. Dy CIT [2026] 189 taxmann.com 959 (Delhi - Trib.) [21-08-2026] - IT Appeal No. 4460 (Delhi) OF 2024 - [AY 2020-21] - [TS-657-ITAT-2026(DEL)-TP]

Assessee earned foreign-sourced income from Sri Lanka and paid foreign taxes of about Rs. 7.14 lakhs; it claimed FTC of about Rs. 2.58 lakhs under sections 90/91 and, during assessment proceedings, made an additional claim for deduction under section 37 of balance tax of about Rs. 4.56 lakhs on footing that credit was not available. Tribunal ruled that since claim of assessee required verification, matter was remanded to AO to verify claim of assessee as per law after giving proper opportunity of being heard to assessee.

III. DIVIDENDS

i. Refund of DDT more than rate under DTAA

1. Where assessee, after paying DDT on payment to its Belgium shareholder, claimed that DDT should be limited to 15 percent under India–Belgium DTAA but issue regarding DTAA applicability to DDT was pending before Supreme Court, matter was to be reconsidered after Supreme Court decision. **[India–Belgium DTAA]**

UCB India (P.) Ltd. vs. Dy CIT [2026] 190 taxmann.com 16 (Mumbai - Trib.) [31-08-2026] - IT Appeal No. 905 (MUM) OF 2021 - [AY 2016-17] - [TS-681-ITAT-2026(Mum)-TP]

Assessee paid dividend of about Rs. 200 crores to its non-resident shareholder resident in Belgium and paid DDT of about Rs. 40.71 crores at 20.36% under section 115-O. It claimed that, by virtue of section 90, DDT should be restricted to 15% under Article 10(2) of the DTAA and sought refund of excess of about Rs. 10.71 crores. Tribunal ruled that since issue regarding applicability of DTAA rate to DDT under section 115-O was pending before Supreme Court, matter was remanded to AO to decide in accordance with outcome of Supreme Court proceedings. **[Huhtamaki India Limited v. DCIT [2026] 186 taxmann.com 723 (Mumbai - Trib.) followed]**

IV. INTEREST

i. A foreign arbitral award's "interest" component, once it merges into a judgment debt, falls outside the scope of taxable interest under section 2(28A)

- 1. Where assessee, a US resident, received an interest component awarded under a foreign arbitral award enforced as a decree by Delhi High Court due to a defaulted business transaction, such interest merged into a judgment-debt and did not constitute taxable 'interest' income in India under section 2(28A) read with article 11 of THE DTAA. [India-USA DTAA]**

Universal Tractor Holding LLC USA vs. Dy CIT, IT [2026] 190 taxmann.com 827 (Delhi - Trib.) [15-09-2026] - IT Appeal No. 2216 (Delhi) of 2022 - [AY 2019-20] - [TS-1475-ITAT-2026(DEL)]

Assessee, a USA-resident LLC, had agreed to sell its 49 per cent membership interest in a US company to another US company for USD 1.2 million in instalments. After buyer defaulted, dispute was referred to arbitration; during this period an Indian company was substituted for buyer in arbitration. A foreign arbitral award directed payment of damages, including an interest component computed at about Rs. 2.48 crores, and other costs. As award was not honoured in USA, assessee sought enforcement in India, and Delhi High Court declared foreign award enforceable and deemed it a decree, directing deposit of amounts in INR. Assessee filed a return for AY 2019-20, claiming damages/interest were not chargeable to tax in India and declaring NIL income. In draft assessment order under section 144C (1), AO proposed to tax entire amount. On objections, DRP accepted assessee's claim that decree damages were not taxable but held that interest component under award was taxable in India under Article 11(2) of India-USA DTAA. Final assessment under section 143(3) read with section 144C (13) assessed income of about Rs. 2.48 crores on this interest component. Tribunal ruled that though nomenclature of "interest" had been used in Arbitral Award, same did not attract definition of "interest" under section 2(28A) and therefore, damages, including interest had assumed character of a "judgement debt"

and was beyond the purview of Indian Income Tax Act. Amount of interest received, as part of decree of court, was not eligible to tax and accordingly, same was deleted.

ii. Interest on income tax refund

1. Where assessee, a tax resident of Ireland, received interest on income-tax refund, such interest was taxable at beneficial rate of 10 percent under Article 11 of the DTAA in relevant years, and not at higher domestic tax rate. [India-Ireland DTAA]

Adobe Systems Software Ireland Ltd. vs. ACIT, IT [2026] 190 taxmann.com 380 (Delhi - Trib.) [10-09-2026] - IT Appeal Nos. 1929 & 1930 (DEL) of 2022 - [AY 2018-19 and 2019-20]

Assessee was a tax resident of Ireland. AO levied tax on the interest on income-tax refund at 40% (plus applicable surcharge and cess) under the Act, instead of applying the 10% rate under Article 11 of the DTAA. Tribunal ruled that interest on income-tax refund received by assessee was taxable at beneficial rate of 10% under Article 11 of the DTAA. **[Adobe Systems Software Ireland Limited v. ACIT ITA No.913/Del/2023, DATED 12-10-2023 followed]**

iii. Interest under section 234B of the Act cannot be charged in the case of a non-resident for the AYs prior to the AY 2013-14

1. Interest under section 234B cannot be charged in case of a non-resident for AYs prior to the AY 2013-14.

Dy CIT vs. Paul Wurth Italia SPA [2026] 189 taxmann.com 1009 (Delhi - Trib.) [07-08-2026] - IT Appeal No. 5254 (Delhi) of 2017 and others - [AYs 2010-11, 2012-13, 2013-14, 2014-15 and 2015-16] - [TS-1219-ITAT-2026(DEL)]

Assessee, a non-resident, challenged the levy of interest under section 234B for AY 2012-13, contending that such interest was not chargeable in its case. Tribunal following the decision of Hon'ble supreme court, it ruled that interest under section 234B is not chargeable in case of a non-resident assessee for the AYs prior to the AY 2013-14. **[DIT v. Mitsubishi Corporation [2021] 130 taxmann.com 276/283 Taxman 273/438 ITR 174 (SC) followed]**

V. FEES FOR TECHNICAL SERVICES (FTS/FIS)

i. Acquisition of technical know-how

1. Where assessee entered into an agreement with UK company (DML) for technical know-how and services and payments were made from a UK grant account through Crown Agents while corresponding rupee amount was deposited by assessee with Indian Government, such consideration for technical know-how/services was chargeable to tax in India as fees for technical services under relevant provisions and India–UK DTAA, regardless of payment mechanism. Thus, disallowance under section 40 was justified since payment was not to Government or specified entities, section 196 was not applicable despite involvement of Indian and UK governments in funding arrangement. [India–UK DTAA]

Hindustan Zinc Ltd. vs. Dy CIT (Assessment) [2026] 190 taxmann.com 219 (Rajasthan) [05-09-2026] - D.B. Income Tax Appeal No. 65 OF 2009 – [AY 1994-95]

Assessee executed Chanderiya lead-zinc smelter project and entered into an agreement dated 28.02.1987 with DML for basic engineering, technical know-how, training and technical assistance. Under U.K.–India aid arrangement, foreign currency payments to DML were released by Crown Agents out of grant account, while assessee certified DML's invoices and deposited corresponding rupee amount with Government of India. For A.Y. 1994-95, assessee claimed about Rs. 8.10 crores under Section 35AB; AO allowed about Rs. 3.99 crores and disallowed balance u/s 40(a)(i). High court ruled that consideration for technical know-how/services payable to DML was income chargeable to tax in India as FTS under Sections 4, 5 and 9 and Article 13(7) of the DTAA, notwithstanding that remittance was made by Crown Agents in United Kingdom. Thus, disallowance under section 40(a)(i) was rightly made. Intervention of Crown Agents as agency administering and releasing U.K. grant did not divest assessee of its character as contracting person on whose behalf and towards whose contractual liability payment was made and, thus, disallowance under section 40(a)(i) read with section 195 was attracted. Since amount under consideration was not income payable to Government, Reserve Bank or any other entity falling within that provision, presence of Government of India and U.K. Government in financing arrangement did not make DML's contractual consideration a payment to Government and, thus, section 196 was not attracted. **[Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC), Transmission Corpn. of A.P. Ltd. v. CIT [1999] 105 Taxman 742/239 ITR 587 (SC), and Grasim Industries Ltd. v. S.M. Mishra, CIT [2011] 10 taxmann.com 355/332 ITR 276/199 Taxman 184 (Bombay) distinguished, Order of Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur in ITA No.84/JU/1999 order dated 20.02.2009 affirmed]**

ii. Onshore supervisory activity

1. Where assessee, an Italian company, admitted existence of a supervisory permanent establishment in India by rendering onshore supervisory activities for customer projects through its personnel for periods exceeding six months, receipts from such activities were taxable as business profits under Article 7 of India-Italy DTAA attributable to supervisory PE under Article 5(2)(j), and not as fees for technical services under Article 13. [India-Italy DTAA]

Dy CIT vs. Paul Wurth Italia SPA [2026] 189 taxmann.com 1009 (Delhi - Trib.) [07-08-2026] - IT Appeal No. 5254 (Delhi) of 2017 and others - [AYs 2010-11, 2012-13, 2013-14, 2014-15 and 2015-16] - [TS-1219-ITAT-2026(DEL)]

Assessee, an Italian company, was engaged in business of supply of plant and machinery and providing technical services. It provided supervision of erection and commissioning of offshore equipment by deputing its personnel at customer site and earned receipts. In respect of supervisory activities performed by assessee, it submitted that incidence of a PE, i.e., supervisory PE did exist in India in terms of Article 5(2)(j) of DTAA as conditions mentioned therein were satisfied, which was accepted by AO. Further, assessee submitted that in respect of supervisory fees, assessee followed 'Completed Contract Method' for revenue recognition in respect of supervisory revenue, taxable on net income basis in year of completion of such projects under Article 7 of DTAA, which was also accepted by AO. However, CIT(A) held that supervisory activities performed by assessee in India did not constitute a supervisory PE under Article 5(2)(j) of DTAA as claimed by assessee and proceeded to re-characterise onshore supervisory receipts as FTS under Article 13 of DTAA instead of 'business profits' under Article 7. Tribunal ruled that since assessee had admitted its supervisory PE in India and assessee performed onshore supervisory activities for all relevant projects for a period exceeding six months, receipts from onshore supervisory activities were taxed as 'Business Profits' under Article 7 attributable to supervisory PE under Article 5(2)(j) and not as FTS under Article 13. **[CIT v. Sumitomo Corporation [2017] 80 taxmann.com 247/ [2016] 382 ITR 75 (Delhi) distinguished, Andritz AG v. Dy. DIT (International Taxation) [2024] 165 taxmann.com 76 (Delhi - Trib.) followed]**

iii. Secondment of employees

1. Where seconded employees from overseas AEs worked under assessee's control and supervision and tax was deducted under section 192 on salaries, reimbursement of actual salary to AEs was merely reimbursement without income element and could not be treated as fees for technical services requiring TDS under section 195

Caterpillar India (P.) Ltd. vs. Dy CIT [2026] 189 taxmann.com 468 (Chennai - Trib.) [07-08-2026] - ITA No. 718 (Chny) OF 2023 - [AY 2016-17]

Assessee had seconded employees from overseas AEs who worked under its control and supervision and tax was deducted under section 192 on salary payments.

Assessing Officer disallowed Rs. 37.33 crores under section 40(a)(i), treating reimbursement of secondment expenses to AEs as fees for technical services requiring deduction of tax under section 195. Commissioner (Appeals) directed deletion of disallowance after verification of tax deducted under section 192. Tribunal ruled that since seconded employees worked under control and supervision of assessee and reimbursement of actual salary to AE was merely in nature of reimbursement without any element of income, such reimbursement could not be treated as FTS requiring separate deduction of tax under section 195. Therefore, disallowance under section 40(a)(i) was unwarranted and Department's challenge was dismissed.

2. **Where reimbursement of expatriate salary costs was received by assessee on cost-to-cost basis without markup for employees seconded to an Indian entity, such reimbursement could not be taxed as FTS notwithstanding that the assessee itself had so offered it for tax in its return of income. [India – Japan DTAA]**

Toyota Tsusho Corporation vs. Dy CIT (Int. Tax.) [2026] 190 taxmann.com 826 (Delhi - Trib.) [21-09-2026] - IT Appeal Nos. 1828 (Delhi) of 2018 and others - [AY 2013-14, 2015-16 and 2016-17] - [TS-1522-ITAT-2026(DEL)]

Assessee, a Japanese company received Rs. 2.08 crores from Toyotsu Rare Earths India Pvt. Ltd. (TREI) as reimbursement of expatriate salary. The expatriates were seconded to TREI, salary was initially paid by the assessee as an administrative convenience and subsequently recovered from TREI on a cost-to-cost basis without markup. The assessee erroneously offered the aforesaid reimbursement as FTS. AO assessed the amount as offered in the return. The TPO did not dispute that the reimbursement was made on a cost-to-cost basis. CIT(A) upheld the AO's order since the assessee itself had originally offered the amount to tax in its return. Tribunal held that reimbursement of expatriate salary costs received on cost-to-cost basis for employees seconded to an Indian group company did not constitute taxable income in India in hands of assessee and, therefore, was excluded from taxable income. It relied on the coordinate bench decisions of *Boshoku Automotive India (P.) Ltd. v. Dy. CIT* and *Toyota Boshoku Automotive India (P.) Ltd. vs DCIT* wherein employees seconded to Indian entity were regarded as its employees and reimbursement to non-resident AE by Indian entity held not be in the nature of FTS, but in the nature of 'salary', and therefore, not chargeable to tax in the hands of the AE. **[Toyota Boshoku Automotive India (P.) Ltd. v. Dy. CIT [2022] 138 taxmann.com 166 (Bangalore - Trib.), Toyota Boshoku Automotive India (P.) Ltd. v. Asstt. CIT [2022] 145 taxmann.com 141 (Bangalore - Trib.) followed]**

iv. Reimbursement of Expenses

1. **Where assessee, a US based company, received reimbursement of expenses from its Indian AE without any profit element or mark-up and revenue failed to establish that technical knowledge, know-how or processes were made**

available, such reimbursements could not be treated as FTS or FIS under the DTAA and were not taxable in India. [India-US DTAA]

Lubrizol Corporation vs. ACIT (Int. Taxation) [2026] 190 taxmann.com 939 (Mumbai - Trib.) [25-09-2026] - ITA No. 1672 (Mum) OF 2022 - [AY 2017-18]

Assessee, a US based company, received certain sum from its Indian AE towards reimbursement of expenses incurred on its behalf and did not offer amount to tax. AO held that reimbursements were in substance remuneration for services, taxable as FTS under section 9(1)(vii) and as FIS under Article 13(4) of India-USA DTAA. It was noted that assessee had acted as an intermediary and that amount received was purely reimbursement of cost without any mark-up. Tribunal ruled that since there was no profit element or mark-up on reimbursement of costs, no income could be attributed to assessee. Further where neither AO nor DRP had established on record that, in course of rendition of services, service provider had made available any technical knowledge, skill, know-how, or process, or any technical plan or design to Indian AE, reimbursement of cost, without any profit element embedded therein, could not be treated as FIS under Article 12(4)(b) of the DTAA.

v. SAAS

- 1. Where assessee, a US company, provided SaaS-based Software Development Kit and dashboard to Indian customers under standard terms, with technology, algorithms and processes always retained by assessee and customers not acquiring any enduring knowledge, the payments received were for use of a standard, non-customized facility and did not constitute 'fees for included services' under Article 12(4) of the DTAA. [India-US DTAA]**

Branch Metrics Inc vs. Dy CIT, IT [2026] 189 taxmann.com 510 (Delhi - Trib.) [12-08-2026] - IT Appeal No. 3599 (Delhi) of 2023, IT(IT)Appeal No.1122 (Delhi) of 2025 - [AY 2021-22 and 2022-23] - [TS-1239-ITAT-2026(DEL)]

Assessee, a US-incorporated company and tax resident, provided a cross-linking and attribution platform through SaaS products in form of a Software Development Kit (SDK). Indian customers purchased product under uniform, published Terms and Conditions and executed Order Forms; customers themselves installed and integrated SDK into their own apps/websites and used a dashboard for reports. Assessee filed a NIL return, reporting receipts from Indian customers. It claimed part of receipts as exempt under section 10(50) on which equalisation levy at 2% had been paid, and treated balance as business profits not taxable under Article 7 of DTAA for want of a PE in India. AO proposed to tax receipts as FIS under Article 12 read with section 9(1)(vii) at 10%. It was observed that SDK and dashboard were products which embody sophisticated deep linking and attribution technology; customers used those products, but underlying technology, that is, algorithms, source code and processes, remained at all times exclusively with assessee. Terms and Conditions prohibited customers from making functionality of Services available to any third party, from

selling, distributing, renting, leasing or sublicensing Services and from circumventing their security features. Nothing was imparted to customers which they could thereafter deploy on their own; on expiry of subscription, customer was left with no technology, knowledge, skill or process of assessee. Tribunal ruled that since receipts failed **make available** condition as customers were enabled to use platform but were at no point enabled to apply technology underlying it, receipts from Indian customers on account of sale of SaaS based products were consideration for use of a standard, non-customized, off shelf facility and did not constitute 'fees for included services' under Article 12(4) of the DTAA. **[CIT v. Kotak Securities Ltd. [2016] 67 taxmann.com 356/239 Taxman 139/383 ITR 1 (SC), SFDC Ireland Ltd. v. CIT [2024] 160 taxmann.com 328/298 Taxman 403/465 ITR 471 (Delhi), CIT v. Bharti Cellular Ltd. [2011] 330 ITR 239 (SC), GVK Industries Ltd. v. ITO [2015] 54 taxmann.com 347/231 Taxman 18/371 ITR 453 (SC), CIT v. De Beers India Minerals (P.) Ltd. [2012] 21 taxmann.com 214/208 Taxman 406/346 ITR 467 (Karnataka), and DIT v. Guy Carpenter & Co. Ltd. [2012] 20 taxmann.com 807/207 Taxman 121/346 ITR 504 (Delhi), US Technology Resources (P.) Ltd. v. CIT [2018] 97 taxmann.com 642/407 ITR 327 (Kerala), International Management Group (UK) Ltd. v. CIT [2024] 164 taxmann.com 225/466 ITR 514 (Delhi) followed, CBDT v. Oberoi Hotels (India) (P.) Ltd. [1998] 97 Taxman 453/231 ITR 148 (SC), and DCIT v. Kalpataru Power Transmission Ltd. [2023] 149 taxmann.com 484/200 ITD 420 (Ahmedabad - ITAT) distinguished]**

vi. Video conferencing and installation services

1. Where assessee procured a video-conferencing system from a German company with separately identified payments for installation, setup and training, only the amount specifically attributable to installation, setup and training qualified as fees for technical services and was subject to withholding tax, while the balance transaction related to equipment supply could not be treated as FTS.

Hikal Ltd. vs. Dy CIT [2026] 189 taxmann.com 866 (Mumbai - Trib.) [19-08-2026] - IT Appeal No. 3460 (MUM) of 2026 - [AY 2019-20]

Assessee made payment of Rs. 6.44 lakhs to Dekom AG, Germany for supply of a video-conferencing system (AVAYA SCOPIA XT5000) and associated products, with an Order Confirmation showing €4,725 for AVAYA SCOPIA XT5000, €768 for AVAYA SA Essential + UA PRT NBD SCOPIA XT5000, €890 for installation, setup and training, and €25 for shipping, packing and insurance. AO treated entire payment as fees for technical services (FTS) on premise that it was connected with clinical research trials, leading to action under sections 195, 201(1) and 201(1A). Tribunal ruled that since transaction was essentially a commercial transaction for procurement of an identified video-conferencing system, accompanied by its installation, commissioning and elementary training necessary for putting that very equipment to use, entire payment could not be characterised as FTS. However, since order

confirmation separately identified an amount of €890 towards 'installation, setup and training', which, inter alia, comprised installation at site, commissioning, training of system administrator and users and deployment of configuration templates and recommendations, said amount of €890 separately attributable to installation, setup and training was subjected to withholding tax at applicable treaty rate.

vii. Voice termination, bandwidth and O&M services

- 1. Where assessee made payments to non-resident group telecom operators for voice termination, bandwidth and O&M services without having control, exclusive use, or access to any identified equipment of service providers and foreign operators retained exclusive responsibility over such equipment, such payments could not be classified as royalty or FTS under Indian law or DTAAs and, in absence of any PE in India for recipients, were not taxable in India as business profits, so assessee was not required to deduct tax at source and no disallowance under section 40(a)(i) was warranted.**

Dy CIT vs. Reliance Jio Infocomm Ltd. [2026] 189 taxmann.com 851 (Mumbai - Trib.) [21-08-2026] - IT Appeal Nos. 3540 and 3541 (Mum) of 2026 - [AY 2019-20] - [TS-1313-ITAT-2026(Mum)]

Assessee, engaged in telecom services, made foreign remittances to group non-resident operators for three categories of services: voice termination, bandwidth and annual O&M. Recipients included RJIPL (Singapore), RJIUK (UK) and RJIUS (USA). AO treated consideration for interconnect/voice termination, bandwidth and O&M as royalty and/or FTS under section 9(1)(vi)/(vii), concluded tax was deductible under section 195, and disallowed about Rs. 66.65 crores under section 40(a)(i) for failure to deduct tax. It was noted that no identified equipment belonging to overseas operators was placed at disposal of assessee. Assessee could not operate, access, control, alter or direct functioning of such equipment; it could not exclude service provider or other customers from its use; nor was any particular equipment earmarked exclusively for assessee. Responsibility for selection, operation, configuration, maintenance and repair of equipment remained throughout with foreign telecom operator. Tribunal ruled that payments made by assessee towards voice termination services, bandwidth services and O&M services to concerned non-resident telecom operators were not chargeable to tax in India as royalty or FTS/FIS under applicable DTAAs. In absence of any PE of recipients in India, receipts, being business profits, were also not taxable in India under Article 7. Consequently, there was no obligation upon assessee to deduct tax at source under section 195 and AO was not justified in invoking section 40(a)(i). **[DIT v. New Skies Satellite BV [2016] 68 taxmann.com 8/238 Taxman 577/382 ITR 114 (Delhi), Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC) and Dy. CIT (International Taxation) v. Vodafone Idea Ltd. [2025] 173 taxmann.com 695/304 Taxman 594 (SC) followed]**

viii. Business support services

1. Where assessee, a Singapore tax resident, provided regional support services to its Indian group entity and did not impart or transfer any technical, industrial, commercial, or scientific knowledge or experience, such receipts could not be treated as royalty or FTS under the DTAA or section 9, and in absence of a PE in India, receipts would be treated as business income not taxable in India. [India-Singapore DTAA]

ATOS Information Technology (Singapore) Pte Ltd vs. Dy CIT [2026] 190 taxmann.com 248 (Mumbai - Trib.) [07-09-2026] - IT Appeal No. 6745 (MUM) of 2025 - [AY 2018-19]

Assessee, a non-resident corporate entity and tax resident of Singapore, was engaged in providing support services to group companies, including in India. It had entered into Regional Service Agreement with its Indian group entity for rendition of certain services. During year, it received certain amount towards regional support services from its Indian group entity under a Regional Support Services Agreement covering strategic operations, sales/markets/service line support, finance, legal, human resources, and marketing & communication. AO treated said receipts as royalty/FTS under sections 9(1)(vi) and 9(1)(vii) and Article 12 of India–Singapore DTAA. It was noted that nature of services rendered by assessee to Indian group entity did not appear that in course of rendition of services, assessee had imparted any information concerning technical, industrial, commercial, or scientific knowledge, experience, and skill to Indian group entity as per definition of royalty under Explanation 2(iv) under Section 9(1)(vi). Even, there was nothing on record to demonstrate that in course of rendition of services, assessee had transferred use of, or right to use, any information concerning industrial, commercial, or scientific experience. Tribunal ruled that receipts should not qualify as royalty either under Article 12(3)(a) of Treaty or under Section 9(1)(vi). Since service recipient was not in a position to independently apply technical knowledge, experience, skill, knowhow, etc. without requiring assistance of assessee, 'make available' condition under Article 12(4)(b) was not satisfied and, therefore, receipts could not be treated as FTS under treaty provisions. Therefore, receipts could only be in nature of business receipts and in absence of PE could not be taxed in India.

ix. Diamond grading and certification services

1. Where assessee made payments to non-resident entities for diamond grading and certification and received only independent reports without any transfer of technical knowledge, process or skill enabling independent grading in future, such payments did not constitute fees for technical services chargeable to tax in India; therefore, no obligation to deduct tax at source arose under section 195 and resultant demands under section 201(1) and interest under section 201(1A) were rightly deleted

ITO vs. Hari Krishna Exports (P.) Ltd. [2026] 190 taxmann.com 24 (Mumbai - Trib.) [31-08-2026] - IT Appeal Nos. 2360, 2362, 2359 & 3864 (Mum.) of 2026 - [AY 2012-13, 2015-16 & 2019-20] - [TS-1409-ITAT-2026(Mum)]

Assessee, engaged in business of importing, manufacturing, trading and exporting diamonds and manufacturing and exporting jewellery, made payments to various non-resident entities towards diamond grading and certification charges without deducting tax at source. AO treated payments as FTS chargeable to tax in India under section 9 and, consequently, treated assessee as assessee in default under section 201(1) and levied interest under section 201(1A). It was noted that grading entities merely examined diamonds and issued independent certification reports and did not impart any technical methodology, process, know-how or skill to assessee. Tribunal ruled that since grading and certification services did not constitute FTS under Explanation 2 to section 9(1)(vii), and no technical knowledge, experience, skill, know-how or process was made available to assessee under applicable DTAAs, impugned payments did not constitute FTS chargeable to tax in India. Held, yes. Once impugned payments were held not to be sums chargeable to tax in India, assessee was not liable to deduct tax at source under section 195. Therefore, no infirmity was found in orders of CIT(A) deleted the demand under section 201(1) and consequential interest under section 201(1A). **[ITO v. Hari Krishna Exports (P.) Ltd. [IT Appeal Nos. 2474 & 2412 (Mum.) of 2026, dated 30-7-2026] followed]**

x. Mineral Oil Exploration Services

- 1. Where assessee engaged in oil exploration made remittances to non-residents for services related to exploration activities and deducted tax under section 44BB, since services rendered were in connection with mineral oil exploration, payments were properly taxable on a presumptive basis under section 44BB and not as fees for technical services under section 44DA, thus, assessee could not be treated as assessee in default for short deduction of tax**

Dy CIT vs. Oil India Ltd. [2026] 189 taxmann.com 621 (Jaipur - Trib.) [17-08-2026] - IT APPEAL NO. 1534 (JPR) OF 2025, CO No. 1 (JPR) OF 2026 - [AY 2012-13]

Assessee, a Government of India enterprise engaged in business of prospecting, extraction and production of crude oil and natural gas, made foreign remittances to several non-resident entities under agreements for services related to its oil exploration business. Assessee deducted tax at source at 4.20 per cent treating payments as covered by section 44BB. AO held that services were highly specialized and technical, treated receipts as fees for technical services taxable under section 44DA (as entities had PE in India), and applied an effective tax rate of 42.02 per cent. Accordingly, he treated assessee as an assessee in default under sections 201/201A for short deduction. CIT(A) held that services were related to assessee's business of oil exploration and concluded that payments were taxable under Section 44BB. It was noted that revenue was unable to distinguish decision of Supreme Court which was relied upon by CIT(A) while holding that remittances made by assessee qualify for

taxation under Section 44BB and not under Section 44DA. Tribunal ruled that assessee could not be treated as an assessee in default under section 201/201A for short deduction.

xi. Section 263 revision cannot displace an Assessing Officer's plausible view on non-taxability under a "make available" clause

1. Where assessee paid service provider charges to overseas group entities and Assessing Officer, after due examination of agreements and DTAA 'make available' clauses, found payments not taxable as fees for technical services and no TDS needed, PCIT could not revise assessment under section 263 as AO had adopted a plausible view, so disallowance for non-deduction of TDS was not sustainable.

Solvay Specialities India (P.) Ltd. vs. PCIT [2026] 189 taxmann.com 631 (Mumbai - Trib.) [10-08-2026] - IT Appeal No. 3550 (Mum.) of 2025 - [AY 2018-19]

Assessee-company had debited service-provider charges of about Rs. 98.97 crores, of which about Rs. 91.58 crores were paid to overseas group entities covered by DTAA's; about Rs. 20.13 crores were considered for TDS under section 195. In assessment, after issuing a show-cause and examining agreements, invoices and submissions, AO recorded categorical findings that, in view of applicable DTAA's containing a "make available" clause, payments to concerned non-residents were not taxable in India as fees for technical services; hence, no TDS was required on those payments and proposed disallowance was dropped. In revision, PCIT observed that TDS under section 195 had been considered only on part of payments and held that there was violation of section 195 on balance. PCIT quantified amount at about Rs. 71.45 crores liable for disallowance under section 40(a)(i) and directed AO to make disallowance. Tribunal ruled that once AO had taken a plausible view, same could not be disturbed by PCIT by invoking provisions of section 263. Therefore, directions regarding disallowance of service provider charges on account of non-deduction of TDS were to be removed.

VI. ROYALTY

i. Software

1. SLP dismissed against order of High Court that consideration received by assessee, non-resident software manufacturer, on sale of off-shelf, shrink-wrapped software to Indian distributors and resellers would not constitute royalty in hands of assessee in terms of India-UK DTAA. [India-UK DTAA]

CIT (IT) vs. CSG International Ltd. [2026] 190 taxmann.com 38 (SC) [24-08-2026] - SPECIAL LEAVE PETITION (CIVIL) Diary No. 34128 OF 2024 – [AY 2003-04]

High Court by impugned order held that consideration received by assessee, a UK based software manufacturer, on sale of off-shelf, shrink-wrapped software to Indian distributors and resellers would not constitute royalty in hands of assessee in terms of India-UK DTAA. Hon'ble Supreme Court ruled that since similar SLP had already been dismissed, instant SLP was dismissed as well. **[SLP dismissed against Commissioner of Income-tax (International Taxation) v. CSG International Ltd. [2023] 155 taxmann.com 476 (Delhi)]**

2. Where Assessing Officer accepted claim of UK-based assessee that receipts from supply of integrated hardware with embedded software was not taxable as royalty following Supreme Court decision in *Engineering Analysis Centre of Excellence (P.) Ltd. [2021] 125 taxmann.com 42 (SC)* and decisions of co-ordinate Benches, revision order passed by Commissioner under section 263 was unsustainable. [India-UK DTAA]

Synamedia Ltd. vs. CIT, IT [2026] 190 taxmann.com 28 (Bangalore - Trib.) [31-08-2026] - IT Appeal No. 3009 (Bang.) of 2025 - [AY 2020-21]

Assessee, a company domiciled in United Kingdom with no PE or liaison office in India, was engaged in supplying open digital technology and services to digital pay television platform operators and content providers, supplying integrated hardware systems with embedded software under customer agreements. Assessee filed its return of income declaring Nil income, claiming relief under section 90(2) by applying India-United Kingdom DTAA. Case was selected for scrutiny wherein assessee submitted that consideration received from customers was not taxable as royalty under DTAA and relied upon Supreme Court decision in *Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42 (SC)*. AO, after considering said submission, accepted returned income and treated receipts as not taxable in India. Subsequently, Commissioner invoked section 263 on ground that during assessment proceedings assessee had not produced copies of end-user licence agreement and that assessment order had been passed without necessary enquiries and verification, rendering it erroneous and prejudicial to interests of revenue. Tribunal ruled that since assessment order was passed on 6 June 2022, limitation period commenced from 31 March 2023 and expired on 31 March 2025. Therefore, since in instant case, first notice itself was issued only on 3 September 2025, personal hearing was granted on 22 September 2025, and revisionary order was passed on 9 October 2025, such a revisionary order was barred by limitation and was quashed. Even otherwise, issue was covered in favour of assessee by several decisions of co-ordinate Benches in assessee's own cases for earlier assessment years wherein it was held that no income was chargeable to tax in hands of assessee in view of decision of Supreme Court in *Engineering Analysis Centre of Excellence Private Limited (supra)*. Therefore, order passed by CIT under section 263 was barred by limitation and, in any event, was unsustainable as assessment order passed by AO contained no error. **[Synamedia Ltd. v. Asstt. CIT (International Taxation) [IT Appeal No. 363 (Bang.) of 2017,**

dated 12-11-2021] and Engineering Analysis Centre of Excellence Private Limited v. CIT [2021] 125 taxmann.com 42 (SC) followed]

3. **Where assessee, an Irish company supplying Slack software on subscription basis to customers in India, had not transferred source code, intellectual property rights or use or right to use any process, subscription fees received did not constitute royalty under section 9(1)(vi) or Article 12(3) of the DTAA and, therefore, were not taxable in India in absence of a permanent establishment. [India-Ireland DTAA]**

Slack Technologies Ltd. vs. ACIT, IT [2026] 190 taxmann.com 825 (Mumbai - Trib.) [15-09-2026] - IT Appeal Nos. 4310 (MUM) of 2023 and 979 (MUM) of 2025 - [AY 2021-22 and 2022-23] - [TS-1490-ITAT-2026(Mum)]

Assessee, a non-resident corporate entity incorporated in Ireland and tax resident of Ireland, was working as a Rest of the World (ROW) seller of Slack communication software and supplied same on subscription basis. It received subscription charges from customers in India and claimed that receipts were not in nature of royalty under section 9(1)(vi) or Article 12(3) of the DTAA. AO, however, held that receipts were consideration for transfer of all or any right in respect of copyright and, without prejudice, that software was in nature of process covered under section 9(1)(vi) and Article 12(3). Tribunal ruled that since neither subscription agreement nor any other material on record demonstrated that assessee had transferred use or right to use any process involved in development of software, and no source code or intellectual property rights in software were transferred to subscribers, subscription merely granted access to use software and its features. Since use or right to use copyright or process had not been transferred to subscribers/customers, subscription receipts did not fall within definition of 'royalty' under Article 12(3)(a) of the DTAA or Explanation 2(iii) to section 9(1)(vi) and were, therefore, business receipts not taxable in India in absence of PE.

4. **Where assessee acquired only restricted end-user rights for internal business use of software from a US entity without rights to reproduce, distribute or modify, payment could not be regarded as royalty under Article 12(3) of the DTAA, and thus no tax was deductible at source under section 195 nor could assessee be treated as assessee in default under section 201 in respect of such payment. [India-USA DTAA]**

Hikal Ltd. vs. Dy CIT [2026] 189 taxmann.com 866 (Mumbai - Trib.) [19-08-2026] - IT Appeal No. 3460 (MUM) of 2026 - [AY 2019-20]

Tribunal ruled that where assessee acquired only a limited end-user right, non-exclusive, non-transferable and non-sublicensable, for internal business use of software, no right to reproduce, distribute, sublicense, modify or otherwise exercise rights belonging to copyright owner was transferred and, therefore, consideration paid to US entity could not be characterised as royalty under Article 12(3) of the DTAA. Once payment itself was not chargeable to tax in India as royalty, there was no obligation upon assessee to deduct tax under section 195 and, consequently, assessee could not have been treated as an assessee in default under section 201(1)

in respect thereof. **[Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC) followed]**

ii. Broadcasting services

1. Where UK-based assessee received fees for live and non-live broadcasting rights and offered non-live fees to tax, AO treated live broadcasting licence fees as royalty, since live match broadcasting was a one-time event, conferred no enduring benefit, and involved neither scientific work nor copyright in broadcasting rights, live broadcasting fees were not taxable as royalty under Article 13(3) of the DTAA. **[India-UK DTAA]**

England and Wales Cricket Board Ltd. vs. ACIT, IT [2026] 189 taxmann.com 1011 (Delhi - Trib.) [21-08-2026] - IT (IT) Appeal No. 41 (Delhi) of 2026 - [AY 2023-24] - [TS-1327-ITAT-2026(DEL)]

Assessee, a UK based company, received revenue from India comprising fees for non-live broadcasting and live broadcasting. Assessee offered non-live broadcasting fees and claimed that live broadcasting licence fee was not taxable in India as royalty under India-UK DTAA. However, AO treated licence fee for live broadcasting as royalty taxable in India. Tribunal ruled that broadcasting of a live match was a one-time event and live transmission did not bring enduring benefit to broadcaster and since live broadcasting was neither 'scientific work' nor any 'copyright' subsisted in such rights, any fee received towards live broadcasting rights could not be classified as royalty under Article 13(3) of the DTAA or section 9(1)(vii). **[CIT International Taxation v. Sri Lanka Cricket [2026] 182 taxmann.com 537/309 Taxman 200 (Delhi), CIT v. Delhi Race Club (1940) Ltd. [2014] 51 taxmann.com 550/ [2015] 228 Taxman 185 (Delhi) and CIT (International Taxation) v. Fox Network Group Singapore Pte. Ltd [2024] 158 taxmann.com 434/ [2025] 473 ITR 528 (Delhi) followed]**

2. Where UK-based assessee's Media Rights Agreement mutually allocated consideration between live and non-live broadcasting in a 95:5 ratio and Assessing Officer sought to alter it to 75:25, since agreed allocation was contractually determined and revenue brought no material showing it to be unjustified, agreed 95:5 ratio was accepted

England and Wales Cricket Board Ltd. vs. ACIT, IT [2026] 189 taxmann.com 1011 (Delhi - Trib.) [21-08-2026] - IT (IT) Appeal No. 41 (Delhi) of 2026 - [AY 2023-24] - [TS-1327-ITAT-2026(DEL)]

Assessee, a UK based company engaged in promotion and marketing of cricket, entered into a Media Rights Agreement under which consideration for media rights was allocated between live and non-live broadcasting in the 95:5 ratio. Assessee offered non-live portion to tax accordingly. AO sought to reallocate fee in 75:25 ratio for live and non-live rights. Tribunal ruled that since allocation of rights fee was mutually decided between two parties by virtue of agreement without there being any material to substantiate that ratio mutually decided was unjustified, no reason was

warranted to disturb said ratio. *[Trans World International LLC TWI v. Dy. CIT (International Taxation) [2024] 167 taxmann.com 517/301 Taxman 530/467 ITR 583 (Delhi) and Global Cricket Corporation (P.) Ltd [2022] 145 taxmann.com 570 (Mum-Trib.) distinguished]*

3. Where assessee paid composite media rights fees to a non-resident licensor for live and non-live cricket broadcasts without deducting tax, live broadcasting rights were held not to constitute royalty under section 9(1)(vi), while non-live/repeat telecast rights constituted royalty, accordingly, 7 per cent of total payment was attributable to non-live rights and, since no TDS was deducted thereon, corresponding disallowance under section 40(a)(i) was confirmed

ACIT vs. Times Content Ltd. [2026] 190 taxmann.com 119 (Delhi - Trib.) [03-09-2026] - IT Appeal Nos. 5328, 5331, 5333 (Del) of 2024 - [AYs 2016-17, 2017-18 and 2018-19] - [TS-1415-ITAT-2026(DEL)]

Assessee-company was engaged in live streaming of sports events outside India. It entered into a media rights agreement with a British Virgin Islands company, which had obtained rights from Star Middle East FZ LLC, UAE, whose rights emanated from ICC. Assessee held sub-licensed rights to broadcast live and non-live (post-match) cricket content via digital delivery systems in specified US territories and paid a composite media rights fee covering live and non-live broadcasting. AO treated payment as royalty and, since tax had not been deducted under section 195, made a disallowance under section 40(a)(i). CIT(A) held that payments for live events were not royalty under section 9(1)(vi) and adopted a 95:5 split between live and non-live (post-match) components. CIT(A) restricted disallowance to 5 per cent allocable to non-live rights. It was noted that as per ComScore data, live broadcast viewership was 93 per cent, and viewership of non-live broadcast was 7 per cent. Tribunal ruled that live broadcast of matches did not carry any copyright and, thus, these payments could not be held as 'royalty' within meaning of section 9(1)(vi). However, repeat telecast i.e., non-live telecast was not out of scope of 'royalty'. Thus, 7 per cent of total payment made was allocated to non-live broadcast rights and since no TDS was made on such payment though same was held as royalty income under section 9(1)(vi), disallowance under section 40(i)(a) of such payment was confirmed. *[CIT v. Sri Lanka Cricket [2026] 189 taxmann.com 687 (SC), CIT v. Sri Lanka Cricket [2026] 182 taxmann.com 537/309 Taxman 200 (Delhi) followed]*

iii. Voice termination, bandwidth and O&M services

1. Where assessee made payments to non-resident group telecom operators for voice termination, bandwidth and O&M services without having control, exclusive use, or access to any identified equipment of service providers and foreign operators retained exclusive responsibility over such equipment, such payments could not be classified as royalty or FTS under Indian law or DTAA and, in absence of any PE in India for recipients, were not taxable in India as

business profits, so assessee was not required to deduct tax at source and no disallowance under section 40(a)(i) was warranted.

Dy CIT vs. Reliance Jio Infocomm Ltd. [2026] 189 taxmann.com 851 (Mumbai - Trib.) [21-08-2026] - IT Appeal Nos. 3540 and 3541 (Mum) of 2026 - [AY 2019-20] - [TS-1313-ITAT-2026(Mum)]

Assessee, engaged in telecom services, made foreign remittances to group non-resident operators for three categories of services: voice termination, bandwidth and annual O&M. Recipients included RJIPL (Singapore), RJIUK (UK) and RJIUS (USA). Assessing Officer treated consideration for interconnect/voice termination, bandwidth and O&M as royalty and/or FTS under section 9(1)(vi)/(vii), concluded tax was deductible under section 195, and disallowed about Rs. 66.65 crores under section 40(a)(i) for failure to deduct tax. It was noted that no identified equipment belonging to overseas operators was placed at disposal of assessee. Assessee could not operate, access, control, alter or direct functioning of such equipment; it could not exclude service provider or other customers from its use; nor was any particular equipment earmarked exclusively for assessee. Responsibility for selection, operation, configuration, maintenance and repair of equipment remained throughout with foreign telecom operator. Tribunal ruled that payments made by assessee towards voice termination services, bandwidth services and O&M services to concerned non-resident telecom operators were not chargeable to tax in India as royalty or FTS/FIS under applicable DTAA's. In absence of any PE of recipients in India, receipts, being business profits, were also not taxable in India under Article 7. Consequently, there was no obligation upon assessee to deduct tax at source under section 195 and AO was not justified in invoking section 40(a)(i). **[DIT v. New Skies Satellite BV [2016] 68 taxmann.com 8/238 Taxman 577/382 ITR 114 (Delhi), Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC) and Dy. CIT (International Taxation) v. Vodafone Idea Ltd. [2025] 173 taxmann.com 695/304 Taxman 594 (SC) followed]**

iv. Business support services

- 1. Where assessee, a Singapore tax resident, provided regional support services to its Indian group entity and did not impart or transfer any technical, industrial, commercial, or scientific knowledge or experience, such receipts could not be treated as royalty or FTS under the DTAA or section 9, and in absence of a PE in India, receipts would be treated as business income not taxable in India. [India-Singapore DTAA]**

ATOS Information Technology (Singapore) Pte Ltd vs. Dy CIT [2026] 190 taxmann.com 248 (Mumbai - Trib.) [07-09-2026] - IT Appeal No. 6745 (MUM) of 2025 - [AY 2018-19]

Assessee, a non-resident corporate entity and tax resident of Singapore, was engaged in providing support services to group companies, including in India. It had entered

into Regional Service Agreement with its Indian group entity for rendition of certain services. During year, it received certain amount towards regional support services from its Indian group entity under a Regional Support Services Agreement covering strategic operations, sales/markets/service line support, finance, legal, human resources, and marketing & communication. AO treated said receipts as royalty/FTS under sections 9(1)(vi) and 9(1)(vii) and Article 12 of the DTAA. It was noted that nature of services rendered by assessee to Indian group entity did not appear that in course of rendition of services, assessee had imparted any information concerning technical, industrial, commercial, or scientific knowledge, experience, and skill to Indian group entity as per definition of royalty under Explanation 2(iv) under Section 9(1)(vi). Even, there was nothing on record to demonstrate that in course of rendition of services, assessee had transferred use of, or right to use, any information concerning industrial, commercial, or scientific experience. Therefore, receipts were not qualified as royalty either under Article 12(3)(a) of Treaty or under Section 9(1)(vi). Since service recipient was not in a position to independently apply technical knowledge, experience, skill, knowhow, etc. without requiring assistance of assessee, 'make available' condition under Article 12(4)(b) was not satisfied and, therefore, receipts could not be treated as FTS under treaty provisions. Therefore, receipts were only in nature of business receipts and in absence of PE could not be taxed in India.

v. Outright purchase of a trademark is a capital transfer, not royalty; thus, no TDS u/s 195

- 1. Where assessee remitted amount to a non-resident for outright acquisition of a trademark under a duly evidenced assignment agreement and not for use of any rights, such remittance constituted consideration for transfer of a capital asset and not royalty, hence no income was chargeable to tax in India and assessee could not be treated as assessee-in-default for non-deduction of tax.**

LSL Holdings (P.) Ltd. vs. ITO INT TAX Ward - 3(1)(2) [2026] 189 taxmann.com 940 (Mumbai - Trib.) [18-08-2026] - IT Appeal No. 2619 (MUM) of 2026 - [AY 2019-20] - [TS-1307-ITAT-2026(Mum)]

Assessee made a remittance of Rs. 65.5 lakhs for acquisition of trademark 'Jamawar' from a non-resident. AO treated remittance as 'royalty' under section 9(1)(vi) and held assessee as assessee-in-default for failure to deduct TDS under section 195, raising demand of Rs. 10.42 lakhs. Assessee contended that remittance was consideration for transfer of a capital asset, not chargeable to tax in India, and furnished evidence including trademark assignment agreement, proof of ownership, nature of rights transferred, valuation, and TRC of recipient. Tribunal ruled that since remittance was for outright purchase of trademark, a capital asset, and not mere payment of royalty, no income was chargeable to tax in India and, thus, assessee could not be treated as assessee-in-default under section 201.

VII. CAPITAL GAINS

i. Treaty cannot be thrust upon a taxpayer to deny the benefit of set-off and carry-forward of brought forward capital losses

1. Where assessee, a Mauritius tax resident engaged in investment, incurred long-term capital losses on shares acquired before 1-4-2017 and had brought forward losses, it was entitled to carry forward and utilise such losses, as treaty could not be thrust upon assessee; therefore, denial of set-off and further carry forward by AO was not justified and AO was to directed to allow the same and recompute the taxable income

APOLETTA ASIA Ltd. vs. Dy CIT (IT) [2026] 190 taxmann.com 821 (Mumbai - Trib.) [07-08-2026] - IT Appeal No. 3088 (MUM) OF 2026 - [AY 2023-24] - [TS-1325-ITAT-2026(Mum)]

Assessee, a tax resident of Mauritius, earned long-term capital gains of Rs. 106.58 crores and short-term capital gains of Rs. 1.08 crores and incurred long-term capital losses on shares acquired before 1-4-2017, besides brought forward long-term capital loss of Rs. 8.96 crores from A.Y. 2018-19. Assessee claimed set-off and carry forward of losses under section 90(2) read with sections 70 and 74. AO, applying Article 13, denied set-off and disallowed utilisation and further carry forward of such losses. Tribunal by following coordinate Bench decisions ruled that, assessee was entitled to carry forward and utilise losses claimed by it, as treaty could not be thrust upon assessee. Therefore, AO was directed to allow same and recompute taxable income. **[Matrix Partners India Investment Holdings, LLC v. Dy. CIT [2025] 173 taxmann.com 727 (Mumbai - Trib.), Goldman Sachs Investments (Mauritius) Ltd. v. Dy. CIT, (International Taxation)- 2(3)(2) [2020] 120 taxmann.com 23/[2021] 187 ITD 184 (Mumbai - Trib.), TVF Fund Ltd. v. Dy. CIT, International Taxation [2025] 171 taxmann.com 349 (Mumbai - Trib.), Dy. CIT v. Patni Computer Systems Ltd. [2008] 114 ITD 159 (Pune) followed]**

VIII. ARTISTES AND ATHLETES

i. Release Fee from IPL franchises

1. Where UK-based assessee received release fees from IPL franchises for permitting English players to participate in IPL, Assessing Officer sought to tax them under Article 18(2) as income of entertainers/athletes, since release fee was received by assessee and not by players themselves, and represented 10 per cent of league fee paid by franchises to players, it was not taxable in India under Article 18 of the DTAA. **[India-UK DTAA]**

England and Wales Cricket Board Ltd. vs. ACIT, IT [2026] 189 taxmann.com 1011 (Delhi - Trib.) [21-08-2026] - IT (IT) Appeal No. 41 (Delhi) of 2026 - [AY 2023-24] - [TS-1327-ITAT-2026(DEL)]

Assessee, a based UK company, received 'release fee' from IPL franchises for permitting English players to participate in IPL. AO held that amount received by assessee from IPL franchises for allowing English players to participate in IPL was taxable in India under Article 18(2). Tribunals noted that in a similar case, High Court held that where payment was made to Event Management Company based outside India to bring artists in India, payment made to agent did not arise from personal activities, clause (2) of Article 18 would not apply. It was also noted that assessee was entitled to receive release fee which would be equivalent to 10 per cent of League Fee that was actually paid by franchise to player. Tribunal ruled that release fee received by assessee from IPL franchises was not taxable in India under Article 18 of the DTAA as it was not received by athlete/player. **[DIT (International Taxation) v. Wizcraft International Entertainment (P.) Ltd. [2014] 45 taxmann.com 24/223 Taxman 250/364 ITR 227 (Bom) followed]**

IX. FOREIGN TAX CREDIT (FTC)

i. Delay in filing form 67

- 1. Where assessee, a resident individual, earned income in India and USA, offered US-source income to tax in India and paid US taxes, his FTC claim was denied merely for delayed filing of Form 67, since delay in filing Form 67 did not disentitle assessee from claiming FTC, matter was **remanded** to AO to admit Form 67 and related documents and decide claim on merits**

Shashank Shekhar vs. ITO [2026] 189 taxmann.com 674 (Bangalore - Trib.) [17-08-2026] - IT Appeal No. 2613 (BANG) of 2025 - [AY 2017-18]

Assessee, an individual resident in India, earned income both in India and USA. US-source income was offered to tax in India, and US taxes were paid. Assessee claimed FTC under section 90 read with India-USA DTAA. Return was processed and FTC was denied on ground that Form 67 was not filed along with return. Thereafter, assessee filed Form 67 and a revised return. Revised return was also processed under section 143(1) and FTC claim was again denied. Tribunal ruled that mere delay in filing Form 67 as per provisions of Rule 128(9), as they stood during year under consideration, would not preclude assessee from claiming benefit of FTC in respect of tax paid outside India. Since in present case, claim of assessee was denied on technical aspect without going into merits, jurisdictional AO was directed to decide claim of FTC on merits, after accepting Form 67 and other related documents filed by assessee. **[Sonakshi Sinha v. CIT [2022] 142 taxmann.com 414/197 ITD 263 (Mumbai - Trib.) and Venkatanarayanan Somayaji Lakshminarasimha v. PCIT [2025] 174 taxmann.com 754 (Madras) followed]**

2. **Where assessee, a USA citizen resident in India, claimed FTC but filed Form No. 67 belatedly, since filing of Form No. 67 was merely directory and not mandatory, delay in filing was condonable and assessee was entitled to FTC subject to verification of facts and documents under law.**

Sangeeta Prasad vs. ITO [2026] 190 taxmann.com 437 (Delhi - Trib.) [14-09-2026] - IT APPEAL No.1393 (Delhi) of 2026 - [AY 2018-19]

Assessee-individual, a USA citizen, was resident in India for relevant assessment year. Assessee filed return claiming FTC. Assessing Officer denied claimed FTC and raised a demand. Thereafter, assessee filed Form No. 67 and moved a rectification order under section 154. AO rejected rectification and denied FTC on ground that Form No. 67 was not filed within prescribed time under Rule 128. Tribunal ruled that denial of FTC solely on ground of non-filing or belated filing of Form No. 67 prescribed under Rule 128 was not sustainable. Delay in filing Form No. 67 was to be condoned, and AO was directed to allow foreign tax credit subject to verification of facts and documents in accordance with law. **[Real Time Data Services (P.) Ltd. v. Pr. CIT [2026] 183 taxmann.com 701 (Delhi) followed]**

3. **Where assessee claimed FTC for salary earned from a Singapore company, denial of FTC solely due to late filing of Form 67 was unsustainable since time prescription for filing was procedural and did not result in forfeiture of otherwise admissible relief, thus recourse to section 119(2)(b) was not a necessary precondition for FTC claim.**

Satyen Sanghavi vs. ITO [2026] 189 taxmann.com 946 (Mumbai - Trib.) [24-08-2026] - IT Appeal No. 6707 (Mum) OF 2026 - [AY 2021-22]

Assessee, an individual, earned salary from two domestic employers and from a Singapore company. Assessee filed return offering Singapore salary to tax in India and claimed FTC of about Rs. 5.63 lakhs under section 90 read with Rule 128 for tax withheld/paid in Singapore. Form 67 was furnished after filing return. Return was processed under section 143(1) by CPC and claimed FTC was not allowed. CIT(A) upheld CPC's denial of FTC and observed that condonation under section 119(2) before competent authority was appropriate remedy and that appellate authority lacked jurisdiction to condone delay and therefore dismissed appeal. Tribunal held that Rule 128(9), as applicable to relevant period, prescribes time for furnishing form and it does not, in terms, provide that delayed furnishing of form shall result in forfeiture of an otherwise admissible FTC. Therefore, denial of FTC solely on account of delayed furnishing of Form No. 67 could not be sustained and recourse to section 119(2)(b) could not be insisted upon as a precondition for grant of FTC. Therefore, matter was remanded to AO to verify assessee's claim, including actual payment of foreign tax in Singapore and that such tax had not been refunded or otherwise recovered by assessee and upon such verification, AO was to allow admissible FTC in accordance with section 90 and applicable DTAA. **[Gopal Ramkrishnan v. Dy. CIT [2026] 188 taxmann.com 687 (Mum-Trib.) followed]**

4. **Where assessee earned income from Indonesia, paid foreign tax, offered such income to tax in India, and claimed FTC though Form No. 67 was filed after due**

date under section 139(1), assessee was still eligible for FTC as filing Form No. 67 is directory and not a mandatory requirement and denial of FTC is not prescribed for late filing where foreign tax payment is verifiable.

Ramesh Jethanand Jethnani vs. ITO [2026] 190 taxmann.com 141 (Mumbai - Trib.) [31-08-2026] - IT Appeal No. 4015 (Mum.) of 2026 - [AY 2023-24]

Tribunal ruled that filing of Form No. 67 is not mandatory but directory and FTC is allowable even if Form No. 67 is filed after due date prescribed under section 139, provided foreign income is offered to tax in India and foreign taxes paid are verifiable. Rule 128(9) does not prescribe denial of FTC for delayed filing of Form No. 67 and Section 90/91 also does not mandate timeline for such filing. Assessee, an individual, earned income from Indonesia, paid foreign tax thereon, and claimed FTC under section 90/90A read with Article 25 of India-Indonesia DTAA, however, Form No. 67 was filed after due date under section 139(1), since foreign income was offered to tax in India and foreign tax payment was verifiable, assessee was eligible for FTC. **[42 Hertz Software India (P.) Ltd. v. Asstt. CIT [2022] 139 taxmann.com 448 (Bangalore - Trib.), Ms. Brinda RamaKrishna v. ITO [2022] 135 taxmann.com 358/193 ITD 840 (Bangalore - Trib.), Vinodkumar Lakshmipathi v. CIT (Appeals) NFAC, Delhi [2022] 145 taxmann.com 235 (Bangalore - Trib.), Nirmala Murli Relwani v. Asstt. DIT [2022] 145 taxmann.com 293/[2023] 198 ITD 603 (Mumbai - Trib.), Satyen Sanghavi v. ITO [IT Appeal No. 6707 (Mum.) of 2026, dated 24-8-2026], Sonakshi Sinha v. CIT (Appeals) [2022] 142 taxmann.com 414/197 ITD 263 (Mumbai - Trib.) followed]**

ii. Shortfall in foreign tax credit allowed - remitted for verification that the underlying income was offered to tax

- 1. Where assessee was denied part of FTC despite corresponding income being included in total income, AO was to verify whether such income was offered to tax in relevant year and, if so, allow necessary credit**

Dy CIT vs. Uflex Ltd. [2026] 189 taxmann.com 995 (Delhi - Trib.) [21-08-2026] - IT(TP) Appeal No.272, 259, 260, 280 & 5367 (Del) of 2026 - [AY 2020-21, 2021-22 and 2022-23]

Assessee claimed that out of total FTC of Rs. 1.04 crores, AO had allowed credit to extent of Rs. 1.01 crores and had not allowed credit of Rs. 2.70 lakhs, though corresponding income was fully incorporated in computation of total income and subjected to tax under Indian tax law. Tribunal directed the AO to verify whether income relating to such short FTC was offered to tax in year under appeal and, if claim of assessee was found correct, necessary credit of foreign tax was to be allowed.

X. OTHERS

i. Section 197 certificate cannot be denied on the bare assertion of a proposed SLP

1. SLP dismissed against order of High Court that where assessee providing domain registration and web hosting services sought a nil-rate certificate under section 197, but authority rejected application merely stating that Department proposed to file SLP against earlier High Court ruling in assessee's favour, since application under section 197 must be decided as per Act and DTAA and not on revenue considerations, order was unsustainable and nil-rate certificate was directed to be issued

A/Dy CIT vs. Godaddy.Com [2026] 190 taxmann.com 84 (SC) [31-08-2026] - SLP (CIVIL) Diary No. 45711 of 2026 – [AY 2026-27] - [TS-1372-SC-2026]

Assessee was engaged in business of providing domain name services, including domain name registration, web hosting, web designing, SSL certification, etc. It filed an application under section 197 for grant of certificate for nil rate of tax. Competent Authority rejected application and issued a consequential certificate under section 197, stating only that Department proposed to file an SLP against earlier High Court's decision affirming assessee's case. High Court held that Competent Authority deciding an application under section 197 had an obligation to decide application as per provisions of Act, while having due regard to treaties between two countries and he should not be driven or swayed by Revenue targets/considerations. Further, since no reason was assigned other than bald assertion that Department was proposing to file an SLP against order of High Court and limitation of filing SLP had passed and order could not be sustained. Therefore, order and consequential certificate were to be quashed, and authority was to be directed to issue a certificate at 'nil' rate. Hon'ble Supreme court held that since no case for interference was made with impugned order of High Court, SLP was to be dismissed. **[SLP dismissed against Godaddy.Com LLC v. Assistant/Deputy Commissioner of Income-tax, International Taxation [2026] 184 taxmann.com 4 (Delhi)/ [2026] 310 Taxman 29 (Delhi)]**

ii. Form 26AS mismatch attributable to AEs already covered under MAP cannot be assessed in the agent's own hands

1. Where assessee acting as agent for foreign AEs faced addition for mismatch between receipts in return and Form 26AS, and claimed such receipts belonged to AEs already taxed under MAP, assessment of difference could not be made in assessee's hands, subject to verification on remand.

Discovery Communication India vs. JCIT [2026] 189 taxmann.com 864 (Delhi - Trib.) [19-08-2026] - IT Appeal No.1977 (Delhi) of 2017 - [AY 2012-13]

Assessee, an agent of its AEs (DALLC and APLLC) for distribution, ad airtime and marketing in India, filed its return declaring income of about Rs 17.61 crores. In draft

assessment, AO noticed a mismatch between receipts declared by assessee and those appearing in Form 26AS and proposed an addition of about Rs 24.96 crores; this addition was carried into final assessment order. Assessee claimed that said receipts pertained to its AEs and had been taxed under MAP. Tribunal ruled that difference between receipts reported in return and as per Form 26AS could not be assessed in assessee's hands, subject to verification on remand.

iii. Section 254(2) rectification cannot be invoked merely because oral arguments were curtailed when written submissions were duly considered.

- 1. Where Tribunal allowed appeal of assessee holding that payments received by assessee from Indian Customer(s) for rendering AWS Services did not qualify as royalty or FTS, since both parties were duly represented during appeal hearing and their detailed written submissions were reproduced and considered by Tribunal in its order, allegation of violation of principles of natural justice was unfounded and absence of further oral arguments was not a ground for recall or rectification under section 254(2). [India-USA DTAA]**

ACIT, IT vs. Amazon Web Services, Inc. [2026] 190 taxmann.com 820 (Delhi - Trib.) [03-09-2026] - MA Nos. 328 and 329 (Delhi) of 2023 - [AY 2014-15 and 2016-17] - [TS-1435-ITAT-2026(DEL)]

Assessee, a US based company, was engaged in providing 'standard and automated' cloud computing services/AWS services to its customers around globe. In relevant assessment years, assessee received consideration from Indian customers towards hosting and bandwidth charges. Assessing Officer treated receipts to be taxable as royalty and held that said receipts would be chargeable to tax in India. Tribunal allowed appeal of assessee holding that payments received by the assessee from Indian Customer(s) for rendering AWS Services did not qualify as royalty or FTS under the DTAA and hence were not taxable in India. Revenue thereafter filed Miscellaneous Applications seeking recall/rectification of Tribunal's order under section 254, alleging violation of principles of natural justice. It was noted that both AR and DR were present; Revenue sought an adjournment citing recent filing of paper books and need to peruse them, after which appeals were finally heard. Tribunal's impugned order recorded that Department filed detailed written submissions contending impugned receipts were taxable as royalty under Act and the DTAA, and that assessee filed a rejoinder; both sets of submissions were reproduced in and considered by order. Tribunal ruled that there was no violation of principles of natural justice as alleged by Revenue. Further, it was not a case where impugned order had not considered submissions of parties, in which case position could be different particularly where said contentions could have affected result but merely that oral arguments were not enhanced could not be a subject matter of recalling of impugned order as per provisions of section 254(2). Thus, Tribunal did not find any justification in recalling/rectifying impugned order as there being no mistake apparent on record in order of Tribunal on fact that written submissions made by both parties were reproduced in order itself and was duly

considered while adjudicating issue in hand. ***[Madhya Pradesh Industries Ltd. v. UOI AIR 1966 SC 671, Carborundum Universal Ltd. v. CBDT [1989] 47 Taxman 156/180 ITR 171 (SC) and Honda Siel Power Products Ltd. v. CIT [2007] 295 ITR 466/165 Taxman 307 (SC) /AIR ONLINE 2007 SC 323 followed]***

iv. Absence of a foreign TRC or foreign tax-return proof cannot override documented non-resident status and foreign-sourced salary

- 1. Where assessee, a non-resident electrician employed abroad, received salary in USD credited to his NRE account and produced relevant documents confirming non-resident status and foreign income, claim for exclusion of salary from Indian taxation cannot be denied merely for non-filing of foreign tax returns or Tax Residency Certificate, and assessment must be based on available records without insisting on such foreign documentation.**

Santhoshkumar Vithal Akka vs. ITO [2026] 190 taxmann.com 802 (Bangalore - Trib.) [23-09-2026] - ITA No. 2056 (Bang) of 2025 - [AY 2016-17]

Assessee, a non-resident individual, was employed as an electrician in a foreign company based in Greece which had a project in Korea. Assessee received salary in USD which was credited into his NRE bank account in India. Assessee did not file return in response to notice under section 148. During assessment proceedings, assessee submitted bank statements, interest certificate, computation of income, passport copy, and payslips. AO noted that assessee had not declared salary income and added same to total income. DRP upheld addition on ground that assessee had failed to submit TRC, foreign tax returns, and proof of payment of taxes in Congo. It was noted that assessee had produced copy of passport and bank statements which established that he was a non-resident and had received salary in USD. Tribunal ruled that non-filing of tax returns, TRC and tax paid details in foreign country could not be a reason for rejecting claim of assessee when facts remained that assessee was a non-resident and earned income in USD. Therefore, matter was remanded to AO with direction to consider passport entries and NRE account details and decide issue based on said documents without insisting on copy of tax return filed in foreign country, TRC and tax paid details in foreign country.