IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1203/Mum./2021
(Assessment Year : 2016–17)

IQVIA AG (Previously known as IMS AG)
4, Dorfplatz, 6330, Cham Switzerland
C/o IQVIA Consulting And Information
Services India Pvt. Ltd., Unit no.902 ……. Appellant
9th Floor, Supreme Business Park
Hiranandani Garden, Powai, Mumbai 400 076
PAN – AACCI5872K

v/s

Dy. Commissioner of Income Tax
(International Taxation) ……. Respondent
Circle–2(2)(2), Mumbai

Assessee by : Shri Madhur Agarwal
Revenue by : Shri Milind Chavan, Sr. DR

Date of Hearing – 06.04.2022	Date of Order – 11/05/2022

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the final assessment order dated 19.04.2021, passed under section 143(3) r/w section 144C(13) of the Act by the Assessing Officer for the assessment year 2016–17.

2. In this appeal, the assessee has raised following grounds:–

> *"Ground No. I - Non-taxable business income of Rs. 46,24,44,838/- in the nature of Subscription Fees for standard online market research database on pharmaceutical sector taxed as Roʸaltʸ under Section 9(1)(vi) of the Income-tax Act, 1961 ('the Act') and under Article 12(3) of the India- Switzerland Tax Treaty ('Tax Treaty')*
>
> *1. On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer (AO) / Dispute Resolution Panel (DRP) erred in concluding that the Subscription Income received by the Appellant for providing access to its online database of statistically compiled pharmaceutical data collected from public domain ("IQVIA Reports") is in the nature of 'Royalty as defined ' under section 9(l)(vi) of the Act as well as under Article 12(3) of the Tax Treaty.*
>
> *2. The AO / DRP erred in not appreciating that the IQVIA Reports provided by the Appellant are basically a statistical compilation of data collected from doctors, stockist, dealers and other sources i.e. data available in the public domain and none of the clauses of Explanation 2 of section 9(1) (vi) of the Act which defines the term 'Royalty' are satisfied and also does not fall within the definition of 'Royalty' as per Article 12(3) of the Tax Treaty.*
>
> *3. The Ld. DRP also failed to appreciate that Honorable ITAT vide its order dated 13 July 2020 in Appellant's own has deleted the impugned treatment of Subscription Income as Royalty for AY 201314, 2014-15 and 2015-16.*
>
> *4. The Appellant prays that addition of Subscription Fees received of Rs. Rs. 46,24,44.838/- as Royalty under the Act as well as Article 12(3) of the Tax Treaty, be deleted.*
>
> *Ground No. 2 - Levy of Interest under Section 234B of the Act of Rs. 1,77,90,467*
>
> *1. On the facts and circumstances of the case and in law, the levy of interest under Section 234B of the Act is consequential in nature and should he deleted once the relief as sought under Ground no. 1 is allowed to the Appellant."*

3. The only issue arising in the present appeal is with regard to taxability of subscription income received by the assessee as Royalty under the provisions of section 9(1)(vi) of the Act as well as under the Article–

12(3) of the India Switzerland Double Taxation Avoidance Agreement (DTAA).

4. The brief facts of the case pertaining to this issue as emanating from the record are: The assessee is a company incorporated under the laws of Switzerland and has its entire management and control in Switzerland. The assessee is engaged in the business of providing market research reports on pharmaceutical sector to its clients. For the year under consideration, the assessee filed its return of income on 30.03.2018, declaring total income of Rs.17,70,93,233. During the course of assessment proceedings, it was observed from the return of income that the assessee has, inter–alia, earned subscription fees of Rs.46,24,44,838. It was further observed that the assessee has, inter-alia, claimed exemption from taxation for its aforesaid income earned under the head subscription fees as per Article–7 r/w Article–5 of the DTAA. Accordingly, the assessee was asked to show cause as to why the subscription fee amounting to Rs.46,24,44,838, received from Indian customers should not be treated as Royalty under the provisions of the Act as well as DTAA. In reply, the assessee made following submissions:–

(a) The assessee is a tax resident of Switzerland under the DTAA and tax resident certificate has been issued in its favour. Accordingly, the assessee is eligible to take the recourse to the beneficial provisions of the tax treaty;

(b) The assessee is engaged in providing market research reports on pharmaceutical sector to its customers across the globe at a predetermined subscription price. The assessee mainly collects, process and utilize the data and information, particularly in the fields of medicine and pharmaceuticals for the delivery of reports through online IQVIA knowledge link;

(c) The assessee entered into an Agreement with its customers for providing the Review Reports ('IQVIA Reports'). The Agreement sets out the details of the modules that are required by the customers and permitted to be accessed with applicable fees;

(d) The IQVIA Reports based on modules selected, are statistical database compilations, which provide geoeconomical data about a pharma molecule (medicine) thereby providing insights into the economic and political issues affecting the pharmaceutical and healthcare industries in a jurisdiction. The IQVIA Reports are akin to a magazine that provides latest information and developments and it relates to database, information, etc., relevant to the pharmaceutical industry. Further, IQIVA reports are standard data reports of the module selected by customers;

(e) For the purpose of its database and IQUVIA reports, the assessee collects relevant data through various forms mainly from doctors, stockiest, dealers and other sources. The assessee then merely compiles/extrapolates the data to provide statistical information to its customers in the form of IQVIA reports;

(f) The assessee grants non–exclusive and non–transferable license to use the IQVIA Reports provided to the customers and thereby it restricts the use of information by the customer for its own benefit, back–up, etc.

(g) The assessee has during the Financial Year 2015-16 received an income of Rs. 46,24,44,838 as Subscription Income from its third party Indian Customers for online Subscription of IQVIA Reports on which taxes have been withheld at source by some of the Indian customers aggregating to Rs. 1,71,09,885;

(h) The Subscription Income received by the assessee from the Indian Customer is not towards transfer of right to use the copyright or for imparting information concerning industrial, commercial or scientific knowledge, experience or skill and accordingly not taxable as Royalty either under section 9(1)(vi) of the Act or under Article 12(3) of the DTAA;

(i) Further, the IQVIA Reports are not in the nature of any literary, artistic or scientific work and even otherwise there is no grant of any copyright by the assessee to its customers.

5. The Assessing Officer vide draft assessment order dated 28.11.2019, passed under section 144C(1) of the Act did not agree with the submissions filed by the assessee and held that the subscription fees received by the assessee is in the nature of Royalty under the provisions of section 9(1)(vi) of the Act as well as under Article–12(3) of the DTAA. The Assessing Officer further noted that similar finding of the Assessing Officer in assessment years 2013–14, 2014–15 and 2015–16 was upheld by the Dispute Resolution Panel ("*DRP*").

6. The assessee filed detailed objections against the addition made by the Assessing Officer. Vide directions dated 15.03.2021, issued under section 144C(5) of the Act, the DRP, though noted that identical issue in assessee's own case has been decided in its favour by the Co–ordinate Bench of the Tribunal, rejected the objections filed by the assessee in order to keep the issue alive and to protect the interest of the Revenue.

7. In conformity with the directions issued by the DRP, the Assessing Officer vide impugned final assessment order dated 19.04.2021, assessed subscription fees as Royalty under the provisions of the Act as well as DTAA. Being aggrieved, the assessee is in appeal before us.

8. During the course of hearing, Shri Madhur Agarwal, learned Counsel for the assessee submitted that similar issue has been decided in favour of the assessee by the decision of the Co–ordinate Bench of the Tribunal rendered in assessee's own case. The learned Counsel further submitted that the DRP did not grant relief to the assessee merely to keep the issue alive.

9. On the other hand, Shri Milind Chavan, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

10. We have considered the rival submissions and perused the material available on record. We find that the Co–ordinate Bench of the Tribunal in assessee's own case in IMS AG (now known as IQVIA AG) v/s DCIT, in ITA no.6445/Mum./2016, vide order dated 13.07.2020, for the assessment year 2013–14, while holding that subscription fees received by the assessee is not taxable as Royalty under the provisions of DTAA, observed as under:–

> *"3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee before us is a company incorporated, and fiscally domiciled, in Switzerland. The assessee company is engaged in providing market research report on pharmaceutical sector to its customers across the world at a predetermined subscription prices, The company collects, processes and utilizes the data and information, particularly in the field of medicine and pharmaceuticals for the delivery of reports through online IMS knowledge link. The company enters into agreements with its customers for providing the review reports (IMS reports) setting out the details of modules required to be accessed by the customers and the consideration for these services. In essence thus, the IMS reports, based on module selected, are statistical database compilations, providing geo economical data, about a pharma molecule, providing insight into the*

connected issues relating to information and developments. The licence access so granted is a non-exclusive and non-transferable right. It is consideration received, as allowing this non-exclusive, non-transferable access to the database and IMS reports which is subject matter of dispute before us. The authorities below have held that in the light of Hon'ble Karnataka High Court's judgment in the case of CIT Vs Wipro Ltd [(2011) 203 Taxman 621 (Kar)] and other judgments by the same Hon'ble High Court, which have been followed by a coordinate bench of this Tribunal as well, these receipts are required to be taxed as royalty under section 9(l)(vi) as also under article 12(3) of the Indo Swiss DTAA. The assessee is aggrieved and is in further appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. We find that Hon'ble jurisdictional High Court, in the case of DIT Vs Dun and Breadstreet Information Services India Pvt Ltd[(2012) 20 taxmann.695 (Mum)] has, while approving and concurring with the approach of Authority for Advance Ruling in the case of this very assessee, observed as follows:

> *"The assessee had imported business information reports from Dun and Bradstreet, USA, and made remittances in respect thereof without deducting tax at source. The Assessing Officer held that the assessee was liable to deduct tax at source and accordingly passed an order under section 195 read with section 201 of the Act. The appeal filed by the assessee was dismissed by the Commissioner of Income-tax (Appeals). On further appeal, the Income-tax Appellate Tribunal set aside the order passed under section 195 read with section 201 of the Act by following its decision in the assessee's own case for the assessment year 2002-03 in I.T.A. No. 1773/Mum/2006 and the decision of the Authority for Advance Rulings on identical facts in the case of Dun and S.A. Bradstreet Espana In re Authority for Advance Rulings No. 615 of 2003 [2005] 272ITR 99 (AAR)), D and B Europe Authority for Advance Rulings No. 657 of 2005, dated October 27, 2005, and D and B UK Authority for Advance Rulings No. 656 of 2005, dated October 27, 2005. In all these cases the Authority for Advance Rulings held that the sale of very same business information reports by the subsidiaries of Dun and Bradstreet US in Spain, Europe and V. K. to the assessee did not attract the provisions of section 195 of the Act. Though the decision of the Authority for Advance Rulings is not binding in the present case, since the decision of the Authority for Advance Rulings relates to the very same business information reports imported by the petitioner and no fault in the decision of the Authority for Advance Rulings is pointed out, we see no reason to interfere with the decision of the Income-tax Appellate Tribunal."*

6. The AAR's decision, which is so concurred with, inter alia states as follows:

> *"The instant case it is not a case of paying consideration for the use of or right to use any copyright of literary, artistic or scientific work or any patent trade mark or for information of commercial experience. The Commissioner sought to bring the payments under royalty/fees for technical service for the*

reason that the BIRs are copyright protected and end-users are required to use for their own purpose and the analysis of raw data provided in the BIRs would be similar to that of providing a technical or consultancy services. We have already mentioned above that a BIR is a standardized product of D&B, it provides factual information on the existence, operation, financial condition, management and experience line of business, facility and location of a company; it also provides special events like any suit, lien, judgment or previous or pending bankruptcy. Further, banking relationship and accountants, information like whether it is a patent company or authority concerned, has any branches etc. It also gives a rating of the company. The informations that are provided in a BIR are said to be publicly available; they are collected and complied by D&B associates. A BIR is accessible by any subscriber on payment of requisite price with regular internet access for which no particular software or hardware is required. The applicant states that access to data base of the applicant is available to public at large at a price as in case of buying a book and it is not a pre-requisite, that BIR must be downloaded by DBIS only and in fact some clients, such as Expert credit guarantee corporation, in fact, access the server themselves to download BIR. The applicant does not have any server in India for the use of DBIS. Indeed the applicant has specifically averred that the copyright in the BIR would neither be licensed nor assigned to either the DBIS or the Indian customer. From these aspects it is clear that the aforementioned ruling of the Authority is distinguishable on facts. If a group of companies collects information about the historical places and places of interest for tourists in each country and all informations are maintained on a central computer which is accessible to each constituent of the Group in each country, can a supply of such information electronically on payment of price be treated as royalty or fee for technical services ? We think not.

The next case relied upon by the Commissioner is also a ruling of the Authority in Ericsson Telephone Corpn. India AB, In re [1997] 224ITR 2031. In that case the applicant was a company incorporated in Sweden. It provided, inter alia, services within radio and telecommunication. It entered into contracts with three Indian companies for the introduction of the cellular system of telecommunication in India and opened branch offices in India at New Delhi, Bombay and Madras. The Indian company informed applicant that while making payments under the agreement they would withhold income tax at 55% as provided in the Finance Act, 1995. According to the applicant tax deduction could not have exceeded 5,5% of the gross payments, as the net profit on the contract would not be more 10%, It was, therefore, not a case of whether the amount paid could be termed as fee for technical services. It was admittedly a case of payment of fee for technical services.

For the abovementioned reasons, payments made by the DBIS to the applicant for purchases of BIRs do not answer the description of 'royalties' within the meaning of para 3 of article 13 of the treaty. So payments made by the DBIS to the applicant cannot be regarded as royalty payment. In our view, the applicant has rightly equated the transaction of sale of BIRs to sale of a book, which does not involve any transfer of intellectual property or a book."

7. Article 12(3) of Indo Swiss DTAA, that we are currently dealing with, is verbatim the same as Article 13(3) of India Spain DTAA that Hon'ble Authority of Advance Ruling was dealing with. The conclusions so arrived at by the Authority for Advance Ruling, which now stand approved by Hon'ble

jurisdictional High Court, are equally applicable in the context of Indo Swiss DTAA as well. It is only elementary that when the assessee is not taxable under the provisions of the respective DTAA, there is no occasion to examine the taxability under the Income Tax Act 1961, since the provisions of the Income Tax Act 1961 apply only when these provisions are more favourable to the assessee vis-a-vis the provisions of the applicable DTAA.

8. When the above position was brought to the notice of the learned Departmental Representative, he simply placed his reliance on the stand of the authorities below. He could not, however, neither point out any legally distinguishable features between the case before Hon'ble jurisdictional High Court vis-a-vis this case, nor any other reasons for not following the binding precedent from Hon'ble jurisdictional High Court. Once our Hon'ble jurisdictional High Court has expressed a view, it cannot be open for us to be swayed by a contrary view expressed by any other Hon'ble High Court. No decision from Hon'ble jurisdictional High Court, contrary to the above decision of Hon'ble jurisdictional High Court, was brought to our notice.

9. In view of the above discussions, as also bearing in mind entirety of the case, we delete the impugned addition of Rs 23,01,00,058 as royalty in the hands of the assessee. The assessee gets the relief accordingly.

10. No other issues were pressed before us. In any event, the other points raised in the appeal were in the nature of consequential levies. Once the main addition itself is deleted, all these issues are rendered academic."

11. We further find that similar findings were also rendered by the Co–ordinate Bench of the Tribunal in assessee's own case in IMS AG (now known as IQVIA AG) v/s DCIT, in ITA no.7291/Mum./2017, vide order dated 13.07.2020, for the assessment year 2014–15. The learned Departmental Representative could not show any reason to deviate from the aforesaid orders and no change in facts and law was alleged in the relevant assessment year. The issue arising in the present appeal is recurring in nature and has been decided in favour of the assessee by the decision of the Co–ordinate Bench of the Tribunal for preceding assessment years. Thus, respectfully following the orders passed by the Co–ordinate Bench of the Tribunal in assessee's own case cited supra, we uphold the

plea of the assessee and delete the impugned addition in respect of subscription fees received by the assessee. As a result, ground nos. 1(1) to 1(4), raised in assessee's appeal are allowed.

12. The levy of interest u/s 234B of the Act is consequential in nature. Accordingly, ground no.2 raised in assessee's appeal, is allowed for statistical purpose.

13. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 11/05/2022

Sd/-	**Sd/-**
PRAMOD KUMAR	**SANDEEP SINGH KARHAIL**
VICE PRESIDENT	**JUDICIAL MEMBER**

MUMBAI, DATED:

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai