

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.607/Mum/2022  
(Assessment Year :2018-19)**

M/s. Massachusetts Institute of Technology NE 49-3142, 77 Massachuetts Avenue Cambridge – 02139 MA	Vs.	Deputy Commissioner of Income Tax Intl Tax Circle 3(2)(1) Mumbai
<b>PAN/GIR No.AADCM8931A</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Ajit Kumar Jain / Shri Rahul Jain
Revenue by	Shri Anil Sant/Ms. Bharati Singh / Ms. Richa Gulati
<b>Date of Hearing</b>	<b>14/07/2023</b>
<b>Date of Pronouncement</b>	<b>31/07/2023</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee, Massachusetts Institute of Technology ('MIT' or 'Appellant') against the impugned order passed by the learned Deputy Commissioner of Income Tax Int. Tax Circle 3(2)(1), Mumbai ('Id. AO') passed under section 143(3) read with section 144C(13) of the Income Tax Act, 1961 ('the Act') for Assessment Years 2018-

19, in pursuance of the directions issued by Dispute Resolution Panel, Mumbai ('the Ld. DRP').

2. The grounds of appeal raised by the assessee read as under:

1. *"On the facts and circumstances of the case and in law, the Ld. AO has erred in proposing and the Hon'ble DRP further erred in confirming the action of the learned AO in assessing the total income at INR 15,49,92,088 as against income of INR 10,48,860 offered by the Appellant in its return of income for the captioned assessment year."*
2. *"On the facts and circumstances of the case and in law, the Ld. AO erred in proposing and the Hon'ble DRP further erred in confirming the addition of receipts from Industrial Liaison program ('ILP') amounting to INR 2,90,20,500 as Fees for Included Service ('FIS') under the Double Taxation Avoidance Agreement between India and USA ('Treaty')."*
3. *"On the facts and circumstances of the case and in law, the Ld. AO erred in proposing and the Hon'ble DRP further erred in confirming the addition of receipts from Sponsorship Assignments amounting to INR 6,06,64,914 as FIS under the Treaty."*
4. *"On the facts and circumstances of the case and in law, the Ld. AO erred in proposing and the Hon'ble DRP further erred in confirming the addition of the receipts from Co-ordination/ Consortium Membership amounting to INR 6,42,57,814 as FIS under the Treaty."*
5. *"On the facts and circumstances of the case and in law, the Ld. AO has erred in not granting the TDS credit of INR 2,922,328 as claimed by the Appellant in the Income-tax Return ('ITR')."*
6. *"On the facts and circumstances of the case and in law, the Ld. AO erred in levying interest under section 234A of the Act."*

7. *“On the facts and circumstances of the case and in law, the Ld. AO erred in levying interest under section 234B of the Act.”*
8. *“On the facts and circumstances of the case and in law, the Ld. AO erred in levying interest under section 234D of the Act.”*
9. *“On the facts and circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under section 270A of the Act on the alleged ground of under reporting of income.”*
10. *The Appellant craves leave to add, to amend, alter, vary, omit or substitute any grounds of appeal or add a new ground which may be necessary.*

3. The facts in brief are that Assessee is an educational institution incorporated as a non-profit organization under the laws of the state of Massachusetts in the USA. The primary purpose of the institute is to impart knowledge and educate students in science, technology and related areas of scholarships. The institute also provides teaching services and helps corporate entities in their industry specific researches. During the year, assessee had received fees from; i) Industrial Liaison Program (‘ILP’) Membership; ii) Sponsorship Assignment for research; and iii) Co-ordination/ Consortium membership, which were claimed as not taxable under the India-USA Treaty.

4. Assessee had submitted the scope of services provided for each of the receipts as under:

**a. Industrial Liaison Program (‘ILP’):**

- *The ILP program is dedicated for creating and strengthening mutually beneficial relationship between MIT and*

corporations worldwide. It is a Liaison Program for members. It is a streamlined way of introducing members to the MIT faculty, departments and labs to see how specific type of MIT research would potentially impact their own strategic plan.

- An Industrial Liaison Officer ('ILO') is assigned to ILP member, as a primary contact who understand the industry. ILO helps members define and prioritize their interest and needs, articulate objectives for the MIT interaction and develop an action plan in a streamlined manner. The role of an ILO is to provide ILP members with access to certain parts of MIT that relate to the member's interest, such as recent developments and reports on emerging technologies (like a brochure which is publicly available). ILO also recommend, organize and facilitates interaction with MIT faculty, researchers, labs and centres by scheduling meetings and phone calls.
- As a member of ILP program, participants are also eligible for the following facilities/ benefits:
  - i. Free or discounted attendance at MIT conferences and seminars.
  - ii. Access to the ILP video archive that stores digital presentations, abstracts and biographical materials from ILP events.
  - iii. Access to MIT platform comprising information on MIT faculty and projects with abstract and links to faculty-maintained web pages.
  - iv. Discounts for Executive /Professional Education, MIT press book and MIT library fees for providing copies of documents.
- MIT merely provides access to the discussion papers, information and reports on technical topics and emerging technologies prepared by MIT faculty and researchers (which are already available in public domain but are provided in a streamlined manner by identifying the relevant reports/ papers which are aligned to the interest of the members and not undertaken specifically for them).

- *In summary, the ILP membership fee is merely for tailored access to people and information that is already publicly available. Members do not receive any, customized reports, technical service or technical plan/ design, technical knowledge or service through the program, by using which, able to develop the technology on their own.”*

**b. Sponsorship Assignments:**

- *As a not-for-profit organization, MIT is willing to accept industry participation to sponsor such research on a non-profit basis. Researches are being conducted in various areas and sponsor may participate in the areas of interest or may also sponsor any research which are already undertaken.*
- *MIT uses budgeted funds to pay for direct and indirect cost associated with the research project and the sponsor reimburses MIT for the expenses incurred. Any funding received from a research sponsor is an offset of expenses, not a source of income, hence sponsored research agreements cannot and do not generate a profit for MIT, being a non-profit organization.*
- *MIT applies its knowledge in performing the research projects and then updates the sponsor periodically about the progress and direction of the research.*
- *While MIT sponsored research agreements may have a stated desired outcome, but there is no promise of deliverable or research results. The research results are unknown at the time of entering into the agreement. In light of the above and given that MIT is a non-profit organization and thriving for research and development in field of science and technology for public good and not for commercial exploitation, this clearly demonstrates that the sponsor funding is not a typical fee for service arrangement that one would see in the commercial world. The funding received is thus towards research cost, notwithstanding the outcome.*
- *Having said the above, the specialized knowledge, experience or skills, etc., of the MIT's faculty members in*

*undertaking the research is not imparted or transferred to the sponsors in the course of the research.*

- *The reports provided if any, are mere statement of facts in relation to the final results / outcome in relation to the emerging technology on which research was being undertaken and / or captured the progress or status of the outcome/ findings. The report does not provide the underlying technical plan / design / process using which the corporates would be able to develop the technology on its own. Thus, the sponsorship receipts did not make available any technical knowledge, know-how etc. or developed and provided any technical plan/ designs.*

**c. Consortium Membership:**

- *A consortium is a group of members that come together to share ideas and information relating to a particular topic. Consortiums are led by hosts that play a role of administrator and coordinator between the members.*
- *MIT acts as the host for following three types of consortium arrangements –*

○ *W3C Member Agreement:*

*Under W3C member agreement, as a part of this arrangement, MIT provides co-ordination service to W3C, a group of members that work together as a Consortium to develop protocols and guidelines that ensure the long-term growth of the World Wide Web. In this, MIT provides a member access to a group of other members focused on a common agenda. Each Member of the Consortium pays a membership fee for (1) access to the Consortium's research so that it can build its knowledge and education on Web issues; (2) access to an open forum for the exchange of ideas and technology solutions; (3) ability to help drive the direction of new research.*

○ *Media Lab Consortium Agreement:*

*Under Media Lab Consortium (MLC) agreement, it is an interdisciplinary research laboratory at MIT. It is a consortium of members sharing a common objective of advancement of technology. Members participate in*

workshop and brainstorming sessions, have access to Media lab meetings and lectures and the Media lab members only website. Media Lab Consortium provides a principal source of support for research conducted under the auspices of MIT's Media Lab. A MLC membership provides a member access to a group of other members and Lab faculty and research staff focused on a common agenda. These members also have access to all the research conducted at the Lab.

○ CBA Agreement:

Under CBA agreement, CBA conducts fabrication lab ('fab lab') programs at MIT. A CBA fab lab consortium membership provides a member access to a group of other members and lab faculty and research staff focused on a common agenda of exploring the boundary between computer science and physical science. CBA studies how to turn data into things, and things into data. MIT is responsible to control the direction of the project.

- As a Host, MIT has the responsibility to help manage the overall direction of the research performed by the Consortium members and help to provide access and dissemination of the Consortium research to its members. MIT does not describe any methods or process involved in carrying out such research. MIT is not undertaking any research services. MIT's role is to act as a co-ordinator between all the consortium members and provide access to a group of other members focused on a common agenda.
- MIT as a host only provides vendor neutral architectural (as a standard facility available to all those who become members) and administrative leadership to the consortium members. It only provides a common platform for the members to come together to accomplish the consortium goals under its overall direction as a coordinator. The access to collective knowledge of the consortium members, grant of license to use documentation/ software and right to use in internal research purposes is merely part of the above co-ordination activity as a host. MIT is not undertaking any research services for any specified party. MIT does not

*describe any methods or process involved in carrying out such research.*

- The receipts merely pertain to co-ordination services. Thus, it cannot be termed that MIT has developed and delivered a technical plan or technical knowledge, experience, skill, know-how or processes is made available to the members.*

5. The Id. AO has examined the agreements for each of the nature of receipts and has concluded the following for each receipt:

- ILP INR 2,90,20,500:** ILP fees consist of the development and transfer of a technical plan or technical design suitable to the needs of the ILP members and thereby transfer that knowledge and information to them.
- Sponsorship Assignments INR 6,06,64,914:** The income earned by MIT from sponsorship assignments is not only restricted to the design and development of customized technologies to the clients but also ancillary and subsidiary to the application or enjoyment of the IP rights developed during the research.
- Consortium Membership INR 6,42,57,814:** The researched and developed technical knowledge/ documentation/ software are made available to the members of the consortium to use in their own business as per their needs.

Based on the above observations, the AO has subjected the income earned from ILP, Sponsorship assignments and consortium membership fees to tax as FIS under Article 12(4) of US-India DTAA.

6. Aggrieved by the Draft Assessment Order issued by the Id. AO, assessee approached the Ld. DRP. The Id. DRP has rejected the arguments and rebuttals put forth by the assessee and has upheld the view of the Id. AO by treating the receipts as FIS and subjecting the receipts to tax as per Article 12 of the Treaty.
  
7. Before us, as regards the issue of ILP, Shri Ajit Kumar Jain, Ld. Counsel of the assessee submitted that the assessee does not provide any technical services to the corporates under the ILP program. Under the ILP program, corporates are introduced to the MIT faculty members / researchers and their projects outside India. This helps companies to see how specific types of MIT research would potentially impact their own strategic plan. The Ld. Counsel of the assessee submitted that no technical services are being rendered by the assessee to the corporates and hence, the receipts under ILP program are not taxable in India. Mr. Jain further submitted that the assessee has not delivered any customized reports/ technical plan to the participants on application of the emerging technologies under the ILP program. Thus, the ILP program does not result in imparting / making available any information concerning technical, industrial, or scientific knowledge, experience or skill to the participants and therefore the receipts under the ILP program should not qualify as Fees for Included Services under the tax treaty.

8. As regards the issue of Sponsored research, Shri Jain submitted that the assessee routinely undertakes research in the areas of science and technology. The assessee, being a not for profit organization, is willing to accept industry participation to sponsor such researches. Research is being conducted in various areas and sponsor may participate in the areas of interest or may also sponsor research which are already undertaken. These are typically research projects focusing on initiatives that will benefit the public at large advancing its objective of advancing education and research. For example, MIT's research agreement sponsored by ABC Irrigation Limited had a goal of improving water systems in India. MIT uses budgeted funds to pay for direct and indirect costs associated with the research project and the sponsor reimburses MIT for the expenses incurred. Any funding received from a sponsored research sponsor is an offset of expenses, not a source of income, hence sponsored research agreements cannot and do not generate a profit for MIT. Ld. Counsel further submitted that MIT and the sponsor agree upon the project goals and then MIT performs research on that topic. MIT applies its knowledge in performing the research projects and then reports back to the sponsor periodically about the progress and direction of the research. MIT sponsored research agreements may have a desired outcome, but there is no promise of delivery or research results. The research results are unknown at the time of entering into the agreement. The sponsor of MIT research project does not receive technical skills or guidance on how to apply those results in their own business. Thus, the sponsorship receipts neither

makes available any technical knowledge, know-how etc., to the participants, nor any technical plan/ design is developed and provided. Therefore, the receipts under the Sponsorship research program should not qualify as Fees for Included Services under the tax treaty. In this regard, the assessee has relied on the decision of the Ahmadabad Tribunal in the case of ONGC vs. ITO dated 3 August 2022 [ITA Nos. 1881-1882/Ahd/2019].

9. As regards the issue of Co-ordination/ Consortium membership receipts, the Ld. Counsel submitted that the assessee acts as the host for the consortiums. A consortium is a group of members that come together to share ideas and information relating to a particular topic. Consortiums are led by hosts that help drive the direction of research performed by the consortium and manage access to that research. Given that the receipts merely pertain to co-ordination services and there is no technical or consultancy services that is being rendered by the MIT, the said receipts should not be taxable in India.
10. Additionally, the Ld. Counsel submitted that the Ld. AO has erred in granting short credit for TDS and raised other grounds in relation to consequential levy of interest and initiation of penalty.
11. Before us Ld. DR, referred to various observations of AO and DRP and submitted that, if one closely analyses the agreements then it can be seen that, all the receipts are in nature of FIS. On the issue of Sponsorship Assignments, the

income earned by MIT from sponsorship assignments is not only restricted to the design and development of customized technologies to the clients but also ancillary and subsidiary to the application or enjoyment of the IP rights developed during the research, which is provided to the clients. This purely falls within “make available” clause.

12. We have heard both the parties, perused the records and relevant finding given in the impugned orders. We shall discuss head wise receipts of various program, whether the receipts fall within the ambit and scope of FIS under the Indo-US Treaty.

***Receipts from Industrial Liaison Program***

13. From the paper book filed by the assessee we observe that on page number 90 an agreement between MIT and Kirloskar Brothers Limited (subscriber) for Industrial Liaison Program (ILP) has been filed. Another agreement between MIT and KPIT Technologies Limited (subscriber) for ILP has been placed on record at page number 95 of the paper book. We have carefully gone through the agreements. As a member of the ILP program the subscriber will have access to full range of customized activities and supplementary services as detailed in the annexure to the agreement. There are hundreds of research centers at MIT and the external subscriber may not even be aware of the vast resources that are available at MIT. Hence, to assist the subscriber, the subscriber is assigned an Industrial Liaison Officer (officer) who will conduct an on-going assessment of subscriber’s interest, need and objectives as they relate to MIT.

The officer will recommend and facilitate interaction at MIT that are custom designed to satisfy the subscriber's identified objectives. The officer will also provide updates on what is going on at MIT that could impact the business of the subscriber. The officer will facilitate meetings between the subscriber and faculty members of MIT. The officer can organize a one-day seminar at MIT for up to 20 senior corporate staff of the subscriber. The officer may also arrange visits of the MIT faculty members at the facilities of the subscriber. There are various such services listed in the agreement which is essentially a relationship building between MIT and the external companies.

14. We observe from the agreements that MIT does not provide any technical services to the corporates under the ILP program. This program is akin to a trade exhibition whereby the corporates are introduced to the MIT faculty members and researchers and their projects. This helps the corporates to identify the specific types of research that would potentially impact the strategic plans of corporates.

15. We have examined the taxability of ILO receipt in the hands of the assessee who is a non-resident with reference to the Indo US treaty. The relevant extract of Article 12 of the treaty and the MOU to the treaty 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) *x.x.x.x*

(b) *x.x.x.x*

3. *x.x.x.x*

**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.**

5. *Notwithstanding paragraph 4, "fees for included services" does not include amounts paid :*

(a) *for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 3(a) ;*

(b) *for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic ;*

(c) *for teaching in or by educational institutions ;*

- (d) *for services for the personal use of the individual or individuals making the payments ; or*
- (e) *to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 15 (Independent Personal Services)."*

Further, the relevant para and example in the MOU to the India-USA DTAA explaining the term Fees for included services is extracted below:

*"Paragraph 4(b) of Article 12 refers to technical or consultancy services that make available to the person acquiring the service technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design to such person. (For this purpose, the person acquiring the service shall be deemed to include an agent, nominee, or transferee of such person.) This category is narrower than the category described in paragraph 4(a) because it excludes any service that does not make technology available to the person acquiring the service. **Generally speaking, technology will be considered "made available" when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service may require technical input by the person providing the service does not per se mean that technical knowledge, skills, etc. are made available to the person purchasing the service, within the meaning of paragraph 4(b).** Similarly, the use of a product which embodies technology shall not per se be considered to make the technology available."*

*"Example (7)*

*Facts: The Indian vegetable oil manufacturing firm has mastered the science of producing cholesterol-free oil and wishes to market the product world-wide. It hires an American marketing consulting firm to do a computer simulation of the world market*

*for such oil and to advise it on marketing strategies. Are the fees paid to the U.S. Company for included services?*

*Analysis: The fees would not be for included services. The American company is providing a consultancy service which involves the use of substantial technical skill and expertise. It is not, however, making available to the Indian company any technical experience, knowledge or skill, etc., nor is it transferring a technical plan or design. What is transferred to the Indian company through the service contract is commercial information. The fact that technical skills were required by the performer of the service in order to perform the commercial information service does not make the service a technical service within the meaning of paragraph 4(b)."*

16. Thus, for attracting liability to pay tax under the head "FIS" in terms of Indo- US DTAA, the services should not only be of technical nature, but it should also make available the technical knowledge, experience, skill, know how, etc., to the recipient of such technical services.

17. In the case of ILP program, the assessee is merely introducing the corporates to its faculty, showcasing the research projects undertaken by them which will enable the corporates to see if any of this research could be leveraged by them in their own strategic plan. The assessee is neither rendering any technical services to the Corporates nor making available any technical knowledge or experience or skill. What is being transferred to the Corporates is purely the factual information with respect to the various research projects. The assessee is not making available the underlying know-how with

respect to the said research projects as enumerated under the DTAA and MOU.

18. From the above facts, we are of the opinion that the receipts under the head ILP cannot be reckoned as FIS in nature within the meaning of Article 12 of the India-US DTAA. Accordingly, we set aside the finding of the DRP and direct the AO to delete the addition made in relation to this ground. Hence the ground of appeal of the assessee is allowed.

***Sponsorship receipts***

19. We now move to the next ground of appeal raised by the assessee in relation to receipts from sponsorship assignments, which is in relation to the addition made by the Ld. AO on account of receipts from Sponsorship Assignments amounting to INR 6,06,64,914 as FIS under the Treaty.

20. We have heard both the parties and perused the records. Shri Jain Ld. Counsel of the assessee further submitted that the sponsorship receipts neither makes available any technical knowledge, know-how etc., to the participants, nor any technical plan/ design is developed and provided. Therefore, the receipts under the Sponsorship research program should not qualify as Fees for Included Services under the tax treaty. In this regard, the assessee has relied on the decision of the Ahmadabad Tribunal in the case of ONGC vs. ITO dated 3 August 2022 [ITA Nos. 1881-1882/Ahd/2019].

21. AO in his draft assessment order has observed that, as per the nature of programme MIT design systems that are appropriate and customized to the needs of the clients, with its own research team and collaborations. The research work is monitored and supervised by the staff of the MIT Accordingly, the services rendered by the assessee under the sponsorship assignment programme, clearly falls under the Clause 4(b) of article 12 of India USA DTAA. Thus, the receipt of Rs.6,06,64,914/- received under the head of Sponsorship Assignments, consists of development and transfer of a technical plan or technical design suitable to the needs of the sponsors of this programme and hence, they are clearly in the nature of Fees for Included services. The ld. AO further observed that without prejudice to the above, the Intellectual property clause of the agreements are also significant and needs to be looked into on the light of the discussion in assessing the nature of income received as fees for Included services. As per the clauses of the Research agreement, signed between the parties, it can be seen that both the parties have agreed to share the Intellectual Property rights for the inventions conceived during the research and for each such invention on which a patent application is filed by assessee, assessee has agreed to grant the Sponsor, a non-exclusive, non-transferable royalty free license for internal research purposes. Thus, the income earned by the assessee through this Sponsorship assignment program, is not only restricted to the design and development of customized technologies to the clients but also ancillary and subsidiary to

the application or enjoyment of the Intellectual property rights developed during the research, accordingly, in view of the above discussion, receipts of Rs.6,06,64,914/- received under the head of Sponsorship assignments are clearly in the nature of Fees for Included services and hereby taxed accordingly.

22. The ld. DRP analysed plea of agreements, projects relating to water purification from the agreement with the Tata Projects. The relevant portion of the statement of the work as appearing in paper book page 150, reads as under:-

*“This project is focused on creating village-scale, off-grid water purification and desalination systems for rural India. Our proposed approach is to design direct-drive photovoltaic (PV) electrodialysis (ED) water purification systems appropriate for small-scale applications, which can provide a scalable, efficient and sustainable solution for clean drinking water. The project will result in new water provision technology as well as the engineering knowledge required to adapt and scale the technology for various environmental conditions and geographic regions. The project includes investigation into methods to reduce the energy required for ED, and thus the number of PV panels required for a given system, in order to reduce cost. Our aim is to create off and desalination systems that are equal or less in cost than equivalently sized on-grid reverse osmosis systems.*

*The project will be a collaboration between the MIT Global Engineering and Research (GEAR) Lab and Tata Projects. The GEAR Lab is directed by Prof Amos Winter whose research focuses on the creation of technologies for developing and emerging markets. Tata Projects has the right to co-fund this project with other companies within the Tata Group.”*

From the above, the ld. DRP observed that *“the project will result in new water purification technology as well as the engineering knowledge required to adapt and scale the technology for various environmental conditions and geographic*

regions. According to the assessee by merely issuing the research reports, MIT does not make available any technical knowledge experience, skill etc. such that the sponsor will be enabled to apply the same independently We find it difficult to accept this contention as the research agreement clearly shows that research project is undertaken to suit the requirement of a specific client as is evidenced from the extract of the agreement with Tata Projects (Supra)

The assessee has also taken a plea that MIT routinely undertakes research in the areas of science & technology and the receipts under the sponsorship assignments are merely reimbursement of cost incurred. However, no evidence has been put forth by the assessee to substantiate the reimbursement aspect.

The assessee also argued that the research performed by MIT under the sponsorship assignment may or may not result in creation of a product. We are of the considered view that this is not a relevant fact and what is to be considered is whether the research undertaken by MIT is for a specific project of a specific client. The intention is to provide technological inputs/skills or experience by way of research to suit the requirements of the clients sponsoring the research. We are not in agreement with the assessee, when it says that the research report does not provide the underline technical plan/design/process using which the corporate would be able to develop the technology on their own As has already been discussed the assessee undertakes specific research for the corporate and the technology and knowledge from the research is provided to the corporate who will apply the same and derive an enduring benefit from the same.

In view of the facts discussed above, we are of the considered view that the receipts earned by the assessee through the sponsorship assignment programme are not only restricted to the design & development of customized technologies to the clients but also ancillary and subsidiary to the application or enjoyment of the intellectual property rights developed during the research. Accordingly, we uphold the action of the AO in treating these receipts as FIS”

23. We have gone through the various agreements in relation to sponsorship research. From the perusal of the agreements and IP clause agreement as appearing in paper book 142, the relevant extracts are reproduced hereunder:-

*SPONSOR INTELLECTUAL PROPERTY Title to any invention conceived or first reduced to practice in performance of the Research solely by the Sponsor's personnel without significant use of MIT administered funds or facilities ("Sponsor Invention") shall remain with the Sponsor Title to and the copyright in any copyrightable material first produced or composed in the performance of the Research solely by the Sponsor's personnel without significant use of Mil administered funds or facilities- ("Sponsor Copyright) shall remain with the Sponsor Neither Sponsor Inventions nor Sponsor Copy rights shall be subject to the terms and conditions of this Agreement*

*JOINT INTELLECTUAL PROPERTY A The Parties shall have joint title to (1) any invention conceived or first reduced to practice jointly by employees and/or students of MJT and the Sponsor's personnel in the performance of the Research and (II) any invention conceived or first reduced to practice by the Sponsor's personnel in the performance of the Research with significant use of funds or facilities administered by VIIT (each, a "Joint Invention") The Sponsor shall be notified of any Joint Invention promptly after an invention disclosure is received by MIT's Technology Licensing Office MIT shall have the first right to file a patent application on a Joint Invention in the names of both Parties All expenses incurred in obtaining and maintaining any patent on such Joint Invention shall I be equally shared except that, if one Party declines to share in such expenses, the other Party may take over the prosecution and maintenance thereof, at its own expense, provided that title to the patent remains in the names of both Parties."*

The Id. DRP from the perusal of this agreement has observed that as per the clause of research agreement signed between parties, both the parties have agreed to share the

intellectual property, rights for the inventions conceived during the research and for each such invention on which patent application is filed by the assessee, the assessee has agreed to grant the Sponsor a non-exclusive, non-transferable royalty free license for internal research purposes. Thus, both ld. AO and ld. DRP found that there was a clear cut income available by technical knowledge and experience by providing technical plans and business carried out during the process of research to the Indian Corporates and accordingly, the same falls within the scope and ambit of FIS under Article 12(4) of US-India DTAA.

24. We also note from the agreements that the assessee use to undertake specific research project for its sponsors and provide them with the research reports. This research report enables the sponsor to apply the underlying technology and intellectual property conceived during the research in its specific projects, which shall help the corporate in deriving enduring benefit from the said research. Thus, we are not in agreement with the assessee when it says that the research report does not make available any technical knowledge/ experience nor provides the underlying technical plan/ design to the corporate.

25. As regards reliance placed on the decision of the Ahmedabad Tribunal in the case of ONGC, the same can be distinguished on facts. In the context of make available, the Ahmedabad Tribunal stated the crux of the matter is after rendering of such technical services by the service provider, whether the recipient is enabled to use the technology which the

service provider had used. In that case, the broad objective of the research project was to develop the chemical enhanced oil recovery formulation. However, the underlying technology was not passed on by the service provider to the corporate.

26. As has already been discussed above, the assessee undertakes specific research for the corporate and the technology and knowledge from the research is provided to the corporate in the form of research report, who will apply the same and derive an enduring benefit. Once, the assessee after the research submissions report not only provides the research report to the Indian corporate who then apply the research work for their own business. Further, in the specific IP clause agreement as incorporated above, there is a clear-cut stipulation and sponsor will get IP and in some cases it was joint IP, which also goes to show that technical knowledge has been made available to the clients. Thus, in our view it was clearly making available of technical designs and knowhow and accordingly, the ld. AO and ld. DRP had rightly concluded that the receipts under this programme falls within five years clause of India-US DTAA.

27. Accordingly, we conclude that the receipts earned by the assessee under the sponsorship arrangement qualify as FTS/ FIS within the meaning of the Act and DTAA. In the result, this ground filed by the assessee is dismissed.

28. Now coming to the next ground of appeal raised by the assessee in relation the receipts under the head:-

***Receipts from co-ordination / consortium membership***

The receipts from co-ordination / consortium membership arrangements, which is in relation to the addition of the receipts from Co-ordination/ Consortium Membership amounting to INR 6,42,57,814 as FIS under the Treaty.

29. Shri Jain submitted that the assessee acts as the host for the consortiums. A consortium is a group of members that come together to share ideas and information relating to a particular topic. Consortiums are led by hosts that help drive the direction of research performed by the consortium and manage access to that research. Given that the receipts merely pertain to co-ordination services and there is no technical or consultancy services that is being rendered by the MIT, the said receipts should not be taxable in India.

30. As mentioned above, for attracting liability to pay tax under the DTAA, the services not only should be of technical nature, but it should also make available the technical knowledge, experience, skill, know how, etc., to the recipient of such technical services.

31. We have carefully gone through the various agreements in relation to the co-ordination agreements. In the case of co-ordination agreement, the assessee is merely acting as the host wherein the assessee has the responsibility to help manage the

overall direction of the research performed by the consortium members and helps to provide access and dissemination of the Consortium research to its members. The assessee does not undertake any research nor does it describe any method or process involved in carrying out such research. The assessee's role is to merely act as a co-ordinator between all the consortium members. It is only providing administrative support to the members. Thus, the assessee is not rendering any technical services to the corporate members. Also, the assessee is not providing any technical plan or design to the corporate members. Thus, the assessee cannot be said to be making available any technical know-how, experience, etc., or technical plan / design to the members as enumerated under the DTAA and MOU.

32. From the above, there remains no ambiguity to the fact that the receipts are not FIS in nature within the meaning of Article 12 of the India-US DTAA. Accordingly, we set aside the finding of the DRP and direct the AO to delete the addition made in relation to this ground. Hence the ground of appeal of the assessee is allowed.

### ***Other grounds***

33. We now move to the next ground of appeal which relates to *not granting of credit of TDS of INR 2,922,328 as claimed by the Appellant in the Income-tax Return*. The AO is directed to verify and grant the credit of TDS in accordance with law. The ground of appeal of the assessee is thus allowed for statistical purposes.

34. As regards the grounds on interest, the same are consequential to the earlier grounds and the AO is directed to re-work the same based on the aforesaid directions. In so far as the ground on penalty is concerned, the same is pre-mature.

**35. In the result, appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced on 31<sup>st</sup> July, 2023.

**Sd/-**  
**(S RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 31/07/2023  
KARUNA, sr.ps

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**