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

BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA No. 665/MUM/2022 (A.Y. 2017-18)

M/s. IQVIA AG (previously Known as IMS AG) C/o. IQVIA Consulting and Information Services India Pvt. Ltd., Unit No. 902, 9th Floor Supreme Business Park Hiranandani Gardens, Powai Mumbai - 400076 **PAN: AACCI5872K**	*v.*	DCIT (IT) – 2(2)(2) 16th Floor, Air India Building Nariman Point Mumbai – 400 021
Appellant		**Respondent**

Assessee by	**:**	**Shri Madhur Agarwal**
Revenue by	**:**	**Ms. Bharati Singh**
Date of Hearing	**:**	**27.07.2022**
Date of pronouncement	**:**	**10.10.2022**

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against directions of Learned Commissioner of Income Tax (DRP-1), Mumbai-1 [hereinafter in short

"Ld.DRP)"] dated 21.01.2022 for the A.Y. 2017-18 passed u/s. 144C(5) of the Income-tax Act, 1961 (in short "Act").

2. Brief facts of the case are, assessee is a company incorporated under the Laws of Switzerland and has its entire management and control in Switzerland. Assessee is a tax resident of Switzerland under the India-Switzerland Tax Treaty ("Tax Treaty"). The Tax Residence Certificates issued by the Cantonal Tax Administration, Zug for the calendar year 2015 and 2016. Accordingly, the Company is eligible to take the recourse to the beneficial provisions of the Tax Treaty. The Company is engaged in providing market research reports on pharmaceutical sector to its Customers across the globe at a predetermined subscription price. The Company 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. The Company enters 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. The IQVIA Reports based on Modules selected, are statistical database compilations, which provide geo-economical 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 provide 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. For the purpose of its database and IQVIA Reports, the Company collects relevant data through various forms mainly from doctors, stockiest, dealers and other sources. The Company then merely compiles/extrapolates the data to provide statistical information to its Customers in the form of IQVIA Reports. The Company 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. During the year under consideration, the Company has delivered to its Indian Customer, majorly the following types of IQVIA Reports: -

a) World Review Molecule: The said reports provides access to the database to the Indian Customers, of all details / characteristics of the selected molecule. Further the data comprises of the statistical data of 73 Countries across the Globe.

b) World Review Pack: The said reports provides access to the database to the Indian Customers, of selected details/ characteristics of the selected molecules based on the customer's requirement. Further the data comprises of the statistical data of 73 Countries across the Globe

c) Customized Insight. The said reports provides access to the database to the Indian Customers, of selected details / characteristics of selected molecules and for the selected countries based on requirement of the Indian Customers."

3. The Company has during the Financial Year 2016-17 received an income of ₹.44,34,93,451/- 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 ₹.1,67,30,090/. Assessing Officer issued notice dated 23.02.2021, the Company have been requested to show cause as to why the Subscription Income should not be taxable as Royalty as assessed in Company's own case in AYs 2013-14, 2014-15 and 2015-16 and AY 2016-17. In this regard, assessee submitted that the subscription income is in the nature of business income and is not in the nature of 'Royalty' under the Act as well the Tax Treaty and therefore not taxable in India. As mentioned above, assessee is resident of Switzerland, under Section 90(2) of the Act and accordingly governed by the beneficial provisions of the Tax Treaty as compared to the provisions of the Act, wherever applicable. The Assessing Officer passed a draft Assessment Order with the observation that ITAT has granted relief to the assessee for A.Y. 2013-14 to A.Y. 2015-16 and department has preferred

an appeal before Hon'ble High Court which is pending for adjudication. Therefore, the assessee's claim that the revenue earned from its Indian clients does not constitute royalty is not accepted and accordingly gross receipt of ₹.44,34,93,451/- is taxable as Royalty and considered as income for this assessment year. Aggrieved, assessee preferred an appeal before the Dispute Resolution Panel and Ld. DRP decided the issue against the assessee.

4. Aggrieved assessee preferred appeal before us raising following grounds in its appeal: -

> *"**Ground No. 1- Non-taxable business income of Rs.44,34,93,451/- 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")***
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> *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(1)(vi) of the Act as well as under Article 12(3) of the Tax Treaty*
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> *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, stockiest, 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 Appellant prays that addition of Subscription Fees received of Rs. 44,34,93,451/- as Royalty under the Act as well as Article 12(3) of the Tax Treaty, be deleted.

Ground No. 2- Short grant of TDS credit of Rs. 6,47.764

1. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in not granting TDS amounting to Rs. 6,47,764,

2. The Appellant has also filed a rectification application with the AO for the above mistake apparent from the record.

3. In view of the above, the Ld. AO should be direct to grant TDS of Rs. 6,47.764

Ground No. 3-Levy of Interest under Section 234B of the Act of Rs.1,64,07,015

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 be deleted once the relief as sought under

Ground no. 1 and 2 is allowed to the Appellant.

Ground No. 4-Levy of Interest under Section 234D of the Act of Rs. 4,02,390

1. On the facts and circumstances of the case and in law, the levy of interest under Section 234D of the Act is consequential in nature and should be deleted once the relief as sought under Ground no. 1 and 2 is allowed to the Appellant."

5. With regard to Ground No. 1, Ld. AR brought to our notice that the issue under consideration is already covered in favour of the assessee and he brought to our notice the first order passed by the Coordinate Bench for the A.Y. 2013-14 in ITA.No. 6445/M/2016 which is placed in Page No. 132 of the

Paper Book. Further, he brought to our notice recent order of the Coordinate Bench in the immediate previous A.Y. 2016-17 in ITA.No. 1203/Mum/2021 dated 11.05.2022 which is placed in Page No.161 of the Paper Book. Ld. AR prayed that the same be adopted for the year under consideration.

6. On the other hand, Ld.DR vehemently argued and relied on the orders passed by the lower authorities.

7. Considered the rival submissions and material placed on record, we observe that Coordinate Bench in assessee's own case in ITA.No.1203/Mum/2021 dated 11.05.2022 for the A.Y. 2016-17 in the immediate previous assessment year held as under: -

> *"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:–*
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> > *"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."

8. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2016-17 and also following rule of principle of consistency, we allow the ground raised by the assessee.

9. With regard to Ground No. 2 of grounds of appeal which is in respect of not granting of TDS Credit, Ld.AR submitted that assessee has filed rectification application under section 154 of the Act requesting for grant of

TDS amount of ₹.6,47,764/-. Ld. AR prayed that Assessing Officer be directed to allow the TDS credit after due verification.

10. Ld. DR fairly agreed that issue may be restored back to Assessing Officer for verification.

11. Considered the rival submissions and material placed on record, we observe that Assessing Officer has completed Assessment under section 143(3) r.w.s 144C(13) of the Act. Therefore, certain informations were not available with him at the time of completion of the final Assessment Order. However, assessee has filed rectification application u/s. 154 of the Act and it is the duty imposed on the Assessing Officer to complete the rectification process within six months. Even otherwise the Assessing Officer should have intimated the same. Therefore, we are inclined to remit this issue back to the file of the Assessing Officer to verify the claim of the assessee as per the Act after giving them a proper opportunity of being heard and we direct the Assessing Officer to complete the rectification within one month on receipt of this order. Accordingly, ground raised by the assessee is allowed for statistical purpose.

12. With regard to Ground No. 3 and 4 which are in respect of levy of interest u/s. 234B and 234D of the Act, are consequential in nature, accordingly, the grounds raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open court on 10th October, 2022.

Sd/-	Sd/-
(AMIT SHUKLA)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai / Dated 10/10/2022
Giridhar, 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.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum