

IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH MUMBAI

BEFORE SHRI C.N.PRASAD, JUDICIAL MEMBER

&

SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.7361/Mum/2017  
(Assessment Year: 2013-14)

Aktiebolaget SKF C/o SKF India Limited MGM Building Netaji Subhash Road Charni Road Mumbai-400 002	Vs.	DCIT(International Taxation)-1(1)(1) 1 <sup>st</sup> Floor, Room No.119 Scindia House Mumbai-400 038
<b>PAN/GIR No.AACCA5944J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

&

ITA No.7366/Mum/2018  
(Assessment Year: 2014-15)

Aktiebolaget SKF C/o SKF India Limited MGM Building Netaji Subhash Road Charni Road Mumbai-400 002	Vs.	DCIT(International Taxation), Circle-1(1)(1) 517, 5 <sup>th</sup> Floor, Air India Building Nariman Point Mumbai-400 021
<b>PAN/GIR No.AACCA5944J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Dr. Sunil M.Lala & Bhavya Sandesh, AR's
Revenue by	Shri Rakesh Ranjan, CIT-DR
<b>Date of Hearing</b>	<b>22/11/2019</b>
<b>Date of Pronouncement</b>	<b>10/01/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

These two appeals filed by the assessee are directed against final assessment order passed by the Ld. AO u/s 143(3) r.w.s.

144C(13) of the I.T.Act, 1961, dated 13/10/2017, in pursuant to directions u/s 144C(5) of the I.T.Act, 1961 issued by the Dispute Resolution Panel [DRP]-1, Mumbai, dated 13/09/2017 for the AY's 2013-14 and order dated 24/10/2018 u/s 143(3) r.w.s. 144C(13) of the I.T.Act, 1961, in pursuant to directions of the Ld.DRP-1, u/s 144C(5) of the I.T.Act, 1961 dated 04/09/2018 for AY 2014-15. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

**ITA.NO.7361/Mum/2017:-**

2. The assessee has, more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2013-14 are reproduced as under:-

**1 Ground No. 1 - Taxability of IT services as Fees for Technical Services**

1.1 *On the facts and In the circumstance? of the case and in law, the learned DCIT and Depute Resolution Panel (hereinafter referred as DRP ) have erred In holding that the IT services is taxable as Fees for Technical Service [FTS} under India - Sweden Double Taxation Avoidance Agreement (DTAA).*

1.2 *On the facts and in the circumstances of the case and in law, the learned DCIT/DRP has erred in holding that the protocol granting Most Favored Nation benefit available in India - Sweden DTAA can be granted only through Government notification disregarding the fact that no such notification k required as per India - Sweden DTAA.*

1.3 *On the facts and circumstances of the case and in law, the learned DCIT and the learned DRP has. erred In considering that the IT services are ancillary and subsidiary to the Technology License Agreement and accordingly taxable under Article 12(4)(a) of India- Portuguese Republic DTAA.*

1.4 *On the facts and circumstances of the case and In law, the Appellant contends that amount received for rendering IT services cannot be characterized as FTS since such services do not make available technical knowledge, experience, skill, etc..*

*The appellant craves leave to add, after, amend, or withdraw any of the above stated Ground of Appeal at anytime.*

3. The brief facts of the case extracted from ITA No.7361/Mum/2017 for AY 2013-14 are that the assessee company is incorporated in 1907 and headquartered at Goteborg Sweden. SKF Group is the originator of the self aligning ball bearings and is one of the leading global suppliers of products, solutions and services within rolling bearings, seals machatronics, services and lubrication systems. The assessee has entered into agreements with SKF India and SKF Technologies, in relation to technology License agreement; Trademark License agreement and IT service delivery agreement. The assessee has filed its return of income for AY 2013-14 on 31/11/2013, declaring total income at Rs.87,48,43,540/- and such income includes gross receipts from royalty and trademark fee, IT related services and training and support services fee. The assessee has offered entire receipts as taxable income under the head royalty as per India-Sweden DTAA. Subsequently, the assessee has filed a revised return of income on 31/03/2015, declaring total income at Rs. 64,21,17,550/- and excluded fee received for I.T. related services and training and support services and stated that said income is in the nature of reimbursement of expenses and hence, not liable to tax in India, and such decision is on the basis of certain judicial precedents, including the decision of ITAT, Pune bench decision, in the case of Sanvnick Australia vs DDIT (2013) 141 ITD 598 (Pune).

4. The case has been selected for scrutiny and in the draft assessment order, the Ld. AO has noted that in the preceding year, the assessee has only two agreements, i.e. the technology

collaboration and technical assistance agreement and the service agreement with respect to various services. He, further observed that these have now been broken down into three agreements, i.e. the Trademark license agreement, Technology License Agreement and IT services Delivery agreement. The Ld. AO, further, noted that the royalty agreement i.e Technology Collaboration and technical assistance agreement is the main agreement, in respect of royalty/FTS. The Ld. AO, further noted that although, the assessee has changed the agreements from two to three from AY 2011-12 onwards, but, there has not been any change in functions and risks of the assessee with respect to its services to the AEs in line with the change in these agreements. Further, only the nomenclature of the agreements has been changed to segregate training and support cost to be not taxable in India, but such income was being offered to tax in earlier years. The Ld. AO, further observed that although, the assessee has made few submissions with respect to IT services, but such submissions are vague, general in nature and it is not possible to infer the exact nature of such services. He, further observed that receipts from IT related services has decreased considerably during the year under consideration as compared to previous years and hence, the services rendered by the assessee to its AE's are make available technical knowledge, skills etc. Therefore, he opined that the Indian subsidiary has been enabled to apply technical knowledge acquired from the AE, which results in fall of expenses and thus, concluded that the nature of services is such that it can be taken to be in the nature of FTS, which makes available technical knowledge/experience/skill or process. The Ld. AO, further noted that the services provided by the AE are pursuant to the royalty agreement and are on a consolidated platform comprising of

mainframe and non mainframe computer servers and communication devices. The assessee imparts information, knowledge, assistance or services, which are the result of commercial experience acquired over the years and further, systemized by way of various modules in integrated utility software. He, further noted that the services rendered are in the nature of scientific, commercial and industrial knowledge and experience and in order to access such information, the Indian companies and other group members of the assessee company are required to have compatible systems/software installed in their premises. The Ld. AO has discussed the meaning of term 'industrial, commercial or scientific experience' and has concluded that the services rendered by the assessee, also falls under this category of FTS and while doing so he has relied upon various decisions including decision of Hon'ble Karnataka High court, in the case of Synopsis International Old Ltd. (2012) 28 taxmann.com 162 (Kar). The relevant findings of the Ld. AO are as under:-

*25.34 To sum up, it is respectfully submitted that-*

*(i) the payments made by the Indian companies to the assessee for the use of ABSKF IT SERVICES may also be treated as considerations for informations concerning industrial or commercial experience, which is defined as royalty within the meaning of section 9(1)(vi) of the Act. As well as Article 12(3)(a) of the India-Sweden DTAA.*

*(ii) the payments to the assesses, for the use or right to use the software embedded in ABSKF IT SERVICES, and the commercial database which the software operates upon, may be treated as payments for use or right to use copyright in a literary or scientific work within the meaning of royalty as per section 9(1)(vi) of the Act.*

*(iii) the payments to the assesses for the use of the software embedded in ABSKF IT SERVICES may also be treated as royalty being payment for use or right to use of process patent, trademark, design or similar property within the meaning of the provisions of the Act as well as the DTAA between India and Sweden ; and*

*(iv) the payments to the assessee, being of the nature of royalty is taxable in India as per the provisions of the Act as well as Article 12(3)(a) of the DTAA between India and Sweden.*

5. Being aggrieved by the draft assessment order, the assessee has filed objections before the Ld. DRP-I, Mumbai. Before the Ld.DRP, the assessee has filed elaborate written submissions along with various judicial precedents and copy of agreement between the assessee and Indian subsidiaries, which has been reproduced at para 5 on pages 4 -19 of Ld. DRP order. The sum and substance of arguments of the assessee before the Ld. DRP are that although, the Ld. AO has referred earlier agreements between the parties, but those agreements are not relevant for the year under consideration, as the same was not effective during the year. The assessee has also narrated, the functions performed to the AE's, as per the scope of agreement between the parties and argued that it has purchased software from third party vendor and hence, the question of ownership of right in the software does not arise. The assessee has also, referred DTAA between India and Sweden and its clauses more particularly, the definition of the term Royalty and argued that payments made for availing of maintenance and support services, in relation to IT Infrastructure cannot be considered as payment made for use or right to use any copyright or literary, artistic or scientific work, including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. The assessee had also argued that SKF India and SKF technologies are provide with only a copyrighted software programs, because the assessee itself does not own intellectual property rights, in respect of the software programs. The assessee, further contended that

majority of IT cost are in the nature of cost allocation, being third party cost, which is recharged to various group entities, based on appropriate allocation keys. Accordingly, these costs are in the nature of reimbursements of expenses not having any income element and hence, should not be taxed in India. The assessee had referred Article 12 of the India-Sweden tax treaty along with the protocol to the India-Sweden tax treaty and invoked 'MFN' status, in light of Article 12 of the Indian-Portugal Treaty, wherein the restrictive provision of make available has been provided in the treaty. The assessee had also, referred Article 12(4)(b) of the India-U.S. DTAA and the MOU signed between these two countries.

6. The Ld. DRP after considering relevant submissions of the assessee and also, by relied upon various judicial precedents, including case laws cited by the assessee, came to the conclusion that fees received for IT related services are inextricably linked with royalty agreement and hence, the same cannot be segregated to make it not taxable in India under the India-Sweden tax treaty by changing the nomenclature of the agreement, when there has not been any functional change with respect to services offered by the assessee to its AE or the integral nature of royalty to the IT infrastructure setup by the assessee to render these services subsequent to revision of the agreements. The Ld. DRP, further observed that while, filing its return of income, the assessee had offered the entire receipts to tax. But, subsequently, revised its return of income to exclude receipts on account of I.T. Services, which was claimed to be not taxable in India, either as royalty, or fees for technical services, in light of the MFN clause in the India-Sweden tax treaty, without bringing on record to prove that there

was any significant change in the operational setup in the new agreement and also, when substance of the transactions has remain the same. The Ld. DRP has extensively discussed the nature of services rendered by the assessee to its AE's in India and relevant fees charged for services, in light of various clauses of agreement between the parties to come to the conclusion that royalty agreement and IT delivery support agreement are meant to function together and the royalty agreement cannot be effectively implemented, unless it is integrated with I.T. support agreement. The Ld. DRP has also referred clause 3(ii) of agreement between the parties, where it was categorically referred that the licensor shall without delay disclose and make available to licensee any modifications or improvements of the technology, intangible developed by the licensor or its employees, whether or not patented and whether or not said modification or improvement is substantial. Accordingly, the Id. DRP has finally concluded that services rendered by the assessee are in the nature of FTS as per the provision of the I.T.Act, 1961 and also as per definition of FTS as provided in India-Sweden tax treaty. The Ld. DRP has also rejected MFN clause invoked by the assessee, in light of the India-Portugal tax treaty, on the ground that such benefit cannot be given in the absence of a specific notification from the government. The relevant findings of the Ld. DRP as under:-

**DISCUSSION AND DIRECTIONS OF DRP**

*5.53. During the course of proceedings before us, the assessee has submitted a chart containing various errors in the order as such discussion refers to various terms Industry. These appear to be extraneous discussion which have crept the order on account of some misunderstanding of the AO and hence, these references as well as inferences based on such discussion are being ignored while discussing the issue at hand.*

5.54. The submission made by the assessee and various issues raised by the AO in his order have been examined. It is seen that while filing its return of income, the assessee had offered the entire receipts to tax. However, through revised return, the income of the assessee was reduced by excluding the receipts on account of IT Services which was claimed to be not taxable in India either as royalty or as fee for technical services in light of the MFN clause in the India Sweden Treaty.

5.55. The issue at hand relates to a change in the agreement between the Indian group companies who are manufacturers of bearings and the assessee company which owns the technology as well as the trademark with respect to such bearings. Admittedly, the assessee is in an area where research and development is a regular process and the results of such research with reference to the products for which agreements have been entered are passed on to the licensee entities without any delay. Before us, the assessee has submitted following description of IT services rendered by it.

Category of service	Descriptive nature of Service	Taxability of the transaction	SKF India Limited (Euros)	SKF Technologies (SEK)
<b>End User &amp; Service Equipment</b>				
PC workplace	These costs are for standard software's like MS Office, Adobe, WebEx, Local Network, etc.	These are payments for purchase of standard software's/copyrighted articles and hence not taxable under Article 12 of India • Sweden Tax Treaty.	2,70,359	6,18,772
Service Desk	These are costs for help desk provided by third party vendor (i.e. HP) for any trouble shooting.	The services provided are routine IT support services in the nature of help-desk, administrative and maintenance. These services are required every year and these services does not make available technical knowledge, skill, know-how etc. Accordingly, such payments cannot be considered as 'Fees for Technical Services' (FTS) in terms of	59,990	3,84,615

		Article 12 of the India - Sweden Tax Treaty read with the Most Favoured Nation clause (MFN).		
Video Conferencing & Mail in Phone	These payments are for availing standard facilities like access to email on mobile phone, video conference facility, etc.	The services provided are standard services and hence not covered under Article 12 of the India - Sweden Tax Treaty and hence not taxable in India. Without prejudice to the above, even if these services are considered as technical in nature, the same cannot be taxed as FTS as these services does not make available" technical knowledge, skill, know-how etc. Accordingly, such payments cannot be considered as FTS in terms of Article 12 of the India - Sweden Tax Treaty read with MFN clause.	9,458	20,723
<b>IT Operations</b>				
AMS-Financial Mgmt	These costs are for standard software's like Sara Masterpiece (i.e. accounting software), SAP CPM, etc. provided by third party tike HP.	These are payments for purchase of standard software's/copyrighted articles and hence not taxable under Article 12 Of India - Sweden Tax Treaty, %	1,69,979	2,75,968
AMS-Global Web & Info Mgmt	These are costs for software/application provided by third party vendors like Cap Gemini, Findwise &		92,260	62,841

	<i>Mogul.</i>			
<i>AMS-Innovation Mgmt</i>	<i>These are costs for software/application provided by third party vendors like CAD-Q, Autodesk, PTC, etc.</i>		<i>97,572</i>	<i>4,04,908</i>
<i>Maintenance - Customer Mgmt</i>	<i>These are costs for software/application purchased for Customer Relationship Management, customer account validation, new customer offer, etc. provided by third party vendors like Capgemini, Oracle etc.</i>		<i>1,80,263</i>	<i>21,376</i>
<i>Maintenance - Demand Chain Mgmt</i>	<i>These are costs for software/application purchased for order entry process for sales units, order handling, pricing, etc. provided- by third party vendors like Apper, Infor, Ilmery" etc</i>		<i>1,77,395</i>	<i>2,17,427</i>
<i>AMS-People Mgmt</i>	<i>These costs are for standard HR software provided by vendors like Corner Stone, etc.</i>	<i>These are payments for purchase of standard software's/copyrighted articles and hence not taxable under Article 12 of India – Sweden Tax Treaty</i>	<i>42,949</i>	<i>42,367</i>
<i>AMS-Process Independe</i>	<i>These costs are for standard software provided by third</i>		<i>1,31,199</i>	<i>2,00,065</i>

<i>nt Mgmt</i>	<i>party vendors tike Acando, Every, etc.</i>			
<i>Datacenter Services - Mainframe</i>	<i>These payments are towards governance fee and service management fee. These services have been provided by HP.</i>	<i>The services provided are routine IT support services in the nature of ' maintenance services. These services are required every year and these services does not make available technical knowledge, skill, know- how etc. Accordingly, such payments cannot be considered as FTS as per Article 12 of India - Sweden Tax Treaty read with MFN clause. The services provided are standard services and hence not covered under Article 12 of the India - Sweden Tax Treaty and hence not taxable in India, Without prejudice to the above, even if these services are considered as technical in nature, the same cannot be taxed as FTS as these services does not make available technical knowledge, skill, know-how etc. Accordingly, such payments cannot be</i>	73,242	84,112

Datacenter Services - Midrange	These are payments for hosting application on server and its maintenance paid to third parties like HP, Cap Gemini, Oracle, etc.	considered as FTS in terms of Article 12 of the India - Sweden Tax Treaty read with MFN clause.	2,04,711	2,44,799
<b>Group IT Function</b>				
Network Services	These are payments for Wide Area Network services from British Telecom.	The services provided are standard services and hence not covered under Article 12 of the India - Sweden Tax Treaty and hence not taxable in India	5,65,178	2,45,355
Support Team - Customer Mgmt	These are costs incurred by internal IT Team of AB SKF to support the Indian Companies. AB SKF provides various support services	Indian companies have a very small IT team. Accordingly, Appellant provides ongoing support services in respect of maintenance, trouble shooting etc. These services does not make available technical	1,14,686	32,839

	to Indian companies like service desk, system development support, IT security support, infrastructure network support, etc,	knowledge, skill, know-how etc. Accordingly, the aforesaid payments made cannot be considered as FTS as per Article 12 of India -Sweden Tax Treaty read with MFN clause to the Tax Treaty,		
Support Team Demand Chain Mgmt	-		62,798	3,98,161
Support Team Financial Mgmt	-		1,59,788	4,22,248
Support team Global Web & Info Mgmt	•		10,776	2,985
<i>IT Business Project Services</i>				
Project Services Exit Mainframe	These are software development costs for Mapics Template i.e. inventory software provided by third party vendor like Infor.	These are payments for purchase of standard software's/copyrighted articles and hence not taxable under Article 12 of India - Sweden Tax Treaty.	69,795	98,180

Project Services - Financial Mgmt	These are costs for purchase of standard accounting software i.e. SARA provided by third party like HP.		69,102	1,45,035
Project Services - Global Web & Info Mgmt	These costs are for purchase of upgrades for standard software like Spider and intranet software provided by third party vendors like Cap Gemini, Mogul, etc.		77,299	60,523
<i>Project Services - Group IT</i>				
Project Services - Group Projects	These are costs incurred for connectivity room application Development provided by third party vendors like HIQ, Every, etc.	The services provided are IT support services which in the nature of help-desk, administrative and maintenance. The services does not make available technical	38,335	33,649
Project Services - Innovation Mgmt	These costs are for Pdm link upgrade provided by third party vendor tike PTC.	knowledge, skill, know-how etc. Accordingly, the aforesaid payments made cannot be considered as FTS as per Article 12 of the India - Sweden Tax Treaty read with the MFN clause to the Tax Treaty.	16,877	11,519

<p><i>Development Customer Mgmt</i></p>	<p><i>These are software costs for Web Customer link software for price and availability searches, product searches, order placement etc. provided by third party vendor tike Cap Gemini.</i></p>	<p><i>These are payments for purchase of standard software's/copyrighted articles and hence not taxable under Article 12 of India - Sweden Tax Treaty.</i></p>	<p>70,839</p>	<p>6,906</p>
<p><i>Development Demand Chain Mgmt</i></p>	<p><i>These are software development costs for OCH (i.e. customer order handling software) consolidation project, Data warehouse upgrade, and XA Mapics (Manufacturing, Accounting and Production information control system) upgrade provided by third party vendors like Acando, Limery, Qliktech.</i></p>		<p>34,668</p>	<p>54,227</p>

Project Services - People Mgmt	These are costs for standard software purchased for employee master data from third party vendors like Ework, Global business training etc.,		14,624	12,819
Project Services - Process independent Mgmt	These are costs for Windows 7 upgrade project and for project to implement the new outsourcing contract provided by third party vendors like CGI, Opticos, etc.	These are payments for purchase of standard software's /copy righted articles and hence not taxable under Article 12 of India - Sweden Tax Treaty.	73,441	76,865
Project Services - UNITE	These are costs for pave the way for Unite/GAI provided by third party vendors like Acando,	The services provided by the assessee are IT support services in the nature of help-desk, administrative and	3,157	0

	etc.	<p><i>maintenance. The services does not make available technical knowledge, skill, know-how etc. to Indian companies. Therefore, the aforesaid payments made cannot be considered as FTS as per Article 12 of the India - Sweden Tax Treaty read with the MFN clause to the Tax Treaty.</i></p>		
	<i>Total IT related costs (SEK)</i>		<i>28,90,742 (Euro)</i>	<i>41,79,284 (SEK)</i>
	<i>Total IT related costs (INR)</i>		<i>19,93,79,930</i>	<i>3,33,46,062</i>

5.56. It is also noticed that earlier, the assessee had only two agreements with these AEs, one related to Technology Collaboration and Technical Assistance Agreement or the 'Royalty Agreement' and another related to the Service agreement with respect to various management services. Although the assessee has not provided the old royalty agreement, it is clear that the technology & up gradation was to be transmitted through IT infrastructure. Both, the present royalty agreement as well as the IT services agreement have been examined.

5.57, It is noticed that the assessee already, had an elaborate computer network setup for the group through which the technical information was being shared. In this regard, it is necessary to examine certain critical details of the two agreements which have now been signed by the assessee:

Whereas:

(A) The SKF Group is a global supplier of products, solutions and services within rolling bearings, seals, mechatronics, services and lubrication systems. Licensor and Licensee belong to the SKF Group;

(B) Licensor is, through its affiliates, engaged in the manufacture and sale of products, solutions and services within rolling bearings, seals, machatronics, services and lubrication systems, including Deep Groove Ball Bearings, Taper Roller Bearings, Hub units, Split Taper hub units, Macpherson's strut bearing units, Kits, Mounted products, Seals, Lubrication systems and Mechatronic products like sensor bearings (hereinafter referred to as the "Products");

(C) Licensor owns, or has acquired the right to use, various patents, designs, specifications, and similar know-how related to or associated with its Products (hereinafter collectively referred to as "Technology Intangibles");

(D) Licensee is a manufacturer and seller of the Products. In order to obtain the right to manufacture and sell the Products, Licensee needs access to the Technology Intangibles related to the Products;

(E) Licensor provides, under this Agreement, the Technology Intangibles necessary in order for Licensee to manufacture and sell the Products on the India market and in such other countries that may be applicable (hereinafter referred to as the "Territory").

### III. ENGAGEMENT OF LICENSOR AND LICENSEE

(1) Licensor shall actively provide Licensee with the Technology Intangibles as set out in Appendix A.

**(2) Licensor shall without delay disclose and make available to Licensee any modification or improvement of the Technology Intangibles developed by Licensor or its employees, whether or not patented and whether or not said modification or improvement is substantial. Such improvements or modifications shall be included under the scope of this Agreement and shall become part of the Technology Intangible as defined without an increase in license fee.**

**(3) Licensee shall manufacture the Products and operate its business in accordance with the Technology Intangibles, specifications, instructions and technology provided by Licensor.**

(4) Licensee shall actively use its best efforts to (i) make the Products known and used on a broad scale (ii) promote and develop the sales of the Products and (Hi)-promote.the distribution of the Products in a manner and through means which can reasonably be expected to result in a major penetration of the Products on the market.

#### **APPENDIX A**

#### **Licensed Technology Intangibles**

*Intangibles provided by Licensor under this Agreement to Licensee include, but are not limited to, patents, designs, specifications and know-how with the following products:*

1. Deep groove ball bearings
2. Taper roller bearings
3. Hub units
4. Macphersons strut bearing units
5. Split Taper hub units
6. Kits
7. Mounted products
8. Seals
9. Lubrications systems
10. Textile machinery components
11. Value added/non bearing product like rollers, solid oil ball cage, clutch lifter, cam follower, rocker arm bearing, rocker arm assemblies, etc
12. Mechatronic products like sensor bearings

5.58. With respect to the new IT Services agreement, the following clauses are noted;

#### 1. CATEGORIES OF SERVICES TO BE PERFORMED

SKF hereby agrees to provide to The Purchaser - at The Purchaser's request - with Information Technology services as to certain phases of its business, including but not limited to systems, development & maintenance, computer operations & support, education & control, providing telecommunication and network facilities & support, infrastructure development, purchasing, technical services in various fields, project services, application service subscriptions, desktop and helpdesk services, corporate investments, electronic mail services, data warehouse services and -also such other services, not specifically contemplated herein, as the parties may subsequently agree to.

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#### 2. MANNER IN WHICH SERVICES M TO BE PERFORMED

SKF agrees to render the services under this Agreement:

**a) By developing and maintaining common (SKF Group) applications as well as The Purchaser specific IT systems in use or to be used by The Purchaser;**

**b) by providing computer operation capacity and run applications concerning the business of The Purchaser;**

**c) By providing The Purchaser with telecommunication, electronic data interchange and electronic mail services;**

**d) By purchasing software & software licences using the purchasing power of central acquisition in all service categories as may be necessary or helpful for the development, expansion and improvement of The Purchaser's business; and**

**e) By providing The Purchaser with SKF common (SKF Group) IT infrastructure; and**

**f) By providing The Purchaser with factual information, data and recommendation and the results of studies and service relating to the IT business and management of The Purchaser, so as to enable it to promote and improve its business; and**

g) By providing The Purchaser with onsite and remote technical support concerning personal computing, problem management, installation and test of IT applications and hardware; and

h) By providing helpdesk and knowledge support not available with The Purchaser; and

i) By providing The Purchaser with education, instructions and manuals; and

j) By providing The Purchaser with other such IT related services as described in the IT Service Catalogue.

-SKF is also entitled to render these services through other SKF Group companies or through external companies.

5.59. The two agreements, read together, indicate that the royalty agreement and the IT support agreement are meant to function together and the royalty agreement cannot be effectively implemented unless it is integrated with the IT support - agreement, it is also noticed that there has seen no ground Level change in the nature of service which is being rendered by the AE or the setup which has been used for rendering such services,

5.60. in this regard, the inference of the AO that the IT services emanate from the Royalty agreement is riot found to be out of context or not tenable. Admittedly, the assessee is required to continuously upgrade the technology in the area of manufacturing with respect to products under license. The assessee hardly has any significant R&D setup with respect to the cutting-edge technology in this area. The assessee has not provided the details of mechanism through which the various technology transfers take place and the mechanism through which the employees of the assessee company are educated or made aware of such changes. The assessee has not provided the details of mode in which the continuous upgrades to various models referred to in the royalty agreement are communicated to the manufacturing entities which have paid royalty and are entitled to continuous improvement with respect to such products.

5.61. It is seen that the entire IT setup maintained by the AE whose details have been reproduced jibove, is directed towards rendering the services which are tailored towards effective transmission of information as well as assistance in technological areas which are included in the royalty agreement. While earlier, the whole process was under an

*integrated agreement, the assessee has now bifurcated the agreement to separate the I T services so that it can be taken out of the ambit of definition of royalty. In this regard, it is an acknowledged fact that group entities are able to enter into contracts which may not reflect the true intent of the operations and hence, in such situations, the AO is allowed to, go behind the agreement and examine the substance of such transactions.*

5.62. *In our view, there has not been any functional change with respect to services offered by the assessee to its AE or the integral nature of royalty to the IT infrastructure set up by the assessee to render these services subsequent to revision of the agreements. No documentation Has been furnished which shows that the I T services are now reorganised afresh and totally delinked with the rendering of services in connection with the royalty agreement. In fact, there is absolutely no change in the existing set up at all.*

5.63. *The assessee, in its submission before us, has mentioned a number of times that the extent of software utilised is much smaller than the extent of services rendered. Hence, the acquisition of software forms a small-portion of the overall quantum of services rendered-by the assessee. It is clear that the services rendered in the IT segment or the services, connected with training are integrally linked with the royalty agreement entered into by the assessee with its AEs and both cannot be separated from each other.-*

5.64. *The assessee has objected to the AO's reliance on earlier agreements claiming that these agreements are no longer in operation and hence the agreements relevant to the period should have been examined by the AO. The contention of the assessee is not found acceptable in light of the fact that the assessee has not brought any facts to our notice to evidence that there was any significant change in the operational set up in the new agreement. When the substance of the transaction has remained the same, the AO is correct in disregarding the new agreement or in relying on the earlier agreement.*

5.65 *Admittedly, the services rendered by the assessee are FTS as per the provisions of the Income Tax Act, The definition of FTS as per India Sweden Treaty is similar to the definition in the Act and hence, the service is liable to be treated as FTS.*

5.66 *However, the assessee has invited attention to the Protocol which offers a MFN benefit to tax residents of Sweden and has relied on the definition of FTS in India Portugal Treaty. Ordinarily, such benefit is granted to a tax resident only through a Government notification and hence, the assessee would not be eligible for a treaty benefit based on MFN clause automatically. The assessee has not provided any notification which allows the benefit of Portugal Treaty to tax residents of Sweden. Hence, the assessee is not correct in invoking the MFN clause.*

5.67 *Without prejudice to above, the reliance placed by the assessee on the India Portugal Treaty has been examined. While the assessee has*

only elaborated on the Article 12(4)(b) of the Treaty, the entire clause related to fee for technical services is as reproduced below;

4. For the purposes of this Article, "fees for included services" means payments of any kind, other than those mentioned in Articles 14 and 15 of this Convention, to any person in consideration of the rendering of any technical or consultancy services (including through the provisions 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 which enables the person acquiring **services** to apply the technology contained therein, (emphasis supplied)

5.68. It is noticed that the IT services rendered by the assessee rendered by the assessee are subservient to the royalty agreement and are ancillary and subsidiary to the royalty agreement entered into by both the parties. The assessee already has a royalty agreement with AEs under which it transfers its knowledge in **relation with the** products covered under the royalty agreement to the AEs. The setup **is clearly the means** of achieving this objective and has to be treated accordingly.

5.69. The assessee is not correct in moving to the second limb of FTS **as per the above** definition to conclude that the services do not make available any technical knowledge, skill, process etc. These services would fall in the first limb as they are integrally connected with the royalty agreement and hence, would **be treated** as fee for technical services as contemplated under section 12(4)(a) of the Treaty.

5.70. The AO as well as the assessee have discussed elaborately on the nature of cost of software which have been passed on to the AEs. In our view, it is not relevant to discuss individual nature of service rendered or individual nature of software utilised while rendering such service. The nature of the service has to be decided as a whole and not individually.

5.71. The assessee has also submitted that 80% of the amount represents third party cost of service rendered. The submission does not alter the fact that the nature of service is FTS. In any service, a major portion of the service would represent cost of service which may be incurred by the same party or through a third party. Similarly, a major portion of a product would comprise of cost of material which may be a third party cost. But such cost cannot be a factor for deciding the nature of service. In the case of M/s ASHOK LEYUND LTD AIT-2008-365-ITAT, Chennai Bench, [2009] 120 ITD 14 (Chennai), the expenditure on personnel visiting the Indian party for rendering part of the service was held to be part and parcel in the process of advice of technical character. The cost which forms a part of the total receipt on account of FTS cannot be excluded while computing tax on a gross basis.

5.72. *On this issue, the decision in the case of CSC Technology Singapore Pvt Ltd (2012) 19 taxmann.com 123(del) and Antwerp Diamond Bank NV Engineering Centre (2014) 44 Taxmann.com 175(Mum) relied on by the assessee in this regard has been examined. It is seen that in both these cases, the cost of SAP licenses and 'Flexcube'<sup>1</sup> were held to be in the nature of reimbursement. In the present case, as admitted by the assessee, the software form a part of the overall service rendered by the assessee and the service component is over 80% of the total cost. Clearly, the above decisions are not applicable in the present case.*

5.73. *In light of the above facts, the receipts of the assessee company from IT Services rendered to the Indian AEs is treated as FTS liable to tax in India under Article 12 of India Sweden Treaty, The objections of the assessee are decided accordingly.*

7. The AR for the assessee submitted that the Ld. AO, as well as the Id. DRP have erred in holding that I.T. Services is taxable as fees for technical services under the India-Sweden DTAA, without appreciating the fact that the assessee has provided simple back office support services to its Indian subsidiaries, which is exclusive of royalty agreement between the parties. The Ld. AR, further submitted that no doubt, in earlier years, there were two agreements between the parties i.e, one for technology collaboration and technical assistance agreement and the other for service agreement with respect to various management services. But, from AY 2011-12 onwards, the agreements have been changed, as per which there is a separate agreement for I.T. delivery services as per which the assessee is not providing only license in software, but not 'make available' any technology, because most of the services are rendered to the AE's are sourced from third party vendors and therefore, it is incorrect to say that the assessee is having intellectual property rights, which has been passed on to the AE's.

8. The Ld. AR, further submitted that the Ld. DRP has erred in holding that the protocol granting Most Favored Nation(MFN) benefit is available in the India -Sweden, DTAA can be granted only through government notification, disregarding the fact that no such notifications required, as per the India-Sweden DTAA. The Ld. AR, further submitted that the Ld. DRP has erred in considering I.T. services are ancillary and subsidiary to the technology license agreement and accordingly, taxable under Article 12(4)(a) of India-Portuguese Republic DTAA, without considering the relevant evidences filed by the assessee to prove that these agreements are independent of others and I.T service delivery agreement is not depended upon technology collaboration agreement and service management agreement. The Ld. AR, further submitted that amount received for rendering I.T. services cannot be characterized as FTS, since such services do not make available technical, knowledge, experience skill etc. The Id. AR has referred various clauses in the India-Sweden tax treaty, the India-US tax treaty and the India-Portuguese Republic tax treaty to argue that in case, the protocol provides for MFN in the treaty, then in such situation, India limits its taxation of FTS to a lower rate or a restricted scope, then such lower rate are restricted scope would also, applied to the India-Sweden tax treaty, whether or not such tax treaty has been entered into before or after the India –Sweden tax treaty was entered into. The Id. AR further referring to Article 12(4)(b) of the India-U.S DTAA and the MOU signed between the counties submitted that services provided by the assessee are I.T. support services in the nature of help desk, administrative and maintenance. These services are provided through third party vendors, as the assessee itself is not technically competent to provide the same. The services provided by

the assessee do not impart any technical knowhow. Skill, process or technical plan or design to the employees of SKF India and SKF technologies. Further, there is a difference between rendering of services and to make available the service. Merely because provision of services requires technical input, it cannot be said that technical knowledge, skills, knowhow is being made available in providing the services. The Ld. AR for the assessee has explained the difference between earlier two agreements between, the assessee and two Indian subsidiaries and present three agreements between the assessee and Indian subsidiaries and argued that there is a difference between the agreements entered into for earlier years and the present agreement and therefore, the Ld. AO is incorrect in referring to earlier agreements to come to the conclusion that there is no difference between the scope of service provided to AE's as per earlier agreements and present agreements. In this regard, he relied upon the following judicial precedents.

<b>Sr.No.</b>	<b>Particulars</b>	<b>Citations</b>
1	<i>ITO v. M/s. M.S.K.Travels &amp; Tours Ltd.</i>	<i>ITA No.284 of 2015 (Kol Trib)</i>
2	<i>DCIT v. Fort India Ltd.</i>	<i>(2017) 56 ITR (T) 433 (Chen Trib)</i>
3	<i>Apollo Tyres Ltd v. CIT</i>	<i>(2018) 92 taxmann.com 166 (Kar HC)</i>
4	<i>Steria (india) ltd. v. CIT</i>	<i>(2016) 386 ITR 390 (Del HC)</i>
5	<i>Shell Global solutions International BV. ITO</i>	<i>(2016) 157 ITD 24(Ahd Trib)</i>
6	<i>DCIT v. Sun Pharmaceuticals Laboratories ltd.</i>	<i>(2018) 96 taxmann.com 105 (Ahd Trib.)</i>
7	<i>Torrent Pharmaceuticals Ltd. V. ITO</i>	<i>ITA No.451 &amp; 624 of 2012 (Ahd Trib)</i>

8	DCIT v. Gupta Overseas	(2014) 30 ITR (T) 738 (Agra Trib).
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*Beneficial provisions of a DTAA can be imported into another DTAA where the protocol to such other DTAA contains the Most favored nation clause*

Sr.No.	Particulars	Citation
9	Sandvik AB. DDIT	(2015) 67 SOT 297 (Pune)
10	Sandvik AB v. DDIT	(2015) 70 SOT 551 (Pune)
11	ACIT v. D.A. Jhaveri	(2017) 183 TTJ 447 (Mum)
12	ITO v. Cadila Healthcare Ltd.	ITA No.2765 of 2013 (Ahd Trib.)
13	XYZ, In re	(2012) 348 ITR 31 (AAR)
14	Idea Cellular Ltd, In re	(2012) 343 ITR 381 (AAR)
15	Poonawalla Aviation (P) Ltd, In re	(2012) 343 ITR 202 (AAR)
16	Lanka Hydraulic Institute Ltd, In re	( 2011) 337 ITR 47 (AAR)

*Rendering of IT services (on recurring basis) do not make available any technical knowledge, skill, etc. as required under the DTAA and thus the same does not amount to FTS/FIS.*

**Favour:-**

Sr.No.	Particulars	citaiton
1.	Sandvik Australia	(2013) 141 ITD 598 (Pune)
2	Soregam SA v. DDIT	(2019) 101 taxmann.com 94 (Del Trib)
3	Seal for Life India v. DCIT	(2018) 173 ITD 229 (Ahd Trib)
4	Bharat AXA General Insurance Co.Ltd., In re	(2010) 326 ITR 477 (AAR)
5	Exxon Mobil Company India(P) Ltd. v. ACIT	(2018) 65 ITR(T) 583 (Mum Trib)
6	Outotec Oyj v. DDIT	(2017) 183 TTJ 289 (Kol Trib)

9. The Ld. DR, on the other hand, strongly supporting order of the Ld. AO, as well as the Ld. DRP submitted that if you go through agreements between the parties, it is absolutely clear from clauses

of agreement that those agreements are composite agreements for developing and maintaining and which are insufferable. Therefore, it is incorrect on the part of assessee to segregate IT related services from royalty agreement to make it not taxable, as per the definition of royalty under the India-Sweden tax treaty. The Ld. DR, further submitted that it is an admitted fact that the assessee itself had offered to tax gross receipts from two arguments in earlier years. But, subsequently changed its stands and filed revised return on the basis of decision of the Tribunal without bringing on record and evidences to prove that how characters of income received from the subsidiaries by way of those agreements is suddenly changed to be not taxable as royalty within the meaning of definition of royalty as provided in under the I.T.Act, 1961 and the definition as provided under the India-Sweden tax treaty. The Ld. DR, further heavily relied upon the orders of the Ld. DRP and argued that services referred by the assessee on the basis of I.T. Services delivery agreement are ancillary and subsidiary support service, which are inextricably linked with main frame agreement over providing royalty services and hence, the Id. AO, as well as the Ld. DRP were right in upholding that the I.T. service delivery is in the nature of FTS as per the definition FTS under the I.T. Act, 1961 and the definition of FTS as per the India-Sweden tax treaty.

10. We have heard both the parties, perused the material available on record and gone through orders of the authorities below, along with case laws cited by the Ld. AR for the assessee. The factual matrix of the impugned dispute is that the assessee company had entered into two agreements for providing technology collaboration and technical assistance and service agreement with respect to

various management services and such agreements are in force till AY 2010-11. Thereafter, the assessee has broken down two agreements into three arguments, i.e. the trademark license agreement, the technology license agreement and I.T. services delivery agreement. The assessee has charged royalty and trademark fees as per technology collaboration and technical assistance agreement and collected fees for IT related services, training and support services, as per service agreement for various management services. The assessee has offered total receipts from both agreements under the head royalty, as per the India-Sweden DTAA. However, subsequently the assessee has revised its return of income and reduced fees received from two subsidiaries, in respect of IT related services, on the ground that it is not in the nature of royalty, as defined under the India-Sweden tax treaty and hence, not liable to tax in India, for which it has taken support from certain judicial precedents, including the decision of ITAT, Pune bench, in the case of Sandvik Australia vs DDIT (supra), in light of MFN clause in the India-Sweden tax treaty. Therefore, the issue to be decided relates to change in the agreement between the assessee and Indian companies, who are manufacturers of bearings.

11. Admittedly, the assessee is in area, where research and development is a regular process and the results of such research, with reference to the products, for which agreements have been entered are passed on to the licensed entities without any delay. As admitted, in earlier year, the assessee had only two agreements with AE's, i.e. one related to technology collaboration and technical assistance agreement or the royalty agreement and another related to the service agreement with respect to various management

services. From the combined reading of agreements between the parties, it is clear that the technology and up-gradation was to be transmitted through IT infrastructure. Therefore, for this purpose, the assessee had an elaborate computer network setup for the group through which, the technical information was being transmitted. The assessee had also furnished copies of agreements between the parties. As per the agreement between the parties, clause 3 (ii) refers to engagement of licensor and licensee. As per the said clause, the licensor shall without delay disclose and make available to Licensee any modification or improvement of the technology intangibles developed by the licensor or its employees, whether or not patented and whether or not said modification or improvement is substantial. Such improvements or modifications shall be included under the scope of this Agreement and shall become part of the technology intangible, as defined without an increase in license fee. Further, the said clause also specified that licensee shall manufacture the products and operate its business in accordance with the technology intangibles, specifications, instructions and technology provided by the licensor and was also provided to licensed agreement indicating licensed technology intangibles, as per which intangibles provided by licensor under this agreement to licensee, including, but or not limited to patented, designs, specifications and knowhow.

12. We have carefully gone through IT delivery service agreement and its clauses. The two agreements read together indicate that the royalty agreement and the IT support agreement are meant to function together and the royalty agreement cannot be effectively implemented, unless it is integrated with the IT support agreement. It

is also not in dispute that there has been no ground level change in the nature of services, which is being rendered by the AE or the set up, which has been used for rendering such services, after change in agreements effective from AY 2011-12. Further, it is also not in dispute that the assessee is required to continuously upgrade the technology in the area of manufacturing with respect to product under license. The assessee has hardly any significant R&D setup with respect to the cutting-edge technology in this area. The assessee has also not provided the details of mechanism through, which various technology transfers take place and the mechanism through, which the employees of the assessee company are educated or made aware of such changes. The assessee has not provided the details of mode in which, the continuous upgrades to various models referred to in the royalty agreement are communicated to the manufacturing entities, which have paid royalty and are entitled to continuous improvement with respect to such products.

13. We, further noted that the entire IT setup maintained by the AE, whose details have been referred in agreement between the parties, as directed towards rendering the services, which are tailored made towards effective transmission of information, as well as assistance in technological areas which are included in the royalty agreement. We, further noted that in earlier period the whole process was under an integrated agreement, but now from AY 2011-12 onwards, the assessee has bifurcated the agreements into separate IT services agreement, so that it can be taken out of the ambit of definition of royalty which is evident from the fact that it is an acknowledged fact that group entities are able to enter into

contracts, which may not reflect the true intent of the operations and hence, in such situations, it is necessary to examine the substance of such transactions. Therefore, in our considered view the assessee has failed to demonstrate that there has been any functional change with respect to services offered by the assessee to its AE or the integral nature of royalty to the IT infrastructure set up by the assessee to render these services, subsequent to change in agreements. Further, no evidence has been furnished, which proves that the IT services provided by the assessee are now reorganized afresh and totally delinked with the rendering of services in connection with the royalty agreement.

14. The assessee has also taken another argument, in light of the fact that the extent of software utilized in IT related services is much smaller than the extent of services rendered and hence, the extent of software forms a small portion of the overall quantum of services and accordingly, it cannot be considered that it is part of integrated services. We find that the services rendered in the IT Segment or the services connected with training are integrally linked with the royalty agreement entered into by the assessee with its AE and both cannot be separated from each other. The assessee has also objected the Ld. AO reference to earlier agreements on the ground that these agreements are no longer in operation and hence, the agreements relevant to the period should have been considered to arrive at conclusion that the IT service delivery agreement is inextricably linked with royalty agreement. The contention of the assessee is not found tenable, in light of the fact that the assessee has not brought on record any evidences to prove that there was any significant change in the operational set up in the new agreement. Further,

when, the substance of transactions has remained the same, the Ld. AO is correct in reference to earlier agreements, while arrived at a conclusion that there is no change in total services rendered by the assessee to its AE, even though, the IT services delivery agreement has been separated from AY 2011-12 onwards. We, therefore, are of the view that the nature of services rendered by the assessee are considered, in light of scope of services mentioned in agreement between the parties, the service rendered by the assessee are 'FTS' as per the provision of section 9(1)(vii) of the I.T.Act, 1961, as well as per the definition of FTS as per the India-Sweden treaty and hence, liable to be taxed in India.

15. Coming to another argument of the assessee, in light of protocol provided in the India-Sweden tax treaty, which offers a MFN benefit to tax residents of Sweden and In this regard has relied upon the definition of FTS in the India-Portugal tax treaty. In this regard, the AR has relied upon various judicial precedents, including the decision of ITAT, Kolkata bench 'K', in the case of ITO vs MSK Travels and Tours Ltd. in ITA No. 284/Mum/2015. We find that there is no doubt of whatsoever with regard to the applicability of the benefit of MFN status, if the other country, where the India is having DTAA is a member of OECD, then even if there is no separate notification from the Government, the benefit of MFN has to be given to the assessee to examine services rendered, in light of the definition of FTS as provided in DTAA between India and other countries. However, the fact remains that since, we have already hold that services rendered by the assessee, in light of scope of services offered by the assessee to its AE as referred to in IT service delivery agreement, are in the nature of FTS, as per the India-

Sweden tax treaty, as well as the definition of FTS, as provided in section 9(1)(vii) of the I.T.Act, 1961, applicability of definition of FTS as provided in the India-Portugal tax treaty has to be examined in light of nature of service rendered by the assessee to its AE. As per the India-Portugal treaty and the India –USA treaty, Article 12, the definition of Royalty and fees for included service has two limbs. The first limb speaks about ancillary and subsidiary services and the second limb speaks about make available clause. If, the assessee needs to apply second limb, then it has to first exhaust first limb. Further, if you go through the definition as per Article 12, prima-facie it appears that as per Article 12(4)(b) of the Treaty between the India-Portugal and India-US, if service rendered 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 make available technical knowledge, experience, skill, knowhow or process or consist of the development and transfer of a technical plan or technical design, which enables the person acquiring the services to apply the technology contend therein, then it comes under the definition of fees for included services, which is akin to the definition of royalty as provided in section 9(1)(vii) of the I.T.Act, 1961 and the definition of royalty as provided in the India-Sweden tax treaty.

16. In this case, it is noticed that the I.T services rendered by the assessee are subservient to the royalty agreement and are ancillary and subsidiary to the main frame royalty agreement entered into by both the parties. Since, the assessee has already a royalty agreement with AE's under which it transfers its knowledge in relation with the products covered under the royalty agreement, the

IT setup is clearly meant for achieving the objective and has to be treated along with royalty agreement. Further, when the services rendered by the assessee under agreement are comes under first limb of FTS, then the assessee is not correct in moving to the second limb of FTS, as per the above definition to argue that the services do not make available any technical knowledge, skill, process etc. The services rendered by the assessee would definitely fall in the first limb, as they are integrally connected with the royalty agreement and hence, would be treated as fee for technical services, as contemplated under Article 12(4)(a) of the tax treaty between India-Portugal as well as the India-US and accordingly, even if the assessee gets the benefit of MFN, as provided in protocol of the India- Sweden tax treaty, the assessee does not get any benefit, because services rendered by the assessee are in the nature of fees for technical services, which are liable to be taxed in India.

17. Insofar as, the last but not least argument of the assessee, in light of 80% of the amount represents third party cost of services rendered, we find that said submission does not alter the fact that the nature of services is FTS, because, in any services a major portion of the services would represent cost of services, which may be incurred by the same party or through a third party. In our consider view, the cost factor is not relevant to discuss individual nature of service rendered or individual nature of software utilized, while rendering such services. The nature of services has to be decided as a whole and not individually. Therefore, we are of the considered view that there is no merit in the arguments of the assessee that services rendered, in light of IT service delivery agreement is a separate and distinct agreement from main royalty

agreement and accordingly, it is not comes under the definition of FTS, as provided under the provision of section 9(1)(vii) of the I.T.Act, 1961 or under the India-Sweden tax treaty. The Ld.DRP after considering relevant facts and also by considering certain judicial precedents has rightly arrived at a conclusion that services rendered by the assessee through IT service delivery agreement is part and parcel of main agreement of technology license and trademark, which cannot be separated and accordingly, fees received for IT related services is liable to be taxed as FTS, as per the definition of FTS, as provided under section 9(1)(vii), as well as provided under the India-Sweden tax treaty. Hence, we are inclined to uphold the findings of the Ld. DRP and reject grounds taken by the assessee.

18. Insofar as, various case laws relied upon by the assessee, in light of protocol provided in DTAA between the India-Sweden tax treaty, we are of the considered view that although, the assessee is entitled for MFN benefit, as per the protocol, but, fact remains that services rendered by the assessee, in light of IT services delivery agreement is in the nature of FTS even under the India-Portugal tax treaty, as well as India-U.S.A. tax treaty, the case laws relied upon by the assessee are considered to be not relevant to decide the issue in hand and accordingly, rejected.

19. In the result, appeal filed by the assessee for AY 2013-14 is dismissed.

**ITA NO.7366/Mum/2018:-**

20. The assessee has raised the following grounds of appeal:-

**1. Ground No.I- Taxability of IT services as Fees for Technical Services**

- 1.1 *On the facts and in the circumstances of the case and in law, the learned DCIT and Dispute Resolution Panel (hereinafter referred as DRPJ have erred in holding that the IT services is taxable as Fees for Technical Service (FTS) under India - Sweden Double Taxation Avoidance Agreement (DTAA).*
- 1.2 *On the facts and in The circumstances of the case and In law, law, the learned DCIT and the learned DRP has erred in holding that the protocol granting Most Favored Nation benefit available in India - Sweden DTAA can he granted only through Government notification disregarding the fact that no such notification is required as per India - Sweden DTAA.*
- 1.3 *On the facts and circumstances of the case and in law, the learned DCIT and the learned DRP has erred in considering that the IT services are ancillary arid subsidiary lo the Technology License Agreement and accordingly taxable under Article 12(4){a} of India - Portuguese Republic DTAA.*
- 1.4 *On the facts and circumstances of the case and in law, the learned DRP has erred in holding that the Memorandum of Understanding to the India - USA DTAA explaining the term 'ancillary and subsidiary' cannot be Imported for the purpose of interpreting the India - Sweden DTAA read With the India - Portuguese Republic DTAA, notwithstanding the fact that both the DTAA's are identical IV worded,*
- 1.5 *On the facts and circumstances of the case and in law, the Appellant contends that amount received for rendering IT services cannot be characterized as FTS since such services do not make available technical knowledge, experience, skill, etc.*

*The appellant craves leave to add, alter, amend, or withdraw any of the above stated Ground of Appeal at any time.*

21. The facts and issues involved in this appeal are identical to the facts and issues, which we had already considered in ITA No.7361/Mum/2017 for AY 2013-14. The reasons given by us in preceding paragraph in ITA No.7361/Mum/2017 shall mutatis mutandis apply to this appeal as well. Therefore, for detailed

reasons given in ITA No.7361/Mum/2017, we dismiss appeal filed by the assessee for AY 2014-15.

22. As a result, both appeals filed by the assessee are dismissed.

Order pronounced in the open court on this 10/01/2020

**Sd/-**  
**(C.N.PRASAD)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated: 10/01/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai