आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.1302/Ind/2016
Assessment Year: 2015-16

M/s. Daly College Indore	**बनाम/** Vs.	ITO (IT & TP), Bhopal
(Appellant / Assessee)		(Respondent / Revenue)
TAN: BPLTO 0735 A		
Assessee by	Shri Manjeet Sachdeva & Avinash Gaur, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	07.11.2022	
Date of Pronouncement	06.12.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 02.08.2016 passed by learned Commissioner of Income-Tax (Appeals)-13, Ahmedabad **["Ld. CIT(A)"]** in Appeal No. CIT(A)-13/Ahd/94/2015-16, which in turn arises out of order dated 16.02.2016 passed by learned ITO, International Taxation & Transfer Pricing, Bhopal **["Ld. AO"]** u/s 201(1)/(1A) of Income-tax Act, 1961 **["the Act"]** for Assessment-Year **["AY"]** 2015-16, the assessee has filed this appeal on following effective ground:

> ***"Learned Assessing Officer was not justified to decide the TDS on remittance of Rs. 24,33,853/- to University of Cambridge, UK, which is for examination fee, books purchased and teacher's***

training fee, considered as royalty paid and imposed tax and interest on the appellant."

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts leading to the present appeal are such that the assessee is a society running an educational institution. It is also an authorized centre for conducting courses of Cambridge International Examination run by University of Cambridge, U.K. It remitted a payment of Rs. 24,33,853/- in terms of Agreement dated 10.05.2010 with ***M/s The Chancellor, Masters and Scholars of the University of Cambridge (Page No. 7 of the assessment-order)*** without deducting tax at source (TDS). Ld. AO framed a view that the impugned payment was in the nature of "Royalty" as per Explanation 2(iii) and 2(vi) of section 9(1)(vi) read with Explanation to section 9(2) of the Income-tax Act, 1961 as well as in accordance with Article 13 of Double Taxation Avoidance Agreement (DTAA) between India and U.K. and, therefore, attracted TDS of Rs. 3,65,079/-, being 15% of the sum of Rs. 24,33,853/- paid by assessee. Accordingly, Ld. AO determined a demand of Rs. 3,65,079/- on account of TDS plus interest of Rs. 57,610/- u/s 201(1A) by then, aggregating to Rs. 4,22,689/-. Being aggrieved, the assessee filed first-appeal to Ld. CIT(A) but however did not get any success. Now the assessee has come in appeal before us assailing the orders of lower authorities.

4. Presently, the exact controversy between parties can be fit in a narrow compass viz. while the revenue claims that the impugned payment of Rs. 24,33,853/- made by assessee was in the nature of "royalty", the assessee denies such a claim.

5. We note that an identical controversy arose before ITAT, Delhi in ***ACIT, International Taxation, New Delhi Vs. M/s The Chancellor, Masters and Scholars of the University of Cambridge, order dated 19.09.2022,*** wherein the Assessing Officer of *M/s The Chancellor, Masters*

and Scholars of the University of Cambridge treated the receipts (exactly same as paid by assessee) as "Royalty", invoking the same legal provisions as in present appeal, and taxed in India. The matter travelled upto ITAT and the Hon'ble Delhi Bench, relying upon the decision of Hon'ble Supreme Court in the case of ***Engineering Analysis Center of Excellence Pvt Ltd. [2021] 432 ITR 471***, was pleased to hold that the impugned receipts were not in the nature of "royalty". The relevant paragraphs of the decision are extracted below:

> *"3. The common grievance is that the ld. CIT(A) was not justified in holding that the revenue received by the assessee on account of granting various licences is not taxable as 'Royalty Income' and so also the amount received for conducting research activities, which are in the nature of various rights transferred by the assessee to its Indian customers for commercial use.*
>
> *4. Briefly stated, the facts of the case are that the assessee is an internationally renowned university engaged in research, the provision of education, publishing and the provision of examination services. During the year under consideration, it undertook these activities through three divisions. The three divisions are:*
>
> *(i) The University itself which undertakes research and degree level education;*
>
> *(ii) Cambridge University Press which publishes and distributes academic literature and journals; and*
>
> *(iii) Cambridge assessment which provides examination services, specifically related to the setting and marketing of internationally recognized examinations.*
>
> *5. During A.Y. 2012–13, the assessee had receipts of Rs. 31,55,95,947/– and in A.Y to 2014–15, receipts were Rs. 51,86,82,807/– from providing examination related content, setting and marking of examination to schools /institutions.*
>
> *6. The said receipts were added to the total income of the assessee by the Assessing Officer by alleging that the services rendered by the assessee are in the nature of Fees For Technical Services [FTS] as such services have been made available to schools/institutions as per Article 13(4)C of the India-UK DTAA.*
>
> *7. Proceeding further, the Assessing Officer alternatively alleged that the receipts from examination related content, setting and marking of examinations is also taxable as Royalty Income under India-UK DTAA.*

8. The assessee questioned the assessment order before the Ld. CIT(A) and strongly contented non-taxability of receipts as royalty.

9. The Ld. CIT(A) was convinced with the contention of the assessee and deleted the addition made by the AO by stating that the Assessing Officer has not provided any basis for taxability of receipts as royalty.

10. Before us, ld. DR strongly supported the findings of the AO but could not bring any distinguishing decision in favour of the revenue.

11. We have given thoughtful consideration to the orders of the authorities below. In our considered opinion, as per section 90 subsection (2) of the Act, where India has executed a tax treaty, then, the non-resident assessee has the option of being taxed under the tax treaty to the extent its provisions are more beneficial and based upon provisions of India-UK DTAA, we have to consider the treatment given by the Assessing Officer in light of the relevant Article of India-UK DTAA.

12. Article 13(3) of India-UK DTAA, Royalty has been defined as:

> *"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 cinematography films or work on films, 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;.."*

13. A perusal of the afore-stated Article of the India- UK DTAA shows that the transaction shall fall under the ambit of Royalty only when payments are received from a buyer to exploit the underlying copyrights of an article or payment is made for information concerning industrial, commercial or scientific experience.

14. We have carefully considered the orders of the authorities below. We are of the considered view that the impugned quarrel is now well settled by the decision of the ***Hon'ble Supreme Court in favour of the assessee and against the Revenue in the case of Engineering Analysis Center of Excellence Pvt Ltd. [2021] 432 ITR 471*** *wherein the Hon'ble Supreme Court, in a bunch of appeals, conclusively held as under:*

> *"168. Given the definition of royalties contained in Article 12 of the DTAAs mentioned in paragraph 41 of this judgment, it is clear that there is no obligation on the persons mentioned in section 195 of the income-tax Act to deduct tax at source, as the distribution agreements/EULAs in the facts of these cases do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright. The provisions contained in the Income-tax Act (section 9(l)(vi), along with explanations 2 and 4 thereof), which deal with*

> *royalty, not being more beneficial to the assessees, have no application in the facts of these cases.*
>
> *169. Our answer to the question posed before us, is that the amounts paid by resident Indian end-users/distributors to nonresident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which the persons referred to in section 195 of the Income-tax Act were not liable to deduct any TDS under section 195 of the Income-tax Act. The answer to this question will apply to all four categories of cases enumerated by us in paragraph 4 of this judgment.*
>
> *170. The appeals from the impugned judgments of the High Court of Karnataka are allowed, and the aforesaid judgments are set aside. The ruling of the AAR in Citrix Systems (AAR) (supra) is set 7 aside. The appeals from the impugned judgments of the High Court of Delhi are dismissed."*

13. In light of the above settled position, respectfully following the aforesaid decision of the Hon'ble Apex Court [supra], we find no reason to interfere with the findings of the ld. CIT(A) and direct the Assessing Officer to delete the impugned addition. 14. In the result, the appeals of the Revenue in ITA Nos. 778/DEL/2017 and 3422/DEL/2018 are dismissed.

6. Thus, the view taken by Hon'ble ITAT, Delhi is quite clear that the impugned receipts were not in the nature of "royalty". This view equally applies to the present assessee. For the sake of completeness and clarity, we may mention that the decision of ITAT, Delhi was in the matter of recipient i.e. ***M/s The Chancellor, Masters and Scholars of the University of Cambridge*** and the present-appeal before us is in the matter of payer. But that would not make any difference in the conclusion *qua* the nature of receipt/payment. Hence respectfully following the decision of Hon'ble ITAT, Delhi, we do hold that the payment made by assessee was not in the nature of "royalty" as claimed by revenue-authorities and hence does not attract

TDS. Resultantly, the Ld. AO is directed to delete the demand of TDS and consequential interest created upon the assessee.

7. In the result, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 06/12/2022.

Sd/- Sd/-

(CHANDRA MOHAN GARG) (B.M. BIYANI)
JUDICIAL MEMBER ACCOUNTANT MEMBER

Indore
दिनांक /Dated : 06.12.2022
Patel/Sr. PS

Copies to: *(1) The appellant*
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	1.12.22
2.	Date of typing & draft order placed before the Dictating Member	1.12.22
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	1.12.22
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	