

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “D” BENCH  
(Conducted Through Virtual Court)  
Before: **Shri Rajpal Yadav, Vice President**  
And **Shri Amarjit Singh, Accountant Member**

**ITA Nos. 3268 & 3269/Ahd/2016**  
**Assessment Year 2012-13 & 2013-14**

Pandit Deendayal Petroleum University- PDP PAN: AABTP3856A (Appellant)	Vs	ITO, International Taxation-II, Ahmedabad (Respondent)
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**Revenue by: Shri Rajdeep Singh, Sr. D.R.**  
**Assessee by: Shri S.N. Soparkar, Sr. A.R.**  
**And Parin Shah, A.R.**

Date of hearing : 21-01-2021  
Date of pronouncement : 05-04-2021

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

These two appeals filed by assessee for A.Y. 2012-13 & 2013-14, arise from order of the CIT(A)-13, Ahmedabad dated 15-09-2016, in proceedings under section 201 and 201(1A) r.w.s. 195 of the Income Tax Act, 1961; in short “the Act”.

2. Since similar facts and issues are involved in the aforesaid two appeals of the assessee, therefore, for the sake of conveniences, we take the

ITA No. 3268/Ahd/2016 for A.Y. 2012-13 as a lead case for adjudication and its finding would be applicable to the other appeal filed vide ITA No. 3269/Ahd/2016 for A.Y. 2013-14. The main issue contested in the ground of appeal against the decision of Id. CIT(A) that assessee is liable for deduction of tax u/s. 195 of the Act on payment made to Georgia Tech Research Corporation towards cost reimbursement for joint Research Projects as Royalty and levy of interest of Rs. 2,31,307/- u/s. 201(1A) of the Act and liable to deduction of tax TDS amounting to Rs. 5,58,040/- on payments made to Georgia Tech Research Corporation.

3. The brief fact of the case is that assessee Pandit Deendayal Petroleum University (PDPU) is a deemed university as per notification of Government of Gujarat. The assessee has entered into two agreements with the Georgia Tech Research Corporation, Georgia, USA for a collaborative joint research project to study permeability of tight gas sandstone. The assessee has made certain payments to Georgia Tech Research Corporation (GTRC) for conducting study related to research project “ Permeability Characterization and Modeling of Tight Sandstone Reservoirs” The Assessing Officer was of the view that payment made to GTRC were of the nature of royalty and hence TDS should have been made @ 15% for the sum so remitted. Therefore vide notice dated 13<sup>th</sup> Nov, 2004, assessee was asked to clarify the nature of these remittances. The contents of the notice issued by the Assessing Officer are reproduced as under:-

*"Please refer to your reply dated 7/11/2014 on the subject of verification of payments to Non-Residents.*

*2. On verification of the details furnished by you, it is seen that the following payments were liable to withholding of tax u/s 195 of the Income-tax Act:-*

Date of payment	Payee/Remitee	Amount (Rs.)	Taxable as
13.10.2011	Georgia Tech Research Corporation, USA	3107088	Fee for Technical services
03/02/2012	Georgia Tech Research Corporation, USA	- 1966000	Fee for Technical services
08/03/2013	Georgia Tech Research Corporation, USA	12876431	Fee for Technical Services
07/06/2013	GeoQuest Systems B. V., Netherland	7499136	Royalty
16/12/2013	Aspen Technology Inc. USA	375000	Royalty

4. The payment of fee for technical services is liable to withholding of tax u/s 195 and the reason as given by you that the 'payee' did not have a PE in India is irrelevant. Similarly, payment for purchase of software is covered under Royalty and required withholding of tax u/s 195 of the Income-tax Act. However, no tax was withheld by you. Therefore, it is intended to treat you as an assessee in default with all consequential actions such as penalty and charging of interest etc.

5. Objection, if any, may be raised in writing within 10 days of receipt of this notice."

5. Thereafter, it came to notice that in row number one, two and three in column four of the table above, the nature of payments were termed erroneously as 'fee for technical services'. The mistakes occurred due to copying of the table from other order. Therefore, the said misnomer mistake was conveyed to the assesses vide letter dated 19/12/2014 which is reproduced as under:

'Please refer my notice u/s 201 dated 13/11/2014.

2. In the said notice, in column number four, the remittances to Georgia Tech Research Corporation, USA were inadvertently shown as 'Fee for Technical Services' instead of 'Royalty'. Please amend column four to read as 'Royalty' in place of Tee for Technical Servicers' in row number one, two and three.

3. Since there is a change in the character of remittances as well as in my designation (re-designated as ITO, international taxation-U), this is to give you again an opportunity to raise objection against the said notice."

In response to the aforesaid notice, the submission of the assessee is reproduced as under:-

6. In response to the above referred to letter dated 19/12/2014, the assessee made a written submission. Relevant and operative portion of its submission is reproduced here below:

"As you are aware that remittances made to Georgia Tech Research Corporation -GTRC, USA is for a collaborative joint research project to study permeability of tight sandstone which is to be utilized by PDPU for educational purpose and therefore the same is specifically excludes from the definition of "Fees for included Services" and remain out of the purview of Pars 5 (c) of article 12 "Royalties and Fees for included Services" of India - USA tax treaty. The same is explained in detailed by our letter dated 12-11-2014

Now sir, as you came to know that remittances to GTRC are specifically excludes from the definition of "Fees for included Services" and remain out of the purview of Para S (c) of article 12 "Royalties and Fees for included Services" of India - USA tax treaty, you have conveniently decided to change

*your stand and wants to treat the remittances to GTRC under the head "Royalty", We strongly object to your changing the stand.*

*However without prejudice to our claim and contentions we have to state as under:*

*We are reproducing herewith term "Royalties" as defined in para - 3 of Article 12 "Royalties and Fees for included Services" of India - USA tax treaty:*

*'3. The term "royalties as used in this Article mean:*

*(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and*

*(b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of Article 8."*

*Further we are also reproducing herewith the term "Royalty" as defined in Explanation 2 to section 9 (1) (vi) of the Income Tax Act, 1961:*

*"For the purposes of this clause, "royalty" means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for -*

- (I) the transfer of all or any rights (including the granting of a license) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property; \*
- (II) the Imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;*
- (III) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;*
- (IV) the imparting of any information concerning technical, industrial, commercial or scientific, knowledge, experience or skill;*
- (V) (iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;]*
- (VI) (V) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films; or*
- (VII) (VI) the rendering of any services in connection with the activities referred to in sub-clauses (i) to-(iv), (iva) and] (v)."*

***Sir, we request you to kindly let us know under which of the above para, sub para/clause, sub clause of the definition of term "Royalty" as per DTAA and as per the Income Tax Act the payment made to Georgia Tech Research Corporation, USA is liable to tax in India.***

***On hearing from you we will be pleased submit our detailed reply on the same. Your early action in the matter is solicited."***

In its reply, the assessee has explained that payment was made to George Tech Research Corporation, USA for a collaborative joint research project to

study permeability of tight gas sandstone and result of such research project will be utilized by both the universities for the purpose of educational and research activities only. It was also explained that remittance to the GTRS was specifically excluded from the definition of fees for included services and remained out of the purview of paras 5 (C) of Article 12 “Royalty and Fees for included services” of India-USA tax treaty. The Assessing Officer has not accepted the submission of the assessee stating that payment made by the assessee was neither for teaching in an educational institution nor for teaching by an educational institution. The Assessing Officer was of the view that payment was made for developing proprietary information by the payee and subsequently allowing right to the assessee to access the same which fall in the category of royalty. The Assessing Officer has also mentioned that the following facts mentioned in the agreement strengthened the nature of research/knowledge licensed to PDPU as an intellectual property.

- “a) That it was proprietary information being creation of mind owned by the GTRC because of its performance in the past of certain research pertaining to tight gas sandstone and reservoirs.*
- b) That it was not available in India and that is why the PDPU had to buy the license for its application by PDPU from GTRC, a US based entity.*
- c) That there are non-disclosure, non-assign, non-transfer, no-export clauses mentioned in both the agreements.*
- d) GTRC has disclosed to PDPU certain technical data or information that is commercially valuable and not generally known in its industry of principal use thereby making available technical knowledge.”*

In view of the above facts and understanding, the Assessing Officer observed that remittances made by the PDPU to the GTRC was nothing but royalty as per the provisions of section 9(1)(vi) of the Income Tax Act, 1961 as well as in terms of Article 12 of the DTAA between India and USA in the guise of actual direct and indirect cost. Consequently, the Assessing Officer

has made disallowance as per working of tax u/s. 201(1) and interest u/s. 201(1A) of the I.T. Act.

4. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee reiterating the facts reported by the Assessing Officer.

5. During the course of appellate proceedings before us, the ld. counsel has submitted that during the course of assessment proceedings, the assessee has furnished copy of detailed agreement executed between assessee and Georgia Tech Research University and gone through the different clauses of the agreement stating that nowhere it is provided that payment is made for acquiring intellectual property by the assessee from GTRC. The ld. counsel has taken us to the different pages of the paper book pertaining to agreement and copy of invoices pointing out payments made to GTRC are not in the nature of royalties but are in the nature of cost reimbursement of joint research project and also referred judicial pronouncements in the case of CIT vs. Dunlop Rubber Company Ltd. of Hon'ble Calcutta High Court 10 taxman 179 (Cal) and High Court of Gujarat in the case of CIT vs. Creative Infocity 82 taxman.com 356 (Gujarat). On the other hand, ld. Departmental Representative has relied on the order of Assessing Officer and ld. CIT(A).

6. Heard both the sides and perused the material on record. The assessee has made certain payments to the Georgia Tech Research Co-operation (GTRC) claiming cost for reimbursement of a Joint Research Project. The Assessing Officer in the order passed u/s. 201(1) has held that remittance

made by the assessee to the GTRC was nothing but royalty as per provisions of section 9(1)(vi) of the Act as well as in terms of article 12 of DTAA between India and USA. We have perused the copy of agreement executed on 23<sup>rd</sup> July, 2010 between the assessee and Georgia Tech Research Corporation placed in the paper book for disclosing information by the assessee and GSRTC collectively for the purpose of joint research pertaining to tight gas sandstone and reservoirs. It is a joint research project and both the parties have right on result of research project. Each party shall use the proprietary information only for and to the extent required to accomplish the purpose of the agreement. Explanation to section 9(1)(vi) which defines “royalty” is reproduced as under:-

*“Explanation 2.- For the purpose of this clause, “royalty means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head “Capital gain” ) for-*

- (i) the transfer of all or any right (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;*
- (ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;*
- (iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;*
- (iv) the imparting of any information concerning technical, industrial commercial or scientific knowledge, experience or skill;*
- [(iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB]*
- (v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale distribution or exhibition of cinematographic films; or*
- (vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to [(iv), (iva) and ](v)”*

We have also gone through the clause 3 of article 12 of the DTAA between India and USA wherein the term royalty is defined as under:-

*"3. The term "royalties" as used in this Article means;*

- (a) Payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film, tape, or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the*

*alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and*  
*(b) Payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of Article 8."*

The Assessing Officer has not ascertained the true characters of the transactions. The assessee has explained with the support of agreement and copies of invoices that payment made was towards cost reimbursement of joint research project and does not amount to royalty as per section 9(1)(vi) and not covered with clause 3 of Article 12 as royalties and fees for included services of India USA DTAA. The assessee has demonstrated from the copies of agreement and copies of invoices that the payments to GTRC was not in the nature of royalties but was in the nature of cost reimbursement for a joint research project on which both the parties have equal right to use. The Assessing Officer has not specifically considered the relevant clauses of the agreement of joint research to be carried out for the subject matter from sharing of information from both the parties. We have also gone through the decision of Hon'ble High Court of Calcutta in the case of Dunlop Rubber Company Ltd. 142 ITR 493 holding that the result of the research was for the benefit of all concerned including the head office and subsidiary concern. But the very fact that technical data was jointly obtained and the expenses were shared together indicates that it could not be treated as income.

Similarly in the case of the assessee (PDPU), it is as per agreement executed on 23.07.2010 assessee (PDPU) may disclose to General Tech Research Corporation (GTRC) and GTRC may disclose to PDP certain technical data or information for the purpose of research pertaining to tight

gas sandstone and reservoirs. The assessee agreed for reimbursement of cost incurred by the GTRC for doing research activity as a part of joint research on which both the parties have equal right on result of such joint research project. The Assessing Officer has not carried out any verification/investigation to disprove the claim of pure reimbursement of expenses made by the assessee on the basis of relevant supporting material as reflected in this order. The Id. CIT(A) has also not specifically controverted the related material referred by the assessee as clauses of agreement pointing out that payment was made to GTRC towards cost reimbursement for joint research project and not for any royalty. It was not established by the authorities below that the agreement grant the assessee the right to use the GTRC's intellectual property in exchange for royalty payments. Considering the aforesaid facts and finding, we consider that Assessing Officer has failed to prove that payment made by the assessee to GTRC was of the nature of royalty payment. Therefore, this ground of appeal of the assessee is allowed. Since we have allowed the ground of appeal of the assessee that payment of Rs. 50,73,088/- made to GTRC was towards cost reimbursement for joint research project and not royalty, therefore, levy of interest u/s. 201(1A) is also not justified. Therefore, the second ground of appeal of the assessee is also allowed.

**ITA No. 3269/Ahd/2016 A.Y. 2013-14**

7. As the facts and issues involved in grounds of appeal vide ITA No. 3269/Ahd/2016 Assessment Year 2013-14 are similar as in ITA No. 3268/Ahd/2016 Assessment Year 2012-13 therefore after applying the decision adjudicated vide ITA No. 3268/Ahd/2016

as supra in this order, this appeal of the assessee is also allowed.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 05-04-2021

**Sd/-**  
**(RAJPAL YADAV)**  
**VICE PRESIDENT**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**Ahmedabad : Dated 05/04/2021**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद