IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos.99-104/Coch/2017
Assessment Years : 2008-09 to 2013-14

M/s. US Technology Resources Pvt. Ltd., 721, Nila, Technopark Campus, Kariyavattom, Trivandrum-695 581. [PAN: AAACU 6085C]	**Vs.**	The Assistant Commissioner of Income-tax (International Taxation), Circle-2(1), Trivandrum.
(Assessee-Appellant)		**(Revenue-Respondent)**

S.P. Nos. 21 to 26/Coch/2017 (Arsg. out of I.T.A. Nos.99-104/Coch/2017)
Assessment Years : 2008-09 to 2013-14

M/s. US Technology Resources Pvt. Ltd., 721, Nila, Technopark Campus, Kariyavattom, Trivandrum-695 581.		The Assistant Commissioner of Income-tax (International Taxation), Circle-2(1), Trivandrum.
(Assessee-Appellant)		**(Revenue-Respondent)**

Assessee by	Shri Raja Kannan, Adv.
Revenue by	Shri A. Dhanaraj, Sr. DR

Date of hearing	29/01/2018
Date of pronouncement	29/01/2018

O R D E R

Per CHANDRA POOJARI, ACCOUNTANT MEMBER:

These appeals are directed against different orders of the CIT(A)-III, Kochi for the assessment years 2008-09, 2009-10, 2010-11 and 2011-12.

2. The brief facts of the case are that the assessee is a resident company engaged in the business of developing Information Technology turnkey software solutions and innovative application development services. It was observed by the Assessing Officer that the assessee had made payments under the head "Consulting Services" to M/s. UST Global Inc., USA, a non-resident company incorporated in the United States of America, without deducting tax at source as per the provisions of section 195. Therefore, the Assessing Officer issued notice u/s. 201 r.w.s. 195 and passed order under section 201(1)/201(1A) of the I.T. Act on 30/03/2015, disallowing the said payments.

3. The first common ground in all the appeals is with regard to the action of the CIT(A) in upholding the tax levied by the Assessing Officer u/s. 201(1) and 201(1A) of the I.T. Act on account of consulting services as there is no deduction of TDS in terms of sec. 40a(ia) of the Act.

4. After hearing both the parties, we find that a similar issue came up for consideration before this Tribunal in assessee's own case in I.T.A. No. 222/Coch/2013 for the AY 2007-08. The Tribunal vide order dated 29/07/2017 held as under:

"1*6. We have considered the rival submissions on either side and also perused the material available on record. Admittedly, the assessee, a resident company, entered into management service agreement with a company, viz. US Technology Resources LLC, a company incorporated in USA and a tax resident in USA. As per this management service agreement, the USA company agreed to provide assistance, advice and support to assessee company in management decision making, sales and business development, financial decision making, legal matters and public relation activities, treasury service, risk management service and any other management support as may be mutually agreed between the parties. In pursuance of this agreement, the USA company provided its assistance, advice and support and the assessee company paid a sum of Rs.85,22,743 in consideration of the services rendered by the USA company. Thus, the question arises for consideration is whether the payment made by the assessee company to USA company for the services rendered would be taxed in India or not? If it is taxable in India the assessee has to necessarily deduct tax at source at the time of making payment as provided in section 195 of the Indian Income-tax Act. The contention of the assessee before this Tribunal is that the managerial consultancy service has been specifically omitted in clause 4 of Article 12 of DTAA. Therefore, the managerial service provided by the USA company to the assessee company is not taxable in India. It is also the contention of the assessee before this Tribunal that at the best, the payment made by the assessee company to USA company may be considered as a business profit under Article 7 of the DTAA between India and USA and in the absence of a permanent establishment in India for the USA company it cannot be taxable in India. Therefore, the assessee company is not liable to deduct tax at the time of payment as required under section 195 of the Act.*

17. We have carefully gone through the provisions of section 9(1)(vii) of the Income-tax Act which defines " fees for technical services". For the purpose of convenience, the provisions of section 9(1)(vii) are reproduced alongwith Explanation 1:

> 9.(1) The following incomes shall be deemed to accrue or arise in India:-

(i) to (vi) xxxxxxxxxxxxxxx

(vii) income by way of fees for technical services payable by-

(a)The Government; or

(b)A person who is a resident, except where the fees are payable in respect of services utilized in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or

(*c)A person who is a non-resident, where the fees are payable in respect of services utilized in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India:*

Provided *that nothing contained in this clause shall apply in relation to any income by way of fees for technical services payable in pursuance of an agreement made before the 1st day of April, 1976, and approved by the Central Government)*

[Explanation 1.- For the purposes of the foregoing proviso, an agreement made on or after the 1s: day of April, 1976, shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date.]"

Explanation 2 to section 9(1)(vii) which was introduced by Finance Act, 1977 with effect from 01-04-1977 clearly says that fees for technical service means any consideration for rendering any managerial, technical or consultancy services.

18. We have also carefully gone through the provisions of DTAA between India and USA as notified by the Government of India in Notification No.GSR 990(E), dated 20-12-1990. Article 12 of DTAA between India and USA deals with royalties and fees for included service. Fee for included service is defined in clause 4 of Article 12 of DTAA. For the purpose of convenience, we are reproducing below clause 4 of Article 12 of the DTAA between India and USA:

> *"4. For the 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 development and transfer of a technical plan or technical design."

19. As per the above definition in DTAA, fees for included services means payment of any kind to any person in consideration for rendering of any technical or consultancy services. As rightly submitted by the Ld.counsel for the assessee, the term "managerial service" as found in Explanation 2 to section 9(1)(vii) of the Indian Income-tax Act, 1961 is not found in clause 4 of Article 12 of the DTAA between India and USA. Taking advantage of the absence of these words "managerial services" in clause 4 of Article 12 of the DTAA between India and USA, the Id.counsel argued that clause 4 of Article 12 of the DTAA between India and USA ***is*** *more beneficial to the assessee when compared to section 9(1)(vii) of the Indian Income-tax Act, 1961. Therefore, in view of section 90(2) of the Income-tax Act, 1961, the assessee is entitled to take the benefit out of the DTAA between India and USA. Therefore, the question now arises for consideration is -Which are the services included in clause 4 of Article 12 of the DTAA between India and USA?*

20. The contention of the assessee is that fees for included services as provided in clause 4 of Article 12 includes only fees paid for technical services which are made available to the assessee to avail technical knowledge, expertise, skill, know how or process, etc. We have carefully gone through the Memorandum of Understanding concerning the fees for included service in Article 12 of the DTAA between India and USA. For the purpose of convenience, we are reproducing the relevant portion of the Memorandum of Understanding said to be executed between India and USA on 15th May, 1989:

"Under paragraph 4, technical and consultancy services are considered included services only to the following extent: (1) as described in paragraph 4(a), if they are ancillary and subsidiary to the application or enjoyment of a right, property or information for which are royalty payment is made; or (2) as described in paragraph 4(b), if they make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design. Thus, under paragraph 4(b), consultancy services which are not of a technical nature cannot be included services."

21. From this Memorandum of Understanding, it is obvious that as provided in clause 4(b) of Article 12 of the DTAA between India and USA, if the technical or

consultancy services made available are technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design are considered to be technical or consultancy services. It is also clarified that consultancy services not of technical nature cannot fall under "included services". In view of this Memorandrum of Understanding between two sovereign countries, the consultancy services which are technical in nature alone are to be included as technical and consultancy services for the purpose of fees for included services as per sub clause 4(b) of Article 12 of DTAA between India and USA.

22. With this background, let us now examine whether the service provided by USA company to the assessee company would be of service of technical nature as provided in clause 4(b) of Article 12 of DTAA between India and USA. Copy of the so-called management service agreement between the assessee and the USA company is not filed by the assessee before this Tribunal. Therefore, this Tribunal has to examine the services from the order of the CIT(A) where the relevant part of the management service agreement is extracted at paragraph 14 on page 22 of his order:

> *"WHEREAS, USTRPL (i.e. appellant) is in the business of developing world class information technology turnkey software solutions and innovative application development services.*
>
> *WHEREAS USTR (i.e. service provider) provides customer specified software development services and IT consulting services .*
>
> *WHEREAS, USTRPL and USTR now desire to enter into an agreement whereby USTR would provide following management services to USTRPL:.*
>
> *- Assistance, advice and support in the field of management decision making. These services will be rendered by USTRs CEO and his support personnel.*
> *- Assistance, advice and support in the field of financial decision making. These services will be rendered by USTR's CFO and USTR's Group controller including their support personnel.*
> *- Assistance, advice and support in legal matters and public relation activities. These services will be rendered by USTR's legal advisor and his support personnel. - Assistance, advice and support in the field of treasury services. These services will be rendered by different treasury managers of USTR.*

- Assistance, advice and support in the field of risk management services. These services will be rendered by different risk managers of USTR.
- And any other management support as may be mutually agreed between the parties.

NOW THEREFORE in consideration of the mutual promises and covenants hereinafter contained, the parties hereto agree as follows:

I. GENERAL DESCRIPTION OF OBJECTIVES AND SCOPE OF DELIVERY

1. During the term of this agreement the role of each company in this partnership is as follows:
a) USTRPL employs USTR to provide management services. The knowledge and experience of USTR will be used to support USTRPL in managing its business and in training its employees.
b) USTR is responsible for recruiting, training and deploying adequate resources to provide the services.

II. ROLE OF USTRPL
1. The USTRPL designated Person will operate as the main interface between USTR and USTRPL. He will ensure that USTRPL's personnel co-ordinates and interfaces with USTR's personnel in a manner satisfactory to USTR.

2. Depending upon the requirements, USTRPL will send its personnel from time to time to USTR office in US or 23 ITA No.222/Coch/2013 Overseas to study and analyse the requirements. USTRPL will bear all the expenses including travel, lodging, training expenses associated either directly or indirectly with the said assignments."

23. It is not in dispute that the assessee has received the above services from the USA company in terms of management service agreement between the assessee and the USA company. Therefore, it is obvious that the USA company provides highly technical services which are used by the assessee for taking managerial decision, financial decision, risk management decision, etc.

24. The next question arises for consideration is whether the above services could be considered as "technical and consultancy services" as provided in clause 4 of Article 12 of DTAA? As already discussed, only the services which are technical in nature, alone could be considered for included services. Therefore, This Tribunal has to examine whether the services rendered by

the USA company are in the nature of technical services. Admittedly, the services rendered by the USA company are made use by the assessee company in management decision making, sales and business development, financial decision making, legal matters and public relations activity, treasury service, risk management service, etc.

25. Let us also examine whether the services provided by the USA company are technical in nature or not? Around 2500 years ago, the Tamil poet Thiruvalluvar in 'Thirukkural' under chapter XLVII under the heading "Action after Deliberations" has elaborated the points which are required for human relations, management, science and communication. It may be relevant to consider one of the verses # 461 the translated version of which reads as follows:

> *"Analyse the cost involved, yield and profits achievable before acting on a proposition."*

Therefore, it could be seen that the technology that is involved in analyzing a business proposition was well developed even before 2500 years ago. The term "management" has been explained by various authors at various point of time. In fact, Mr. James A.F. Stoner explains "management" as follows:

> *"Management is the process of planning, organizing, leading and controlling the effects of organization members and of using all other organizational resources to achieve the stated organizational goals."*

Some of the other authors described management as – latest of the arts and youngest of sciences. The systematic body of knowledge is the phenomenon of present century in management. So the recent trend in management is to adopt systematic body of knowledge in the management process. As per the management service agreement, the managerial advice rendered by the USA company was used in the decision making process of management, financial and risk management etc. Science is fact based, critically tested, systematized body of knowledge pertaining to specific field. The knowledge is accumulated through study, experience and experimentation. The scientific knowledge produces impersonal results and it can be empirically tested and universally applied. Therefore, the knowledge which was accumulated through study, experience and experimentation with regard to management, finance, risk, etc. of a particular business is nothing but a

technical knowledge. In the era of technology transformation, the information / experience gathered by US resident company relating to financial risk management of business is technical knowledge.

26. We now move on to see what is meant by 'decision making'. The term 'decision making' is not defined either in the Income-tax Act or in the DTAA. Therefore, one has to go by the meaning understood in the management. Shri Harold Koontez and Keinz Weihrach, experts in the management define 'decision making' as follows:

> *"Decision making is a selection of a course of action from amongst the alternatives, it is the core planning."*

Another expert by name, R Terry defines 'decision making' as follows:

> *"Decision making is a selection of an alternative form from two or more alternative to determine a course of action."*

Yet another expert, Kenneth R Andrews defines decision making as follows:

> *"Decision making is a process involving information, choice of alternative options, implementation and evolution that is directed towards achievement of certain selected goals."*

27. From the above definitions given by various experts, we may come to a simple and comprehensive meaning as follows:

- Decision making is an act of selecting the suitable solution to the problems from various available alternative solutions to guide actions towards achievement of desired objectives.

28. Now the assessee here is admittedly making use of the advice, input, experience, experimentation and assistance rendered by the USA company in the decision making process of management, financial and risk management, etc. It is nobody's case that the USA company is taking any decision on behalf of the assessee. On the basis of the input, advice, assistance and service provided by the USA company, the management decision is taken by the assessee company in India by selecting suitable solution after considering all the alternatives available. It is also to be remembered that the USA company is giving training to the assessee's employees in making use of the inputs, experience, experimentation, assistance and advice rendered by them for taking a better and possible

decision in order to achieve the desired objectives / goal. Therefore, in the context of professional management and decision making process, the advice and service rendered by the USA company which was made use by the assessee in managerial decision making process is in the nature of technical services which facilitate the assessee to take correct and suitable decision towards achievement of the desired objects and business goal. Therefore, it may not be correct to say that what was received by the assessee is only a managerial advice and not technical advice. The technological input acquired by the US company through experience and experiment was tested at various stages and process and further it was made available to the assessee so as to enable the assessee to apply / use the same in its decision making process.

29. Apart from that financial and risk decision making process is a highly complicated and technical one. Unless the assessee gets a technical input and advice from financial and risk management experts it may be difficult to select a right process for the growth of the company. It is not the case of the assessee that in a given set of facts / problem, the USA company gave its solution or advice. The solution or decision is admittedly taken by the assessee company on the basis of the advice, service rendered by the USA company. Therefore, it is obvious that the technical knowledge, experience, skill possessed by the USA company with regard to financial and risk management was made available in the form of advice or service which was made use by the assessee company in the decision making process not only in management but also in financial matters. Another aspect is risk management service. Risk management service is a highly complicated one in the financial sector. Unless, the technical expertise and knowledge gained by the USA company is made available to the assessee company, they may not be able to analyse the situation to avoid risk in the business. It is also necessary to note that apart from providing the input, service and advice, the USA company is also providing training to the employees of the assessee company. Therefore, this Tribunal is of the considered opinion that the service of technical input, advice, expertise, etc. rendered by the USA company are technical in nature as provided in clause 4(b) of Article 12 of the DTAA.

30. We have carefully gone through the judgment of the Andhra Pradesh High Court in the case of GVK Industries Ltd (supra). In the case before the Andhra Pradesh High Court, the assessee company constructed and erected power generating station designed to operate using industrial gas as fuel near Rajamundri. The assessee company intended to utilize the expert service of qualified and experienced professional who would

prepare a scheme for raising the finances and tie up the required loan. A non resident company offered its services as a financial advisor to the petitioner company's project.. The services offered by the non resident company includes financial structure and security package to be offered to the lender, study of various lending alternatives for the local and foreign borrowings, making an assessment of export credit agencies world-wide and obtaining commercial bank support on the most competitive terms, assisting the petitioner-company in loan negotiations and documentation with lenders and structuring, negotiating and closing the financing for the project in a co-ordinated and expeditious manner. For its services the assessee company paid 0.75% of the total debt financing as "success fee". On the advice of the non-resident company at Zurich, the assessee approached the Indian finance institution for loan. The assessee also approached the International Finance Corporation, USA for a part of its foreign currency loan requirement. After successful rendering of service, the non resident Zurich company sent an invoice for payment of "success fee" to the extent of US$ 17,15,476.16 (Rs.5.4 crores). The assessee company approached the income-tax authorities in India for issuing a no objection certificate to remit the said amount claiming that the non resident company had no permanent establishment in India and all services were rendered from outside India. The Income-tax Officer refused to issue the certificate. On a writ petition before the High Court it was found that the scope of service / work undertaken by the non resident company was merely to draw up a scheme, advise on the terms and methods of negotiation and for documentation with the lender, evaluate the pros and cons of various lending alternatives, both for local and the foreign borrowings, prepare a preliminary information memorandum to be used as the basis for placing the foreign and local debt, and that the responsibility of entering into correspondence as per the advice of the non resident company and pursuing the matter was that of the assessee company itself, and not that of the non resident company. Therefore, the office of the assessee company could not be treated as the place of business of the non-resident company. In those facts and circumstances, the Andhra Pradesh High Court found that the business connection between the assessee company and non resident company had not been established. However, it was found that the "success fee" would fall within the definition of 9(1)(vii)(b) of the Act. The Andhra Pradesh High Court found that advice given to procure loan to strengthen finances would be as much a technical or consultancy service, as it would be with regard to management, generation of power or plant and machinery. The "success fee" was chargeable under the

provisions of the Income-tax Act, and therefore, the assessee was not entitled to no objection certificate.

31. During the course of hearing, the ld.counsel for the assessee was called upon to comment on the applicability of this judgment of the Andhra Pradesh High Court. The ld.counsel submitted that the Andhra Pradesh High Court had no occasion to consider the DTAA between India and USA. Therefore, the judgment of the Andhra Pradesh High Court is not applicable. No doubt, DTAA agreement between India and USA was not considered by the Andhra Pradesh High Court, but the ratio laid down by the Andhra Pradesh High Court clearly shows that advice given to procure loan to strengthen the finance would be managerial or technical or consultancy services for generation of power or plant and machinery. This finding of the Andhra Pradesh High Court is squarely applicable in respect of the service received by the assessee from USA company. Therefore, this Tribunal is of the considered opinion that advice / service said to be received by the assessee company from USA company is in the nature of technical or consultancy services within the meaning of clause (iv)(b) of Article 12 of DTAA.

32. We have also carefully gone through the judgment of the Karnataka High Court in the case of De Beers India Minerals Pvt Ltd (supra). In the case before the Karnataka High Court, the assessee engaged in the business of prospecting and mining for diamonds and other minerals. The assessee entered into an agreement with Netherland company to engage their services for conducting airborne survey for high quality, high resolution, geophysical data suitable for selecting kimberlite targets. For the technical services rendered by them the assessee had paid consideration as per the agreement. The assessing officer found that the payment made to Netherlands company was for technical services provided by them. Therefore, the assessee has to deduct tax on payments made to Netherlands company. However, the Commissioner (Appeals) found that the payment made by the assessee to the Netherlands company was not covered by Article 12(5) of the DTAA between India and 33 ITA No.222/Coch/2013 Netherlands. He also found that the Netherlands company has not imported any technology to the assessee and they have just used the technology and have gone back with the same. The CIT(A) further found that no technology has been made available to the assessee by the Netherlands company, therefore, the consideration paid does not fall within the definition of Article 12(5) between India and Netherlands. On further appeal by the revenue before the Tribunal it was held that the payment in question for services

rendered would not fall within the definition of "fee for technical services" under Article 12(5) of the DTAA between India and Netherlands. The Tribunal found that Netherlands company has surveyed, collected and processed the data on behalf of the assessee. There is no doubt that Netherlands company performed the service using the technical knowledge and expertise, but such technical expertise, skill and knowledge has not been made available to the assessee. On those facts, the Karnataka High Court found that the assessee was not being possessed with technical know how to conduct the prospecting operation. The maps and photographs which were made available to the assessee cannot be considered as technology made available. Therefore, the question of Netherlands company transferring any technical plan or technical design does not arise in the facts of the case.

33. As observed by the Karnataka High Court, the Netherlands company surveyed the area, prepared plan and photographs which are made available to the assessee company locating the exact area for mining. In fact, the Netherlands company located the exact area where diamonds were available after analyzing the photograph and the assessee company has nothing to do except mining the earmarked area for excavating diamonds. In fact, the technology of locating the diamond by aerial survey was not given to the assessee company. Only, the result of the survey was furnished by the Netherland company. Therefore, it is not a case of making available any technical expertise. In fact, the decision was taken by the Netherlands company fixing the location for mining. In the case on our hand, the facts are entirely on different set of facts. The decision was not taken by the USA company. The USA company facilitated the assessee company for making decision in the managerial, financial and risk management system by providing their knowledge, expertise, experimentation to the assessee company. The entire experiment, knowledge, expertise was made available to the assessee and the assessee was facilitated to take a decision on the knowledge, expertise, experimentation which were made available by the USA company. Therefore, this Tribunal is of the considered opinion that the judgment of the Karnataka High Court in the case of De Beers India Minerals Ltd (supra) may not be applicable to the facts of this case.

34. We have also carefully gone through the decision of the Mumbai Bench of this Tribunal in the case of Raymond Ltd (supra). In the case before the Mumbai Bench of this Tribunal the assessee engaged in manufacturing suiting, engineers' steel files and rasps and cement in India. With a view to muster funds it proposed to issue two types of

Global Depository Receipts (GDRs) in the international market. The assessee company engaged a UK company as lead managers to the issue. The assessee paid necessary charges for the services rendered by the lead managers and the managers. However, no tax was deducted by the assessee company form the payment made to them. The assessing officer found that there was violation of the provisions of section 195(1) of the Act holding that the amounts paid to lead managers and managers were chargeable to tax in India as fees for technical services within the meaning of section 9(1)(vii) of the Act. The Appellate Commissioner also upheld the order of the assessing officer. On further appeal before the Mumbai Bench of this Tribunal, the Tribunal found that the services rendered by the lead managers and managers are managerial or consultancy services within the meaning of section 9(1)(vii) r.w.s. Explanation 2 of the Act and therefore the payment made to managers are income by way of fees for technical services deemed to accrue or arise in India. Referring to the DTAA between India and UK, the Tribunal found that no technical knowledge, experience, skill, know how or process, etc. was made available to the assessee company by the non resident managers to the Global Depository Receipts. However, considering the services rendered by the UK company, the Mumbai bench of this Tribunal found that the arrangement between the assessee and the managers of the Global Depository Receipt issued was for the purpose of engaging the service of the managers under the subscription agreement. The subscription agreement contained detailed clauses as to rights and liabilities of the assessee company and the managers. The Tribunal found that as per the agreement, the managers had undertaken to render service in connection with the issue of Global Depository Receipts for which they are entitled for remuneration. The Tribunal found that the services of the managers for issue of Global Depository Receipt were utilized outside India for the purpose of carrying on its business in India. Since the arrangement is only for marketing the Global Depository Receipt outside India, the Tribunal found that the commission paid to UK company cannot be considered to be fee for technical service, therefore, there is no obligation on the part of the assessee to deduct tax u/s 195(1) of the Act. Therefore, it is obvious that only for marketing the GDR outside India, the service of managers are enjoyed. The decision to issue GDR was taken by Indian company without any assistance from managers. In the case before us, it is a clear case of using the technology, expertise of the foreign company in India for taking managerial, financial decision and risk management analysis. The expertise, analysis, technical knowledge supplied by the foreign company remains with the assessee for ever and it could be even used in future

for the business of the assessee in the process of management decision, financial decision making and risk management analysis. Therefore, the decision of the Mumbai Bench of this Tribunal in the case of Raymond Ltd (supra) is also not applicable to the facts of the case.

35. We have also carefully gone through the decision of the Pune Bench of this Tribunal in the case of Sandvik Australia Pty Ltd (supra). The assessee, an Australian company provided I.T. support service to Indian group companies in Asia Pacific Region in order to achieve the consolidated and standardized I.T. environment in Sandvik group. The Tribunal, after considering the agreement between the parties found that the agreement provided only for back up services, I.T. support services for solving I.T. related problems in Indian subsidiary. The agreement with Sandvik Asia Ltd nowhere suggested that the assessee has to make available required technical know how for solving the problem in the I.T. related problems. In the case before us, the USA company has to provide all expertise to the assesee company which would be utilized in the decision making process related to management, financial and risk management. Therefore, this decision of the Pune Bench of this Tribunal may also not be applicable to the facts of the present case. 36. We have also carefully gone through the decision of the Mumbai Bench of this Tribunal in the case of Wokhardt Ltd (supra). In the case before the Mumbai Bench of this Tribunal, the assessee company was incorporated in USA and as per the agreement, the said company sent one of its professionals to India for a period of two days to address conference on future strategy of the company. The assessee company paid US$ 80,000 for the services rendered by the USA company and no tax was deducted. The Tribunal found that the presentation made by the professional was essential in the nature of sharing management, experience and business strategy. Therefore, the Tribunal found that the services rendered by US company could not be termed as technical services in nature. In the case before us, it is not a case of sharing of experience and business strategy. It is a case of providing technical information for taking managerial and financial decision. The assessee also used that technology, information and expertise of USA company in management risk analysis. The information and expertise made available to the assessee company was very much available with them and it can be used in future whenever the occasion arises. Apart from the employees of the assessee company was also trained by USA company. Therefore, this Tribunal is of the considered opinion that the decision of the Mumbai Bench of this Tribunal in the case of Wokhardt Ltd (supra) also may not be of any help to the assessee.

37. We have also carefully gone through the decision of the Authority for Advance Ruling in Intertek Testing Services India (P) Ltd (supra). The Authority for Advance Ruling considered the DTAA between India and UK and found that rendering of service and making use of service go together. It was found that rendering of service and making use of the service are two sides of the same coin. After considering the word "which" the Authority for Advance Ruling found that rendering technical or consultancy service is followed by relative pronoun "which" and it has the effect of qualifying the services. The service offered may be the product of intense technological effort and lot of technical knowledge and the experience of the service provider would have gone into it. The Authority for Advance Ruling found that the technical knowledge and the experience of the service provider should be imparted to and absorbed by the receiver, so that the receiver can deploy similar technology or techniques in future without depending on the provider. In this case also, the information, expertise and training provided by the USA company was absorbed by the assessee company in their decision making process and it was utilized for the purpose of business. The USA company made available all the technical data, information, expertise to the assessee company which was absorbed and made use of by the assessee company in their managerial and financial decision making process and other decision in the development of the business. Therefore, the expertise and technology which was made available by the USA company is technical service within the meaning of Article 12(4)(b) of the DTAA between India and USA. Hence, this ruling of the Authority for Advance Ruling may not of any assistance to the assessee.

37. In view of the above, we do not find any infirmity in the order of the lower authority. Accordingly the same is confirmed.

38. In the result, the appeal of the assessee is dismissed."

5. In view of the above decision of the Tribunal, we are inclined to uphold the orders of the CIT(A) and sustain the additions on account of non deduction of TDS on account of management fees for the relevant assessment years.

6. Without prejudice to the other grounds in I.T.A. Nos. 103&104/Coch/2017, the assessee has raised Ground 5.1 which reads as follows:

> 5.1 Without prejudice, the learned CIT(A) and ACIT have erred in facts by proposing tax on the entire INR 8,12,12,725 u/s. 201(1), because out of such amount, an amount of INR 4,06,06,362 remains unpaid in AY 2012-13. The ACIT and CIT(A) have failed to consider the fact that under the India-US DTAA, any FIS would be taxable in India only on cash basis. Consequently, the liability of the appellant to deduct tax u/s. 195, on such management fees, would arise only in the year of payment by the Appellant. The ACIT and the CIT(A), have also disregarded the directions and intent of Circular No. 7/2007 dated 23 October, 2007.

7. We have heard the rival submissions and perused the material on record. In our opinion, the above ground of appeals of the assessee are totally misconstrued. Even if the assessee credited the amount to the recipient account, the provisions of sec. 195(1) is applicable. Accordingly, we are inclined to dismiss this ground also. In the result, the appeals of the assessee are dismissed.

S.P. Nos. 21 to 26/Co/2017 : (A.Ys : 2008-09 to 2013-14)

8. Since we have disposed of the appeals of the assessee itself, the Stay Petitions filed by the assessee have become infructuous and the same are also dismissed as infrucutous.

9. In the result, all the appeals of the assessee as well as the Stay Petitions of the assessee are dismissed.

Pronounced in the open court on 29th January, 2018.

sd/-	sd/-
(GEORGE GEORGE K.)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Place: Kochi
Dated: 29th January, 2018
GJ
Copy to:
1. M/s. US Technology Resources Pvt. Ltd., 721, Nila, Technopark Campus, Kariyavattom, Trivandrum-695 581.
2. The Assistant Commissioner of Income-tax (International Taxation), Circle-2(1),Trivandrum.
3.The Commissioner of Income-tax(Appeals)-III,Kochi
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin