**IN THE INCOME TAX APPELLATE TRIBUNAL"A" BENCH, MUMBAI**
**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND**
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2619/MUM/2026 (AY: 2019-20)**
*(Physical hearing)*

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| LSL Holdings Private Limited<br>1, Leela Baug, Andheri Kurla Road, Andheri (East), Mumbai – 400059.<br>[PAN: AABCL8257C] | vs | ITO INT TAX Ward – 3(1)(2), Mumbai<br>Kautilya Bhavan, Bld. No. 41-43, G Block, BKC, Bandra (E), Mumbai – 400051. |
| Appellant / Assessee | | Respondent / Revenue |

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| Assessee by | Shri Prakash Jotwani, Advocate |
| Revenue by | Shri Surendra Mohan, Sr. DR. |
| Date of hearing | 21.05.2026 |
| Date of pronouncement | 18.08.2026 |

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of ld. CIT(A)/ADDL/JCIT(A)-Panaji dated 31.01.2026 for Assessment Year (AY) 2020-21. The assessee has raised following grounds of appeal:

> *"1. The learned CIT(A) erred in confirming the stand of the AO in treating the Appellant as "Assessee-in-default and levying the tax of Rs.6,81,200/- u/s 201(1).*
> *2. The learned CIT(A) erred in confirming a levy of interest of Rs.3,61,036/ u/s 201(1A) in view of default u/s 201(1).*
> *3. The learned CIT(A) erred in deeming the Appellant as "assessee-in default" u/s 201(1) and also levying interest u/s 201(1A) by holding that TDS u/s 195 was not deducted by the Appellant, on the acquisition of a capital asset towards which TDS was not deductible.*
> *4. a) The learned CIT(A) erred in confirming that the remittance of Rs.65,60,000/- made for the acquisition of trademark "Jamawar" constituted "royalty" u/s 9(1)(vi) despite the Appellant duly placing on record the transfer certificate issued by the State of Qatar to substantiate the absolute ownership of the trademark.*
> *b) The learned CIT(A) erred in upholding that the remittance made for acquiring the ownership of capital asset being the trademark "Jamawar was "royalty" by disregarding the provisions in Explanation 2 of Section9(1)(vi), which clearly states that consideration which would be the income of the*

*recipient chargeable under the head Capital Gains does not constitute "royalty".*
*c) The learned CIT(A) erred in treating the remittance for acquisition of trademark as royalty" by ignoring the fact that the Appellant had acquired ownership of various trademarks prior and post 2019, the remittances for which were accepted as "capital gain of the recipients" and not disputed as "royalty".*
*5. The learned CIT(A) erred in disregarding the documentary evidences duly placed on record by the Appellant to show that the remittance was made for absolute ownership of the trademark instead of mere transfer of partial rights.*
*6. The Appellant craves leave to add, alter, or modify any of the above grounds at or before the time of hearing."*

2. Brief facts of the case are that, in the case of the assessee, a transaction was reported in Form No. 15CA/CB with regard to foreign remittance made by the assessee, which was flagged for verification for non-deduction of TDS on the foreign remittance. The AO / ITO (TDS) recorded such transaction in para-2 of his order. The AO issued notice under section 133(6) read with section 201, calling for details and reasons for non-deduction of TDS under section 195. In response to the said notice, the assessee contended that they had made payment to a non-resident and that the remittance was on account of assignment of a trademark on which no TDS was deducted on the ground that no income had accrued or arisen in India as per section 5(2) read with Explanation 1. The AO again issued notice dated 17-09-2021, asking the assessee to furnish a copy of the agreement executed for acquiring the trademark, details of the place where the trademark was registered, and whether the remittee (recipient) had a fixed place of business or branch in India or not, and to furnish relevant communications. The AO recorded that only part of the information was provided. The agreement was furnished, which was in the

Arabic language, country of registration of the trademark is mentioned as Qatar. On the issue of permanent establishment, the assessee explained that they have been informed that there is no fixed place of business in India. The AO held that no permanent establishment (PE) certificate had been filed by the assessee. The AO, in para 5.1 of the order, recorded that, as per the official website of Abu-Ghazaleh Intellectual Property (AGIP), it was seen that they had a branch in Delhi. The assessee has not submitted the Tax Residency Certificate (TRC) of the remittee company. The nature of the remittance was in the nature of royalty, as the remittance was sent for assignment of the trademark registered in the name of AL Houda Hotels & Tourism Company. The AO again issued a fresh show-cause notice as to why the remittance should not be treated as royalty payment as per Section 9(1)(vi) of the Act. In response, the AO recorded that no response was filed. The AO issued a fresh notice, intimating that, non-submission of explanation order under section 201 will be passed. The AO recorded that no reply was furnished. The AO noted that the recipient, Abu-Ghazaleh Intellectual Property, (AGIP) T.M.P, is engaged in the business of registration, protection, and sale of intellectual property. Therefore, the remittance received for assignment of the trademark to the assessee is not a capital gain. The AO held that the assessee made the remittance in the nature of royalty and the assessee should have deducted TDS. The AO treated the assessee as an assessee in default for non-deduction of TDS. The AO held that the assessee was liable to deduct tax at the rate of 10% of the remittance. Accordingly, he passed an order under Section 201(1) and created a liability of Rs. 10,42,240/- in the following manner.

| A.Y. | Total payments made to TMP Agents (Abus Ghazal Leh Property) | Liability under section 201(1) & 10% tax + 4% EC on Tax + Surcharge | Interest (u/s 201(1A)(i) @ 1% p.m. for 53 months [10.08.2018 to 31.12.2022] | Total payable |
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| *2019-20* | *65,50,000* | *681200* | *361036* | *10,42,236* |
| *Rounded off* | | | | *10,42,240* |

3. Aggrieved by the order of the AO/ITO TDS, the assessee filed an appeal before the CIT(A). Before ld. CIT(A), the assessee filed detailed written submissions along with certain evidence. The submissions of the assessee are extracted on page 5 & 6 of the order of the CIT(A). The assessee in its submission submitted that they have purchased ownership right of trademark "Jamawar" from Al Houda Hotels and Tourism Co. having their address at Street No. 103, Block 6, Post Box No. 18544 Farwaniya – 81006, State of Qutar through TMP agents Abu-Ghazaleh Intellectual Property having address at Crown Plaza Doha, the business park Building E, 5th Floor, Airport Road, Doha, State of Qatar in the month of August, 2018. Jamawar is the brand name of restaurant used in hospitality industry. The assessee used this brand in one of their restaurant operated in London. The name of restaurant is Jamawar. The purpose of trademark / brand is purchase of asset and not payment of royalty as held by AO in order under section 201(1) and 201(1A) r.w.s. 195. The purchase of trademark cannot be equated with royalty. The royalty is recurring payment for use of trademark / brand owned by others whereas the assessee has purchased trademark / brand and now became owner

thereof. The expenditure incurred for purchase of capital asset and not for revenue in nature. No TDS was deductable under section 195. The assessee also stated that T.M.P. agents have not rendered any services of technical nature to the assessee. They just transferred the ownership right of brand "Jamawar" for lump sum consideration on behalf of AL Houda Hotels & Tourism Co. The proviso to section 916 itself exclude any consideration which would be income of recipient chargeable under the head " capital gain". In the present case, for recipient, it is a transfer of asset from them to assessee and therefore, the income if any shall be chargeable under the head capital gain. Therefore, AO's interpretation cannot be considered as payment of royalty. To support their view, the assessee relied upon the decision of Gujarat High Court in CIT vs Creative Infocity Ltd. wherein reliance was made in case of ITO vs HEUBACH Colour Pvt. Ltd. 53 taxmann.com 377. In the said case it was held that payment to non-resident toward supply of drawing and design for outright purchase was not taxable as royalty or fees for technical services under section 91. It was also stated that once it is held that no income chargeable to tax in the hand of payee in India, the provision of section 195 shall not be applicable.

4. The ld. CIT(A) after considering the submission of assessee upheld the action of AO by taking view that assessee simply contended that payment was made for outright purchase of trademark and, therefore, not taxable in India. However, no documentary evidence has been furnished to substantiate such claim. The assessee has not furnished trademark

assignment agreement, deed of transfer of ownership, proof of ownership of trademark, nature of right transfer, rate list for valuation of trademark. It was also held that transfer of ownership or partial rights in the trademark falls within the scope of royalty unless it is conclusively prove that absolute and perpetual ownership has been transferred. Thus, AO was right in treating remittances as royalty. Further, aggrieved the assessee has filed present appeal before Tribunal.

5. We have heard the submission of ld. Authorised Representative (ld. AR) of the assessee and the ld. Senior Departmental Representative (ld. Sr. DR) for the Revenue. The ld. AR of the assessee submits that the lower authorities have failed to appreciate the fact that the assessee has purchased ownership right of trademark "Jamawar" from Al Houda Hotels and Tourism Co. through TMP agents Abu-Ghazaleh Intellectual Property having address at State of Qatar. Jamawar is the brand name of restaurant used in hospitality industry. The assessee used this brand in one of their restaurant operated in London. The name of restaurant is Jamawar. The purpose of trademark / brand is purchase of asset and not payment of royalty as held by AO in his order. The purchase of trademark cannot be equated with royalty. The royalty is recurring payment for use of trademark / brand owned by others whereas the assessee has purchased trademark / brand and now became owner thereof. The expenditure incurred for purchase of capital asset and not for revenue in nature. No TDS was deductable under section 195. The T.M.P. agents have not rendered any services of technical nature to the assessee and just

transferred the ownership right of brand "Jamawar" for lump sum consideration on behalf of AL Houda Hotels & Tourism Co. The proviso to section 9(1)(vi) itself exclude any consideration which would be income of recipient chargeable under the head " capital gain". The income of recipient is not chargeable to tax in the hand of payee in India, thus, the provision of section 195 shall not be applicable. The ld. AR further submitted ld. CIT(A) has not taken the cognizance of various documentary evidences furnished before him which includes trademark assignment agreement, copy of which is filed at page no. 52 with date of transfer, proof of ownership of trademark by AL Haude Hotels, copy of which is at page no. 52, mode of commercial term of transfer at page no. 56 of paper book. Such document was furnished in response to specific show cause notice by ld. CIT(A) dated 18.11.2024. All these documents were furnished on 22.11.2024, copy of acknowledgement is filed at page no. 65 & 66 of the paper book. The ld. AR carried us through each and every document and the description and size of document uploaded on ITBA portal. The ld. AR of the assessee submits that the ld. CIT(A) failed to appreciate and consider such evidences and simply concluded that no such document was furnished. Copy of tax resident certificate of recipient was also filed, copy of which is filed at page no. 104 of paper book. The ld. AR carried us through Explanation 2 of section 9(1)(vi) of the Act wherein definition of royalty is defined. The ld. AR reiterating that for the recipient the payment was for transfer of an asset to assessee and, therefore, the income if any to the recipient is under the head capital gain.

Otherwise, the recipient has no permanent establishment or business connection in India, therefore, the income of recipient is not taxable in India the assessee is not under obligation to deduct tax at source. To support his submission, the ld. AR relied upon the decision following decision:

- Saregama (I) Ltd. vs ACIT ITA No. 1813/Kol/2009
- Asia Satellite Telecommunication Co. Ltd. vs DIT (2011) 332 ITR 340 (Del)
- GVK Oil & Gas Limited vs ADIT (TA Nos. 317 & 38/Hyd/2012
- GE India Technology Centra (P) Ltd. vs CIT (2010) 327 ITR 456 (SC)
- Pidilite Industries Ltd. ITO (TDS) ITA No. 2174/Mum/2014
- ACIT vs M & B Engineering Limited ITA No. 370/Ahd/2018
- Engineering Analysis Centre of Excellence Pvt. Ltd. vs CIT & Anr. (CA Nos. 8733-8734 of 2018)

6. On the other hand, the ld. Sr. DR for the Revenue supported the order of lower authorities. The ld. Sr. DR submits that as per the finding of ld. CIT(A) at page no. 15, the documents were not furnished, thus, he has not considered various evidence in the form of trademark agreement transferred deed and right transfer in the agreement. As per deed of assignment, complete right was not transferred. So far as contention of ld. AR that recipient has not business connection, such fact is not proved by assessee.

7. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that AO initiated proceedings under section 201 on the basis of information flagged in ITBA system on the basis of Form 15CA/CB about foreign remittance on which no TDS was made. On filing reply by assessee that remittance was made for assignment of trademark and that no income is

accrued or arises in India in the hand of recipient on payment of such consideration. The AO issued fresh show cause notice that as to why remittance should not be treated as royalty under section 9(1)(vi). The AO after recording that no further reply was furnished by assessee treated the assessee in default and created a demand of Rs. 10,42,240/-. We find that before ld. CIT(A), the assessee explained the fact in detail and also furnished necessary evidence to substantiate the fact that remittance was made for acquiring of trademark "Jamawar" from Al Houda Hotels and Tourism Co. through TMP agents Abu-Ghazaleh Intellectual Property having address at State of Qatar. It was explained that "Jamawar" is the brand name of restaurant used in hospitality industry, which the assessee used in one of their restaurant operated in London. From the material available on record, we find that assessee has furnished complete evidence which consist of trademark assignment agreement, evidence of ownership of trademark, nature of right transferred, valuation and mode of commercial transaction. The assessee also furnished tax resident certificate of recipient. As per tax resident certificate, the recipient is tax resident of Jordan. We find that despite furnishing the aforesaid evidences, the ld. CIT(A) simply held that no documentary evidence is furnished by assessee despite allowing opportunity. On the basis of material available on record, we find that assessee has made payment / remittance to TMP agents / Abu Ghazaleh Intellectual Property (AGIP) offshore, who is tax resident of Jordan.

8. We find that Kolkata Tribunal in Saregama (I) Ltd. vs ACIT (supra) while relying upon the decision of Delhi High Court in Asia Satellite Telecommunication Co. Ltd. vs DIT (Supra) and Andhra Pradesh High Court in CIT vs Andhra Petrochemical Ltd. (2015) 373 ITR 207 (T & AP) held that when the assessee made a payment for transfer of ownership of copy right for a lump sum consideration and it was not mere payment past and future royalties. The price was paid for outright purchase for acquiring capital asset. The AO and ld. CIT(A) was not justified in treating the assessee in default for not deducting TDS on such transaction. We find that Hon'ble Apex Court in GE India Technology Centre (P.) Ltd. v. CIT, (supra) held that the obligation to deduct tax under Section 195 arises only when the remittance is a sum chargeable to tax under the Act, it does not arise merely because a remittance is made. Thus, in view of aforesaid factual and legal discussion, we do not find any justification for treating assessee in default. Hence, the demand created by AO / ITO TDS is deleted. In the result, the grounds of appeal raised by assessee are allowed.
9. In the result, appeal filed by assessee is allowed.

Order was pronounced in open court on 18/08/2026

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| Sd/- | Sd/- |
| **GIRISH AGRAWAL**<br>**ACCOUNTANT MEMBER** | **PAWAN SINGH**<br>**JUDICIAL MEMBER** |

MUMBAI, Dated:18/08/2026
Biswajit

<u>Copy of the order forwarded to</u>:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai