$~90, 91 & 99

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

% *Date of Decision : 06.11.2025*

\+ ITA 581/2025
\+ ITA 582/2025
\+ ITA 574/2025

COMMISSIONER OF INCOME TAX,
INTERNATIONAL TAXATION-1, DELHI .....Appellant

Through: Mr. Puneet Rai, SSC, Mr. Ashvini Kumar, Mr. Rishabh Nangia and Mr. Gibran, JSC.

versus

DXC TECHNOLOGY SERVICES SINGAPORE PTE LTD. (EARLIER KNOWN AS HP SERVICES SINGAPORE PTE LTD.) .....Respondent

Through: Mr. Percy Pardiwala, Sr. Adv with Mr. Satyen Sethi, Mr. Arta Trana Panda, Ms. Gargi Sethee, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

V. KAMESWAR RAO , J. (ORAL)

CM APPL. 69038/2025 & CM APPL. 69045/2025 (exemption)

1. Exemption is allowed subject to all just exceptions.

2. The application stands disposed of.

CM APPL. 69039/2025(condonation)

3. For the reasons stated in this application, the delay of 566 days in refilling the appeal is condoned.

4. The application stands disposed of.

CM APPL. 69046/2025(condonation)

5. For the reasons stated in this application, the delay of 553 days in

refilling the appeal is condoned.

6. The application stands disposed of.

ITA 581/2025
ITA 582/2025
ITA 574/2025

7. The challenge in these appeals by the appellant/Revenue is to an order dated 10.10.2023 passed by the Income Tax Appellate Tribunal (ITAT) in respect of 4 appeals related to the Assessment Years (AY) 2011-12 to 2014-15.

8. Mr. Puneet Rai learned Senior Standing Counsel states that the appeal relatable to the AY 2013-14 shall be listed next week.

9. In any case he has made his submissions with regard to these three appeals in respect of orders framed under Section 143(3) read with Section 144C of the Income Tax Act, 1961 (the Act) primarily on three grounds.

10. The challenge in these appeals, as seen from the proposed questions and as per Mr. Rai with regard to three grounds the Tribunal has dealt the same in Paragraphs 6, 12 and 14.

> *"6. First common grievance is in respect of sale of off the shelf software considered as royalty.*
>
> *12. Second grievance in AY 2011-12 relates to the receipts for use of telecom band width facility considered as royalty and/fees for technical services.*
>
> *xxxx xxxx xxxx*
>
> *14. Third common grievance in the captioned appeals relates to the receipts from providing information technology related support services considered as royalty and/fees for technical services."*

11. In paragraph 6, the Tribunal was dealing with issue with regard to the

sale off-the-shelf software considered as royalty. The submission is that given the nature of transaction, the payment is not to be considered as royalty and hence is taxable.

12. Mr. Rai states that on an identical issue relatable to the AY 2009-10, the issue stands concluded against the appellant/Revenue and in favour of the assessee in view of the decision in ITA No.802/2023 wherein this Court has in paragraph 2 onwards stated as under.

> *"2. Via the instant appeal, the appellant/revenue seeks to assail the order dated 31.03.2022 passed by the Income Tax Appellate Tribunal [in short "Tribunal"].*
>
> *3. The appellant/revenue has proposed the following question of law for consideration by this court:*
>
> > *"2.1 Whether on the facts and in the circumstances of the case and in law, the ld. ITAT is correct in holding that the consideration received by the Assessee from various entities on account of sale/supply of software is not royalty within the meaning of Article 12(3) of the IndoSingapore -DTAA?"*
>
> *4. The record shows that the respondent/assessee was subjected to scrutiny-assessment which resulted in the consideration received qua off-the- shelf sale of the software being brought to tax.*
>
> *4.1. The addition made by the Assessing Officer (AO), in this regard, amounted to Rs.1,14,09,24,658/-. The AO construed the said amount received by the respondent/assessee as royalty.*
>
> *5. The finding of fact returned by the statutory authority is that the respondent/assessee had not transferred the copyright it had qua the subject software. The Tribunal, with regard to the said issue, in our opinion, ruled correctly, in favour of respondent/assessee and concluded that the amount could not be treated as royalty within the meaning Article 12(3) of the India Singapore Double Taxation Avoidance Agreement.*
>
> *5.1. The Tribunal relied upon the judgment of the Supreme Court rendered in the case of Engineering Analysis Centre of Excellence Pvt. Ltd. v CIT 432 ITR 471.*

6. Having regard to the findings of fact and the enunciation of law by the Supreme Court in the aforementioned judgment, according to us, the impugned order does not require interference.
7. In our opinion, no substantial question of law arises for consideration. The appeal is, accordingly, closed.
8. Consequently, pending application is rendered infructuous."

13. The Tribunal in the impugned order and this Court in the aforesaid decision have referred to the judgment of the Supreme Court in the case of ***Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT, 432 ITR 471***. If that be so, no substantial question of law as framed would arise for consideration in this appeal.

14. Insofar as ground two is concerned, it was also raised in ITA 574/2025, the same relatable to ground two as urged by the respondent/assessee which has been dealt with by the Tribunal in paragraph 11, 12 and 13 wherein it has stated as under:

"11. Second grievance in A.Y 2011-12 relates to the receipts for use of telecom bandwidth facility considered as royalty and /Fees for technical services.
12. In earlier A.Ys. though the Assessing Officer has taken the same view but the first appellate authority had deleted the addition and the revenue did not raise this issue before the Tribunal. A similar view was considered and decided by the co-ordinate bench in the case of Planetcast International Pvt Ltd 152 Taxmann.com 422. The relevant findings read as under:

> *"39. In ground No. 8, the assessee has challenged taxability of receipts from internet bandwidth charges as royalty income.*
> *40. Briefly, the facts are, in course of assessment proceedings, the Assessing Officer noticed that though the assessee had received an amount of Rs.15,66,888/- towards internet bandwidth charges, however, such income was not offered to tax in India. Being of the view*

that the receipts are in the nature of equipment royalty as scientific / commercial equipment in the form of lease line/router is provided by the assessee to the customer, the Assessing Officer proceeded to treat the receipts as royalty income under section 9(1)(vi) of the Act read with Article 12(3) of India-Singapore DTAA and added to the income of the assessee. Though, the assessee contested the aforesaid addition by filing objections before learned DRP, however, the addition was upheld.

41. Before us, learned Sr. Counsel appearing for the assessee submitted that by referring to the amendment made to section 9(1)(vi) of the Act by insertion of Explanation 4 & 5 by Finance Act, 2012, the Assessing Officer has treated the receipts as royalty. He submitted, the amendment made to the Act cannot be automatically imported to the treaty provisions. He submitted, unless corresponding amendment is made to the treaty provisions, the provisions of the Act cannot be read into the treaty provisions. He submitted, as per the treaty provision, the receipts cannot be treated as royalty income. In support of such contention, learned counsel relied upon following decisions :

(i). Telstra Singapore Pte. Ltd. vs. DCIT (2021) 123 taxmann.com 124 (Delhi Trib.)

(ii). ACIT vs. Reliance Jio Infocomm Ltd. (2019) 111 taxmann.com 371 (Mumbai Trib.)

(iii). Qualcomm India (P) Ltd. vs. ADIT (2017) 77 taxamann.com 56 (Hyderabad-Trib.)

(iv). Essity Hygiene and Health AB vs. DCIT, (2021) 129 taxmann.com 70 (Mumbai-Trib.).

42. Learned Departmental Representative strongly relied upon the observation of the Assessing Officer and learned DRP.

43. We have considered rival submissions and perused materials on record. Undisputedly, referring to the amended provisions of section 9(1)(vi) of the Act, the Assessing Officer has treated the receipts from internet bandwidth charges as equipment/process royalty.

> *However, it is observed, no corresponding amendment in line with the amendment brought to section 9(1)(vi) of the Act has been made to Article 12(3) of India-Singapore DTAA. Therefore, in absence of any such amendment widening the scope of expression 'royalty' under the treaty provisions, the amendment made to section 9(1)(vi) of the Act cannot be automatically brought or imported to Article 12(3) of India-Singapore DTAA, as the treaty provisions have to be construed strictly in accordance with the language used in the provision. While coming to such view, we have found support from the ratio laid down in the decisions cited by learned Sr. Counsel for the assessee. Thus, for the aforesaid reasons, we hold that the receipts from internet bandwidth charges cannot be treated as royalty income under Article 12(3) of India-Singapore DTAA. Accordingly, we direct the Assessing Officer to delete the addition."*
>
> *13. On finding parity of facts, respectfully following the decision of the co-ordinate bench [supra], this addition is also deleted."*

15. A perusal of paragraph 12 reveals that in the earlier AYs though the Assessing Officer (AO) has taken the same view but the first authority has deleted the addition and the Revenue did not raise this issue before the Tribunal.

16. Mr. Rai has not shown us anything contrary to the finding arrived at by Tribunal in paragraph 12. In other words, ground two is covered by the earlier decision of the first Appellate Authority which remains unchallenged before the Tribunal. If that be so, no substantial question of law arises for consideration in this appeal.

17. Insofar as the third ground is concerned, the same has been dealt with by the Tribunal in paragraphs 14, 15, 16 and 17 which we reproduce as under:

"14. Third common grievance in the captioned appeals relates to the receipts from providing information technology related support services considered as royalty and/fees for technical services.

15. The underlying facts in this issue are that India Singapore DTAA requires that services should be such that enable the person acquiring the services to apply the technology contained therein. The claim of the assessee is that the services do not result in transmitting technical knowledge. This claim of the assessee was rejected by the Assessing Officer/DRP.

16. We find that under identical situation, this Tribunal in the case of Planetcast International Pte Ltd 152 taxmann.com 422 had held that while running the services, the assessee has not made available any technical knowledge, experience, skill in terms of Article 12(4)(b) of the DTAA and as such, receipts in question were not FTS liable to tax in India.

17 Applying the same ratio, we are of the considered view that payments received from Mphasis Ltd were not covered by Article 12(4) of the India Singapore DTAA. This addition is, accordingly, directed to be deleted."

18. The Tribunal has followed the judgment in the case of ***Planetcast International Pvt Ltd, 152 Taxmann.com 422*** wherein it was held that for running the services, the assessee has not made available any technical knowledge or experience skill in terms of Article 12(4)(b) of the DTAA and as such, the receipts in question were not FTS liable to tax in India.

19. We have been informed that the judgment in the case of ***Planetcast International Pvt. Ltd. (supra)*** has been challenged before this Court and this Court rejected the appeal in ***ITA 601/2023 Pr. Commissioner of Income Tax (International Taxation 2) v. M/s Planetcast International PTE*** with regard to the AY 2017-18 stating in paragraph 1 onwards as under:

"1. The Department in the instant appeal seeks to question the

correctness of the view expressed by the Income Tax Appellate Tribunal [‘ITAT’] as per the impugned order dated 19 December 2022 for Assessment Year [‘AY’] 2017-18. The dispute itself emanates out of a playout service which was being provided by the respondent/assessee and which as per the explanation tendered embodied the following features :-

> *“**Playout Service***
>
> *Playout services are inextricably linked to Uplinking services and encompasses provision of equipment, infrastructure and manpower to manage continuous playing of channel content based on minute to minute schedule.*
>
> *For providing Disaster recovery Uplinking and Playout services, the up linking and playout equipment installed at the teleport facility of Adore at Singapore is kept pre-configured and in readiness. In the event that the main uplink and playout equipment becomes unavailable/non-functional, the uplink at Singapore facility immediately gets activated. All operations are monitored by highly trained operators and supervisors of Adore in Singapore on a 24 x 7 basis.”*

2. The ITAT has while dealing with the aforesaid aspect come to conclude that the nature of the service being provided would not fall within the ambit of managerial, technical or consultancy services. It has ultimately and on an appreciation of the facts as well as the structure of the playout service come to hold that it was an integral feature of broadcasting and transmission of channels and thus did not involve any decision making. It has been found that the service was essentially to ensure consistency in the broadcasting of channels and thus ensure uninterrupted availability thereof. It has ultimately and on that basis come to conclude in Para 42 that the recovery playout services would not fall within the scope of Fee for Technical Services.

3. While this would have been sufficient, the ITAT appears to have proceeded further to also notice the provisions made in Article 12(4)(b) of the Double Tax Avoidance Agreement [‘DTAA’] and alluded to the added requirement of the service

> *including "making available of" technical knowledge, experience, skill, knowhow or processes enabling the person acquiring the service to apply the technology contained therein.*
> *4. According to Mr. Menon, the ITAT has in that respect incorrectly appreciated the scope of the expression 'making available' as well as the other facets of Article 12(4)(b) of the DTAA and which speak of enablement to apply the technology contained therein.*
> *5. In our considered opinion, once the ITAT had come to conclude that the service in question would not qualify within the meaning of the expressions 'managerial', 'technical' or 'consultancy', there perhaps was no occasion to travel further.*
> *6. While we thus leave the question of the interpretation liable to be accorded to Article 12(4)(b) of the DTAA open to be addressed by the Department in an appropriate case, in light of the findings of fact which have ultimately been rendered by the ITAT and have been referred to above, we find that the appeal raises no substantial question of law. Consequently, it shall stand dismissed."*

20. We find that the judgment in the ***Planetcast International (supra)*** would squarely cover the issue which arises for consideration under ground three.

21. In view of the above, we do not see any substantial question of law as proposed arising for consideration. The appeals are dismissed against the Revenue and in favour of the assessee.

V. KAMESWAR RAO, J

VINOD KUMAR, J

NOVEMBER 06, 2025

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