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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of Decision : 19.05.2025*

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**ITA 158/2025 & CM APPL. 30269-70/2025**COMMISSIONER OF INCOME TAX, INTERNATIONAL  
TAXATION-1, NEW DELHI

.....Appellant

Through: Mr Puneet Rai, SSC, Mr Ashvini  
Kumar Mr Rishabh Nangia, and Mr  
Gibran JSCs and Mr Nikhil Jain,  
Advocate.

versus

COURSERA INC.

.....Respondent

Through:

**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)**

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning the common order dated 21.08.2024 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.2416/Del/2023 and ITA No.3646/Del/2023 in respect of Assessment Year [**AY**] 2020-21 and 2021-22 respectively whereby the learned ITAT allowed the aforesaid appeals preferred by the respondent [**Assessee**] in respect of the final assessment



orders passed by the Assessing Officer [AO] under Section 143(3) read with Section 144C(13) of the Act.

2. The Revenue has confined the present appeal to the impugned order insofar as it relates to ITA No.3646/Del/2023 in respect of AY 2021-22. In terms of the impugned order, the learned ITAT allowed the appeal of the Assessee, *inter alia*, impugning the final assessment order dated 31.10.2023 passed by the AO under Section 143(3) read with Section 144C(13) of the Act.

3. The Assessee is a company incorporated in the United States of America and is a tax resident of the said country. The Assessee operates a global online learning platform providing online courses and degrees from leading universities and companies. The AO sought to tax the receipts from the provision of said services as ‘fees for technical services’ [FTS] within the meaning of Section 9(1)(vii) of the Act and ‘fee for included services’ [FIS] under Article 12(4) of India USA Double Taxation Avoidance Agreement [Indo-US DTAA].

4. The learned ITAT accepted the Assessee’s contention that the receipts from the services rendered are neither in the nature of royalty nor FTS (as it did not entail any included services) which are chargeable to tax under the Act.

5. In the aforesaid context, the Revenue has projected the following questions of law for consideration of this Court: -

“A. Whether on the facts and in the circumstances of the case, and in law, the Hon’ble ITAT is correct in



holding that customized service as provided by the assessee do not qualify as “Make Available” as per Article 12 of India-USA DTAA?

B. Whether on the facts and in the circumstances of the case, and in law, the Hon’ble ITAT is correct in holding that the user services provided by the assessee which involved high degree of human intervention of training element would not satisfy as “Make Available” as per Article 12(4) of India-USA DTAA?”

## FACTUAL CONTEXT

6. On 11.03.2022, the Assessee had filed its return of income for the AY 2021-22 under Section 139(1) of the Act declaring total income of ₹1,03,070/-. The Assessee’s return was picked up for scrutiny and a notice dated 27.06.2022 under Section 143(2) of the Act, was issued. The said proceedings culminated into the draft assessment order dated 29.12.2022, which was passed under Section 144C(1) of the Act.

7. It was the Assessee’s case before the AO that it had received the gross amount of ₹106,18,97,258/- during the previous year relevant to AY 2021-22 in respect of services rendered. The Assessee had explained that it operates a platform which hosts multimedia courses for consumption of end-users. The Assessee has on boarded various educational institutions offering various courses on its platform and offers educational courses in multiple disciplines, on its platform. The said courses in the disciplines of management, arts, humanities, data analysis and philosophy etc. are offered online. The Assessee claims that its customers included individuals, educational institutions as well as corporates. The Assessee claims that the receipts did not constitute consideration for industrial, commercial, or scientific knowledge or experience, etc., and there was no element of its



services whereby it made available any technical knowledge/skills etc. to the customers. The Assessee thus, claimed that its income was not chargeable to tax, either as royalty or as FTS/FIS under the Act read with Indo-US DTAA.

8. Paragraph nos. 1 to 4 of Article 12 of the Indo-US DTAA are relevant and are reproduced below: -

**“ARTICLE 12 - Royalties and fees for included services –**

1. Royalties and fees for included services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if the beneficial owner of the royalties or fees for included services is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) in the case of royalties referred to in sub-paragraph (a) of paragraph 3 and fees for included services as defined in this Article [other than services described in subparagraph (b) of this paragraph]:

(i) during the first five taxable years for which this Convention has effect,

(a) 15 per cent of the gross amount of the royalties or fees for included services as defined in this Article, where the payer of the royalties or fees is the Government of that Contracting State, a political sub-division or a public sector company; and

(b) 20 per cent of the gross amount of the royalties or fees for included services in all other cases ; and

(ii) during the subsequent years, 15 per cent of the gross amount of royalties or fees for included services ; and

(b) in the case of royalties referred to in sub-paragraph (b) of paragraph 3 and fees for included services as defined in this Article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 3(b) of this Article, 10 per cent of the



gross amount of the royalties or fees for included services.

3. The term “royalties” as used in this Article means : (a) payments of any kind received as a consideration for the use of, or the right to use, any copyright or a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof ; and (b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of Article 8.

4. For purposes of this Article, “fees for included services” means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:

- a) are ancillary and subsidiary to the application or enjoyment of the right, property, or information for which a payment described in paragraph 3 is received; or
- b) make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.”

9. The Assessee claimed that by virtue of paragraph 4 of Article 12 of the Indo-US DTAA, the receipts cannot be treated as FIS as they did not include any element of included services.

10. The AO examined one of the agreements entered into by the Assessee [Assessee’s agreement with Gandhi Institute of Technology and Management] and found that the Assessee provided two kinds of services: content services and user services. Insofar as the user services are



concerned, the Assessee provided services for (i) preparing customised landing page featuring the organization logo and selected courses; (ii) generating user engagement reports; (iii) providing payment solution(s) to allow users to seamlessly access premium course experiences and skip checkout, and (iv) rendering enterprise-level user support. The AO also noticed that the agreement included additional services which, *inter alia*, provided for training for using the platform. On the aforesaid basis, the AO concluded that the Assessee was not merely providing content services but was providing a whole range of user services which are specific to a particular user. Additionally, the AO observed that such services also involved a high degree of human intervention and no separate consideration for such user services was received by the Assessee. The AO thus, proceeded to propose an addition of ₹36,62,79,706/- to the Assessee's returned income (which was ₹1,03,070/-).

11. The Assessee filed his objections before the Dispute Resolution Panel [DRP]. The DRP considered the Assessee's objections. The DRP was not persuaded by the objections raised by the Assessee. The relevant extract of the directions issued by the DRP on 21.09.2023 are extracted below:

**“ 8.4 Directions of Panel:**

- (i) The Panel has considered the rival averments as mentioned above.
- (ii) The Panel takes note of the fact that Assessee company is an aggregator. It acts as a platform for content providers and brings numerous courses in various discipline at one platform for ease of availability to the learners who may be individuals, education institutes or corporates. It provides services to the users when users are pursuing the course. The Panel takes a note of the AO's remarks made at para no. 9.3 to 9.4 of the draft order wherein it is mentioned



that assessee is not only providing content services to the customers in India but also providing whole range of user services which involve a high degree of human intervention. In this regard the Panel adds its observation from the 'order form' of Coursera, submitted by the assessee company, wherein it has billed M/s Gandhi Institute of Technology and Management. At the bottom of the page is very small font following is written for internal accounting purpose, Coursera will allocate 70% of these fees for Content Service and 30% for User Services.' This reveals that the claim of assessee company that it is not charging user fee is not a correct claim. The words are very carefully drafted but their meaning is the same that whatever is being charged includes 30% as fee for user services that it provides to its customers.

(iii) The Panel agrees with the observation in the draft order that there is an element of training involved with respect to the customers which has been further verified on the basis of the information received u/s 133(6) of the Act. When a corporate avails the services of the assessee company, it does so to impart training and upgrade the skills of its employees. Corporates are not NGOs they are profit making organisation that spend money to enhance skills of their employees for enduring benefits it will bring to their organisation post training of the employee. And for the same reason that corporates are not NGOs, they have specific criteria for making these training facilities available to their employees. The employees cannot avail these courses on the basis of their likes and dislikes, instead they can avail it on the basis of its utility to their organisation. This learning has commerce at the centre of it and not personal growth of an individual for personal gains. When an educational institution which is teaching in avails services of the assessee company, it does so as a business just like its business of making other services like food, books, clothing etc. In its institute it is already teaching its students, as per their curriculum, what they need to learn. What comes by way of Coursera to the students is the training they



receive that aids their course content in the educational institute. Students when avail such courses it is as per the need that the educational institute identifies, and often educational institutes mark its students on the basis of their completion/ performance at such courses. This is not the same as a person sitting at home, taking subscription of the course from Coursera, at individual level, for personal growth. It is about business of seeking courses for students to give them the training they require for performing better in the educational institute. The purpose here is not the same as for a corporate client but it is business none the less for a commercial gain coming from extra training/education in the chosen discipline.

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(vi) When assessee company is examined on the basis of above provisions it is found that

a) Coursera is a service provider that is in business of providing material for training of employees/ students of corporates/ educational institutes for profit as a business concern. The nature of material provided for training is as technical as it can get in field of education. It cannot be compared with the technical aspect in other fields since it would amount to comparing “apples with oranges”. The content provided is curated and has specialized studying material including video sessions. They are highly specialized courses for learning at ones own pace. Despite the content / course being the same, the nature of these courses acquires different dimension when it is being taken up by an individual for personal reasons verst/s when it is taken up by a corporate / educational institute for commercial reasons.

b) Coursera charges user fee @30% for the user services it provides for the course content which requires use of work force working remotely online for ease of learning.

c) The services that coursera provides (out of the 7 mentioned attributes above in 4 (b) of Article 12 of India US DTAA) imparts skill to the employee of corporate houses and student of the educational



institute. It is not as if a Microsoft Subscription on excel has been given for the users to work upon. Nature of all businesses differ hence 'one size fits all' cannot be used for all businesses. What is 'make available' differ with nature of business. In case of assessee company if we interpret make available with the argument that no technology or right transfer is being done, it will make the argument haywire since the minute this argument is applied the nature of services will become royalty and not remain FTS. Hence arguments has to be of a nature where it more than a simple service but less than royalty. The services provided were if like an 'e-book' it would not 'make available' anything but the minute specialized content with specialized methods of imparting training are applied it 'make available' skill/experience to the user in a predigested, better retention capacity and more eye catching manner that aids learning. If assessee company presents its argument like an 'e-book' seller would present its arguments, it will be a very erroneous argument. In case of assessee 'make available' has to be seen differently as described above.

d) Assessee company is a service provider of educational material, it is neither an educator in a teaching institute nor a teaching institute itself. It has collaborated with universities across the world to bring courses under one platform for ease of choice in taking up courses. It is doing business of facilitating for which it charges user fee, it is not an educator itself. In fact the universities that it caters to as content partners are the educators.

e) The very aim of learning is towards enduring benefits that arise from it for acquiring job in future or doing better at the current job. Hence, this argument squarely applies in the case of the assessee company.

f) The videos involved in teaching and involvement of guidance to the learners through employees for which user charges are being taken by the assessee company prove the human element. In an era of fast digitization and minimal human intervention, the way we define human intervention, has to be recalibrated, for such



services. For a 'mortar and brick' human intervention would differ from an 'on line' coaching institute. Here 'video content' and other services provided to aid learning will be the test

(vii) In view of the above there is no infirmity found with the order of the assessing Officer who is directed to pass a well reason speaking final assessment order. The grounds of objection in this regard, are disposed off accordingly.”

12. However, it does not appear that the AO undertook any fresh exercise. The AO reiterated its earlier observations and proceeded to pass the final assessment order dated 31.10.2023.

13. The learned ITAT did not find merit in the Revenue's contention that the Assessee had provided any technical services, especially the once which involved human intervention. Accordingly, the learned ITAT rejected the contention that the Assessee's receipts were chargeable to tax under the Indo-US DTAA as FIS. The relevant extract of the learned ITAT's decision is set out below:

“11. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. Insofar as the activity of the assessee is concerned, it is established on record that the assessee provides a global online learning platform, wherein, various courses and degrees from leading universities and companies are provided. It is a fact on record that the contents of such courses and degrees are created by the concerned universities and companies and not by the assessee. The assessee acts as a mere facilitator between the concerned university/companies and the customers who want to undertake the courses of the concerned university/companies. The assessee merely provides access to the contents of the universities/companies through the platform on receipt of fees.



12. In fact, the Assessing Officer in the draft assessment order has clearly observed that the assessee is not an educational institution but an aggregation service provider, which brings educational learning on one platform. He has further stated that the course contents were not created by the assessee, but by the educational institutions. The customers who want to undertake course/degree get access to the contents/study materials through the platform provided by the assessee. Tests/examinations are also conducted by the concerned universities and companies and not by the assessee. Certificate for completion of course/degrees are also issued by the concerned universities/companies along with the logo of the assessee. These facts clearly indicate that while providing access to various courses/degrees, the assessee does not provide services of technical nature to the customers. In fact, while disposing of the objections raised by the assessee against the draft assessment order, learned DRP has clearly observed that the Assessing Officer has neither properly examined the agreement with Gandhi Institute of Technology and Management, nor has factually examined assessee's contention that the terms and conditions of the agreement do not make the assessee a technical service provider. However, while passing the final assessment order, the Assessing Officer has completely ignored the directions of learned DRP. This is evident from the following observations of the Assessing Officer in the final assessment order

*“13. In response to the directions of Hon’ble DRP, the agreement of the assessee with GITAM was perused. It is seen that the observations regarding the agreement of the assessee with GITAM has been discussed in the Draft assessment order (refer to para 8.2 and 8.3). Accordingly, the final assessment order is being passed at total assessed income of Rs.75,66,52,591/- taxable at as per provisions of the Income Tax Act, 1961 and applicable surcharge and cess. Necessary*



*forms to be issued, applicable interest to be charged and credit of taxes, if any after verification from the ITD system are to be allowed. Penalty u/s 270A is being proposed to initiate as discussed in earlier paragraphs of the order. Detailed computation of tax payable and interest charged u/s 234A, 234B and 234C of the Act is being attached as part of the final order. Notice of demand is being issued.”*

13. As could be seen from the highlighted portion of the observation of Assessing Officer, without properly implementing the directions of learned DRP, he has merely stated that the agreement with Gandhi Institute of Technology and Management has been discussed in the draft assessment order. By these observations what the Assessing Officer implies is, learned DRP has issued directions without proper application of mind. This, in our view, is highly objectionable and against the provision contained under section 144C(13) of the Act.

14. Be that as it may, Assessing Officer's findings/observations on the role of assessee are self-contradictory. While on one hand, the Assessing Officer has acknowledged the fact that the assessee is an aggregation service provider and not a content creator, in the same breath, he says that assessee's contention that it is a mere aggregator of educational courses is not correct. The Assessing Officer has not brought on record any material to establish the fact that the assessee provides technical services through its online platform. Merely because the assessee has a customized landing page, it does not mean that the assessee provides technical services, that too, through human intervention. The Assessing Officer, in our view, has not been able to prove such fact. Even, assuming for argument's sake, the services provided by the assessee is of technical nature, that by itself would not be enough to bring such receipts within the purview of Article 12(4) of India – USA DTAA, unless the make available condition is satisfied.



Burden is entirely on the Revenue to prove that in course of rendition of services, the assessee has transferred technical knowledge, know-how, skill etc. to the service recipient, which enables him to utilize such technical knowledge, know-how, skill etc. independently without aid and assistance of the service provider.”

14. It is clear from the above that the learned ITAT’s conclusion that the services provided by the Assessee did not include any element of included services and, therefore, the Assessee’s receipts were not chargeable to tax as FIS under the Indo-US DTAA, is based on the findings of fact in respect of the services rendered by the Assessee.

15. We do not find that the said findings can be stated to be perverse by any stretch. There is no dispute that if the services provided by the Assessee are not of technical in nature as stated by the learned ITAT, the Assessee’s receipts would not be chargeable to tax as FTS/FIS under the Act read with the Indo-US DTAA. In any event, the amount receipt is not chargeable to tax as FIS within the scope of Article 12 of the Indo-US DTAA.

16. In view of the above, we find that no substantial question of law arises for consideration of this Court.

17. The appeal is accordingly dismissed. The pending applications are also disposed of.

**VIBHU BAKHRU, J**

**TEJAS KARIA, J**

**MAY 19, 2025**

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