

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

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

**ITA NO. 5674/MUM/2017 (A.Y: 2012-13)**

Jefferies LLC C/o. SRBC & Associates LLP 14 <sup>th</sup> Floor, The Ruby 29 Senapati Bapat Marg Dadar (W), Mumbai – 400028  <b>PAN: AACJ8881D</b> <b>(Appellant)</b>	v.	DCIT (IT)-3(1)(1) Room No. 1605, 16 <sup>th</sup> Floor Air India Building, Nariman Point Mumbai – 400 021  <b>(Respondent)</b>
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**ITA NO. 5675/MUM/2017 (A.Y: 2012-13)**

Jefferies International Limited C/o. SRBC & Associates LLP 14 <sup>th</sup> Floor, the Ruby 29 Senapati Bapat Marg Dadar (W), Mumbai – 400028  <b>PAN: AABCJ7041C</b> <b>(Appellant)</b>	v.	DCIT (IT)-3(1)(1) Room No. 1605, 16 <sup>th</sup> Floor Air India Building, Nariman Point Mumbai – 400 021  <b>(Respondent)</b>
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<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Nishant Thakkar, Shri Hiten Chande &amp; Ms. Jasmin Amalsadvala</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Soumendu Kumar Dash</b>
<b>Date of Hearing</b>	<b>:</b>	<b>03.03.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>28.03.2023</b>

## **ORDER**

### **PER S. RIFAUR RAHMAN (AM)**

1. These appeals are filed by different assessees of same group against separate orders of the Learned Commissioner of Income Tax-57, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 23.05.2017 and 30.04.2015 for the A.Y.2012-13.

2. Since the issues raised in both these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 5674/MUM/2017 for Assessment Year 2012-13 as a lead appeal.

3. Assessee has raised following identical grounds in its appeals, except for change in figures, grounds in ITA.No. 5674/Mum/2017 (A.Y.2012-13) are reproduced below: -

*"On the facts and circumstances of the case and in law; the learned AO/ learned CT(A) has:*

#### **Addition of administrative support charges as fees for technical services**

1. *erred in upholding the contention of the learned AO that administrative support services rendered by the Appellant to Jefferies India Private Limited ("JIPL") as 'fees for technical services' as per section 9(i)(vii) of the Act and therefore, taxing the administrative support charges amounting to Rs 7,142,498 in the hands of the Appellant;*

2. erred in upholding the administrative support services rendered by the Appellant to JIPL as 'fees for technical services/ included services which is taxable in India under Article 12 of the double taxation avoidance agreement between India and United States of America (Treaty)' on the basis that the Appellant 'makes available' technical knowledge, experience, skill, know-how, or process to JIPL;

3. erred in failing to appreciate that the administrative support services are routine in nature and none of the services provided by the Appellant have resulted in knowledge or know-how being transferred to JIPL which would enable JIPL to utilise the know-how on its own in the future without the Appellant's aid;

4. erred in upholding the conclusion of the learned AO that having regard to the fact that tax is deducted at source by JIPL, the only conclusion that can be drawn is that the fee for administrative services is fees for technical/ included services under Article 12 of the Treaty;

5. erred in incorrectly holding that the rate of tax applicable 'technical service fees' is 20%;

**Addition of reimbursement of expenses as fees for technical services**

6. erred in taxing reimbursement of expenses amounting to Rs.2,30,99,178 as income in the hands of the Appellant under section 2(24)(iva) of the Act;

7. erred in upholding that the reimbursement of expenses as 'fees for technical services' under section 9(i)(vii) of the Act read with Article 12(4) of the Treaty on the basis that the reimbursement of expenses was incidental to the administrative support services rendered by the Appellant to JIPL which was taxed as 'fees for technical services' under the Act and 'fees for included services' under the Treaty;

8. erred in concluding that the travelling expenses whether called receipts or reimbursement of expenses are one and the same thing and are classifiable as fees for technical services and taxable as such;

9. erred in upholding the conclusion of the learned AO that merely because taxes were deducted at source by JIPL on reimbursement of expenses, the same are taxable as 'fees for technical/ included services', without appreciating the fact that no taxes were deducted at source by JIPL on reimbursement of expenses;

**Interest under section 234A**

10. erred in levying interest under section 234A of the Act amounting to Rs 262,305;

**Interest under section 234B**

11. erred in levying interest under section 234B of the Act amounting to Rs 664,506;

**Penalty Proceedings**

12. erred in initiating penalty proceedings under section 271(1)(c) of the Act;

13. erred in initiating penalty proceedings under section 271(1)(c) of the Act on Rs 3,642,923 without appreciating the fact that the said amount was suo motu offered to tax by the Appellant in its return of income for the year under consideration;

14. erred in dismissing the ground raised by the Appellant in connection with initiation of penal proceedings under section 271BA of the Act without appreciating the fact that the Appellant had filed the accountant's report in Form 3CEB for the year under appeal vide submission dated 1 October 2014."

4. At the time of hearing, before us, Ld. AR has submitted the relevant facts and submitted as under: -

"1. The Appellant, now known as Jefferies LLC (formerly Jefferies & Co. Inc.), is a US Tax Resident.

2. The Appellant has entered into an intra-group agreement dated 20 April 2010 (see Page 51 of the Paperbook) inter alia with Jefferies India Pvt. Ltd. ("JIPL") under Clause 3 (see Page 52 of the Paperbook) read with Schedule A (see Page 58 of the Paperbook) whereof the

*Appellant provides administrative services covering various areas like Compliance Department, Finance Department, Human Resource Department, Information Technology Department, Internal Audit Department, Legal Department, Operation Department, Risk Department, Tax Department and Treasury Department. The aforesaid services are provided by the Appellant at cost and no mark-up is charged by the Appellant on the cost incurred for providing the aforesaid services.*

*3. For the year under consideration, the Petitioner filed return of income declaring total income of Rs. 36,42,923. During the year, the Appellant has received:*

*a. Rs. 71,42,948 from JIPL for providing administrative support services, and*

*b. Rs. 2,30,99,178 towards reimbursements of costs incurred by the Appellant on behalf of JIPL*

*The amount received by the Appellant for administrative services was claimed exempt under Article 12(4) of India-US DTAA since it did not make available technical knowledge, experience, skill, know-how, or processes and, the amount received towards the reimbursement of costs was claimed as not taxable since there was no element income in the same.*

*4. The return of income filed by the Appellant was selected for scrutiny under section 143(2) of the Act. The Assessing Officer passed an order dated 19 May 2015 under section 143(3) of the Act.*

*a. Insofar as the amount of Rs. 71,42,948 received by the Appellant for rendering the administrative support services, the Assessing Officer held that it is taxable under section 9(1)(vii) as well as under Article 12 of India-US DTAA as it makes available the technical knowledge, experience, skill, know-how, or processes. The operative portion of the order passed by the Assessing Officer is reproduced as under:*

*9.4.7. The Advisory/Support Services is stated to have been used by the Indian entity in the course of their normal business activities. The services rendered by the assessee company to the Indian company JIPL. are utilized by them for betterment and improvement of their business model and other practices which is ultimately reflected in the increase in profitability of JIPL. Thus, the business strategies, administrative and management support services of the assessee company is ultimately made use by the management for their administrative purposes for which they have paid*

*high service fees to them. Moreover, the employees of the JIPL are highly qualified. The said companies recruit the best talent available in the Indian market from the most premier of institutions and hence it would be impossible to imagine that the advisory services provided by the assessee company is not absorbed and utilised by them in the management of their projects. Thus, there is an element of 'make available' involved in whatever administrative/ advisory service that may have been received by JIPL.*

*9.5. Thus, the amount received of Rs. 71,42,498 by way of Administrative Support charges is treated as income of the assessee in the nature of Fees for Included Services and taxed accordingly."*

*b. Insofar as reimbursement of costs of Rs. 2,30,99,178 incurred on behalf of JIPL was held taxable as fees for technical services since these amounts were incurred by the Appellant to render the above referred administrative support services. The relevant portion of the order passed by the Assessing Officer is reproduced herewith:*

*10.1 The assessee has submitted that the expenses incurred by Jeffery LLC was on behalf of JIPL which was mainly incurred towards Bloomberg Finance L.P., Dow Jones & Company Inc., MERGERMARKET (US) LTD., Royale Logistics Ltd., Business Wire, Verizon Network Integration Corp., Universal E-Business Solutions, LLC. Chris Fowler Integration Corp., J2 Global Communications. Inc., Blue Matrix LLC. NYSE Market Inc., Penton Business Media. Inc., etc. These expenses have been paid via bank or wire transfer to third parties on behalf of JIPL and they have been reimbursed at Icost by JIPL to Jeffery LLC via wire transfer. Accordingly, this is a mere reimbursement of expenditure incurred by the assessee on behalf of JIPL*

*10.2. In this connection, the following analysis is made with respect to the chargeability of reimbursement of expenses. The non-resident assessee company, the service provider has provided service through third party to the Indian entities who are the service recipients. If the expenses were not met by the service recipient (SR), the expenses would have been met by the service provider. As a natural consequence the service provider might have charged the additional amount (which was to be met out for Expenses) from the SR. The expenses of the service provider which was to be met out by the service provider in the normal course of the business operation. So, what was paid by the SR for the services done by the service*

*provider is technical service fees payable as per the agreement plus the expenses met out by the SR.*

*10.2.1. It is also pertinent to note that the Fees for Included/Technical Services are taxed on the gross amount. That is why the taxation rate is lower when compared to the general rate of taxation. The fees for technical services are taxed at a lower rate (and on gross basis) only to take care of the expenses to be met in providing the technical services. Since the fees for technical services are taxed at gross basis no expenses can be allowed as deduction. The expenses met out by the SR are nothing but the expenses of the service provider in providing the services. Since the expenses cannot be allowed while taxing the fees for included services, the amount of Reimbursement also should be added with the fees for included services. Section 2(24)(iva) also consider these payments as income of the service provider."*

*5. The Appellant challenged the assessment order by filing an appeal before the Commissioner of Income-tax (Appeals) ["CIT(A)"]. In his order:*

*a. Insofar as the amount of Rs. 71,42,948 received by the Appellant for rendering the administrative support services, the CIT(A) (erroneously) placed reliance on the invoices of third parties produced to evidence cost-to-cost reimbursement of third-party costs and held that services shown in such invoices were utilised by the Appellant to in turn render "marketing and consultancy services" to JIPL and to further support his conclusion relied on Schedule B of the intra-group agreement dated 20 April 2010.*

*b. Insofar as reimbursement of costs of Rs. 2,30,99,178 incurred on behalf of JIPL was, the CIT(A) (erroneously) held expenses have been incurred by the Appellant on travelling of the employees who have travelled to India for providing consultancy services and therefore, JIPL. derived the benefits from their expertise, knowledge. Hence, the travelling expenses were incurred for rendering consultancy services and accordingly, the same is taxable as fees for technical services in India.*

**Submission of the Appellant:**

*Ground No. 1 to 5 Rs. 71,42,948 received by the Appellant for rendering the administrative support services*

6. At the outset the Appellant submits that the CIT(A) has made the following factually incorrect observations in his order:

a. In pages 28 to 36 containing his "Decision" at several places the CIT(A) has erroneously referred to Jefferies International Ltd. (JIL) (another group company) instead of the Appellant. During the hearing a copy of the CIT(A) order marking the wrong reference has been handed over.

b. The invoices tabulated on pages 30 32 and images of samples thereof extracted in the order are invoices of third parties showing costs incurred by the Appellant on behalf of JIPL which have been reimbursed. These bills are not for administrative support services rendered by the Appellant to services rendered under Clause 3. The bill raised by the Appellant for administrative support services rendered is at pages 61-62 of the Paperbook. That the bills referred to by the CIT(A) are third-party charges for rendering services to JIPL is further demonstrated if, as and by way of sample, the last 3 bills referred to by the CTT(A) in his order on Page 32 are seen:

i. Invoice dated 1 December 2011 (Page 400 of the paperbook) - this bill is raised by Glowpoint, Inc for providing and managing calling and video conferencing facilities for the Jefferies group, as a whole. The bill is for USD 18028.32 in aggregate, the cost reimbursed by JIPL (for its office at 2 North Avenue, Mumbai) to the Appellant is USD 2,078 which has been specified in the very bill itself (see page 403)

ii. Invoice dated 1 December 2011 (Page 460 of the paperbook) - this is the bill of Universal Business E-Solutions which provides high speed connectivity to the Jefferies group, as a whole. The bill itself specifies that Universal's charges for providing connectivity charges to JIPL for 2 lines 1500 USD each - (see page 461)

iii. Bills of Verizon Business (Page 480 of the paperbook)-this is a bill from Verizon for providing long-distance communication services to the Jefferies group, as a whole. The bill itself specifies that Verizon's charges for JIPL is 21462.84 USD-(see page 485)

c. The CIT(A) at page 33 of his order has observed that

"Now these expenses cannot by any stretch of imagination called administrative support services but will clearly fall within the domain of "marketing and consultancy services" as

*per the terms of the agreement and are fully covered by the definition of the term "technical service fees" within the meaning of term under section 9(1)(vii) of the I.T. Act 1961"*

*and in that regard places reliance on clauses Schedule A and B of the intra group agreement dated 20 April 2010. While the table reproduced on Page 33 is Schedule A which lists the administrative support services provided by the Appellant to JIPL, the portion under the table starting with clause (a) at the bottom of page 33 and ending on page 34 is a reproduction of Schedule B, provides a list of services provided by JIPL to the other group companies. Schedule B can be found at Page 60 of the paperbook and can be traced back to Clause 5 of the intra-group agreement dated 20 April 2010 which reads as under:*

*"For the purposes of this agreement, the marketing and consultancy services shall include, but are not limited to the following:*

*(a) the marketing of the corporate finance services provided by JIL, Jefco or JHKL, as the case may be, and the assistance to promote contact between JIL, Jefco or JHKL and existing and potential clients in India;*

*(b) the provision of an advisory service to JIL, Jefco or JHKL regarding any development within the relevant markets in India;*

*(c) liaising with clients and providing feedback to JIL, Jefco or JHKL regarding the provision of corporate finance services by JIL, Jefco or JHKL, as the case may be;*

*(d) providing assistance as necessary or requested in connection with obtaining and complying with any consents or approvals which may be required from governmental, regulatory or any other relevant authority to enable any of JIL, Jefco or JHKL to provide corporate finance services to clients in India;*

*(e) undertaking due diligence with respect to any potential client, or otherwise assisting JIL, Jefco or JHKL in the performance of any regulatory or legal requirement it has in India as specifically requested by JIL, Jefco or JHKL as the case may be;*

*(f) undertaking analysis, including the collection of information about market opportunities; and*

*(g) providing such other assistance as may be reasonably requested in writing by JIL, Jefco or JHKL from time to time...."*

*The CIT(A) under this factual and erroneous understanding concludes on page 35-Clause (C) as under: -*

*"As discussed in earlier paragraphs, the nature of the so called "administrative support services" rendered by assessee--JLLC to JIPL is that of consultancy services in respect of the marketing of products of JIL of rendering road shows in UK and giving further technical knowledge in the field of credit and criminal checks of various parties all over the world by engaging the services of "third parties" who had expertise in these fields and passing on these details and documents and advices to JIPL which could access it and use it for its business purposes. First of all these are not usual day to day services which are rendered by JIL which is itself an "investment banking firm" located in UK and even otherwise, these services are of specialized nature and can not by any stretch of imagination called 'routine' especially when data and information about clients and customers had to be accessed by engaging third party firms to collect, collate and provide this information to JIL which ultimately passed on the same to JIPL for its own use in India to meet with and comply with statutory requirements of India and even to meet its business goals. Moreover, the definition of "technical services fees" defined in section 9(U(vii) of the LT. Act 1961 is not restrictive and covers any managerial, technical or consultancy services (including the provision of services of technical or other personnel)". Therefore both these grounds of appeal number 3 and 4 and the subsidiary ground of appeal number 1,2 and 5 are hereby rejected."*

*d. It is evident from the above that:*

*i. Marketing and consultancy services are provided by JIPL to the group companies.*

*ii. Appellant does not provide any marketing or consultancy services.*

*iii. Appellant provides administrative support services listed in Schedule A.*

*7. Now adverting to whether the administrative services provided to JIPL in the areas of Finance, Human Resource, Treasury, Tax, Risk, Operations, Information Technology are taxable or not.*

*a. It is undisputed that the Appellant is governed by the provisions of the Indo US DTAA.*

*b. The Appellant submits that the administrative support services are not covered by Art.12(4) as they are not technical or consultancy services that make available technical knowledge, experience, skill,*

*know-how, or processes, or consist of the development and transfer of a technical plan or technical design.*

*c. These services are provided on a year-on-year basis and are repetitively required by JIPL. Which fact clearly demonstrates that that the services do not make available the technical knowledge otherwise, the same would not be paid repeatedly. The fees paid for administration services from A.Y. 2012-13 to 2021-22 is attached herewith as Annexure-1.*

*d. JIPL seeks these services from the Appellant as it does not have the requisite no. of employees who can carry out the aforesaid functions. This fact has also been found by the TPO in the assessment of JIPL while evaluating the nature of services which rendered by the Appellant to JIPL- relevant observation of the TPO from his order (see Page 34 of the paperbook relevant portion on Page 36) is as under:*

*7.2 The above said administrative services are rendered by the AEs to the entire group which also include provision of such services to JIPL. The services are rendered by the AES owing to the fact that JIPL does not have employees having appropriate experience in relation to departments such as human resource, legal, internal audit, administration etc. As such, the assessee has obtained services from its AEs who have responsible, qualified and experienced personnel in each of the respective departments and who are capable to provide such services owing to their experience. Consequently, the aforesaid process flow results in standardisation and avoid duplication of efforts at individual entity level and hence results in reduction of administrative and support costs for the business of JIPL*

*The above further shows that that no technical knowledge is made available to JIPL*

*e. Therefore, the Appellant submits that the amounts received by the Appellant from JIPL for rendering administrative support services is not taxable in India.*

*Reliance in this regard is placed on the following decisions:*

- (i). Everest Global Inc. vs. DDIT (136 taxmann.com 404) (Delhi) (Para 9.5)*
- (ii). Edenred Pte Ltd. vs. DDIT (118 taxmann.com 2) (Mum.) (Para 9)*
- (iii). Koninklijke Philips Electronics N.V. vs DCIT (99 taxmann.com 23) (Kol.) (Para 34)*

- (iv). *GE Energy Management Services Inc. vs. ADIT (Para 135 taxmann.com 173) (Delhi) (Para 29-33)*
- (v). *Nielson Company (US) LLC vs DCIT (108 taxmann.com 203) (Mum.) (Para 18-20)*
- (vi). *Outotec Oyj vs. DDIT (76 taxmann.com 33) (Kol.) (Para 8.5-8.8)*
- (vii). *CIT vs. De Beers India Minerals Pvt. Ltd. (346 ITR 467) (Kar.) (Para 13 and 14)*
- (viii). *CIT vs. Guy Carpenter & Co. Ltd. (346 ITR 504) (Del.) (Para 9-12)*

8. Without prejudice to the foregoing and in the alternative, it is submitted that the amount of Rs. 71,42,398 received by the Appellant is on a cost-to-cost basis and hence there is no income element and is therefore not taxable under section 9(1)(vii) of the Act. This is also confirmed by the order passed by CIT(A) in case of JIPL wherein he has found that the amount of Rs. 71,42,398 is in the nature of cost allocation and the same was allocated based on certain allocation keys, which have been agreed upon by the CBDT in the APA executed with JIPL applicable for A.Y. 2018-19 to 2022-23 and AY 2014-15 to 2017-18 (rollback years). Therefore, the amount of Rs. 71,42,398 is not taxable being reimbursement of cost incurred. In this regard, the reliance is placed on the following judgments wherein it has been held that reimbursement of cost is not taxable as fees for technical services since there is no element of income in the same:

- a. *DIT vs. AP Moller Maersk (392 ITR 116) (SC) (Para 11)*
- b. *DIT vs. Krupp Udhe GMBH (354 ITR 173) (Bom.) (Para 6 and 7)*
- c. *CIT vs. Goldman Sachs India Finance Pvt. Ltd. (Bom.) (Para 3)*
- d. *Siemens Aktiengesellschaft (310 ITR 320) (Bom.) (Para 33)*

**Ground No. 6 to 9-reimbursement of costs of Rs. 2,30,99,178 incurred on behalf of JIPL**

9. At the outset the Appellant submits that the CIT(A) has made the following factually incorrect observations in his order: a. The CIT(A) in Para 5 on Page 36 of the order recorded as under:

*"Nature of these expenses which were reimbursed by JIPI to the assessee JLLC-USA were towards "travelling and hotel expenses, telecom expenses, placement charges, meal expenses, mail and freight expenses, etc. of the executives of*

*the JIL who travelled from UK to India for consultancy purposes with their Indian counterparts and thus JIPL derived benefits of their expertise, knowledge and expertise. JIPL was billed for their services separately, however, the hotel and travelling expenses of Rs. 7,6,27,033 were billed separately to JIPL by JIL and reimbursed separately. In nutshell, JIPL paid JLLC for the "hotel and travelling expenses" of Rs. 2,30,99,178" for the travelling expenses of the executives who rendered consultancy services in connection with the furthering of business of JIPL in India. Hence these expenses were incidental to the rendering of services by JIL to JIPL in India and hence are also classifiable under the category of "technical service fees" defined in section 9(D(vii) of the I.T. Act 1961 read with article 12(4) of the DTAA between India and USA. In nutshell, the travelling expenses of the consultants of JIL who visited India in connection with rendering managerial and consulting services to JIPL are in the nature of "technical service fees" and hence liable to taxation as such. It is also clear that "whether these expenses are called receipts OR reimbursement of expenses one and the same thing and are classifiable as "technical service fees" and are taxable as such. It may be mentioned here that ultimately, "these travelling expenses have been taxed as technical service fees"."*

*b. The above is factually incorrect. Apart from the erroneous reference to JIL in the above paragraph which have been pointed out by the Appellant by handing over a copy of the CIT(A) order with the corrections during the course of the hearing the following are the other errors:*

*i. The amount of 76,27,033 is incorrect. The total amount received by way of reimbursement is Rs. 2,30,99,178.*

*ii. The nature of services rendered by third parties is as noted in paragraph*

*10.1 of the Assessment Order which reads as under:*

*10.1 The assessee has submitted that the expenses incurred by Jeffery LLC was on behalf of JIPL which was mainly incurred towards Bloomberg Finance L..P.. Dow Jones & Company Inc., MERGERMARKET (US) LTD., Royale Logistics Ltd., Business Wire, Verizon Network Integration Corp... Universal E-Business Solutions. LLC. Chris Fowler Integration Corp., J2 Global Communications. Inc.. Blue Matrix LLC. NYSE Market Inc., Penton Business Media. Inc., etc. These expenses have been paid via bank or wire transfer to third*

*parties on behalf of JIPL and they have been reimbursed a cost by JIPL to Jeffery LLC via wire transfer Accordingly, this is a mere reimbursement of expenditure incurred by the assessee on behalf of JIPL"*

*iii. It is submitted that the above submission has not been disputed by the AO after verifying the third-party bills submitted by the Appellant Para 10.1 of the assessment order.*

*iv. It is further submitted that the CIT(A) himself on Pg. 30 to 32 of its order has reproduced the full details of the third-party invoices totalling to Rs. 2,30,99.178 therefore, the aforesaid finding of the CIT(A) is factually incorrect and contrary to evidence on record. This is further borne out form the bills reproduced by the CIT(A) on pages 30 to 32 and the images of sample invoices extracted - please see paragraph 6(b).*

*10. The Appellant submits that it is not in dispute that the entire amount of Rs. 2,30,99.178 received from JIPL was incurred towards subscription charges/license fees for using a database, communication charges for leased line, etc. is a reimbursement of actual cost for services rendered by third parties to JIPL. The Appellant incurs the expenses for all its group companies at a central level and thereafter the same is recovered based on the actual usage from the group companies. The Appellant's submission that the entire amount of Rs. 2,30,99,178 is a recovery of cost also echoed by the by the TPO of JIPL in his order submitted at Page 34 of the Paperbook wherein on page 2 thereof (viz. Page 35 of the Paperbook) the TPO in last paragraph records a finding that the amount paid by JIPL to the Appellant has been verified with back-to-back invoices and is found to be at cost. In this regard, the reliance is placed on the following judgments wherein it has been held that reimbursement of cost is not taxable as fees for technical services since there is no element of income in the same:*

- a. DIT vs. AP Moller Maersk (392 ITR 116) (SC) (Para 11)*
- b. DIT vs. Krupp Udhe GMBH (354 ITR 173) (Bom.) (Para 6 and 7)*
- c. CIT vs. Goldman Sachs India Finance Pvt. Ltd. (Bom.) (Para 3)*
- d. Siemens Akstiongesellschaft (310 ITR 320) (Bom.) (Para 33)*

*11. Without prejudice to the foregoing it is submitted that the reimbursement of expenses of Rs. 2,30,99,178 cannot be brought to tax as fees for technical services since the same is incurred towards providing a standard facility without involving any human intervention*

*and therefore, it is not in the nature of technical services contemplated under section 9(1)(vii) of the Act. This is evident from the various third party invoices reproduced by the CIT(A) in its order which shows that the amount of Rs. 2,30,99,178 was incurred towards use of Factiva.com database, User wise fees for Thomson Reuters market database, License fees for Blue Matrix portal, Communication charges for Glow point, etc.*

*In this regard, the Appellant relies on the Judgments wherein it is held that the charges paid for availing a standard facility cannot be regarded as fees for technical services as there is no human intervention which is sine qua non for taxability under section 9(1)(vii) of the Act.*

*a. Kotak Securities Ltd. vs CIT (383 ITR 1) (SC) (Para 8 and 9)*

*b. Elsevier Information Systems GMBH vs. DCIT (106 taxmann.com 401) (Mum.) (Para 17)*

*c. Kitara Capital Pvt. Ltd. vs. ITO (ITA No. 130/M/2014) (Para 10)*

*12. It is further submitted that the standard facility provided by the third parties do not make available any technical knowledge, experience, skill, know-how, or processes within the meaning of Article -12 of India-US DTAA therefore, the same is also not taxable by virtue of the provisions of the DTAA. In this regard, the Appellant relies on the judgments referred to in Para 11."*

**5.** On the other hand, Ld DR briefly submitted the facts and referred to Page No. 33 of appellate order. By referring to the above findings of Ld.CIT(A), he submitted that the services rendered by the assessee denotes that the administrative services and other services offered by the assessee are regularly utilized by the JIPL and it shows that the services are make available to the JIPL without any intervention by the assessee. Further he supported the findings of Ld.CIT(A) that the expenditures of other agencies are billed back to back to JIPL. He also referred to findings

of Assessing Officer in Para No. 9.4.1 of the assessment order. He relied on the decision of Hon'ble AP High Court in the case of Clouth Gummiwerke Aktiengesellschaft (238 ITR 861) and decision of Hon'ble Kerala High Court in the case of Cochin Refineries v. CIT (222 ITR 354).

**6.** Considered the rival submissions and material placed on record. We observe from the record that the principal activity of the assessee is to provide merchant banking and investment advisory services to investors, corporates and associated entities and stock broking services to domestic and foreign institutional investors. The Jefferies Group Inc. and its subsidiaries operate as a global full-service, integrated securities and investment banking firm. The group provide investors fundamental research and trade execution in equity, equity linked and fixed income securities including investment grade corporate bonds, high yield and distressed securities, government and agency securities, markets and asset backed securities, municipal securities, bank loans, leveraged loans and emerging markets depths as well as derivatives and engage in securities financing and commodities derivative trading activities. The group offers companies capital markets merger and acquisition, restructuring and other financial advisory services. The group also

provides certain assets management services and products to institutions and other investors.

**7.** We observe from the record that the Jefferies Group Inc functions in such a way that services of the intragroup companies are shared, executed and utilised by all the group companies in order to service the targeted customers, in this case customers in Indian territory. Based on the above, the assessee has entered intragroup agreement for services between Jefferies India Private Limited (JIPL), Jefferies International Ltd (assessee), Jefferies & Co (Jefco) and Jefferies Hong Kong Ltd (JHKL). The latest agreement submitted before us, which is made effective as of April 20, 2010. As per the terms and condition mentioned in the above said intragroup agreement, we observe that the intragroup companies i.e. JIL, Jefco and JHKL shall wishes to provide one or more of the administrative services to JIPL as set out in schedule A to this agreement. The JIPL is willing to identify potential clients for each of JIL, Jefro and JHKL for such corporate finance services as each of those intragroup companies mentioned above (in technical terms, provide marketing services to its group concerns) and in turn the group companies (JLLC, Jefco and JHKL) may engage in and to provide various administrative, day to day management and similar consulting functions in relation thereto.

The fact that even the assessing officer has confirmed that the assessee has provided the administrative services to the JIPL and he is of the opinion that the services are received by the Indian entity in the course of their normal business activities and it has benefitted by employing best talent in the business to improve their business and their project. Therefore, it is continuous in nature, hence it amounts to make available. It is fact on record that the assessing officer is not disputing the fact that the assessee has provided the administrative and day to day management services to the JIPL.

**8.** We observe, as per clause 4 of the agreement, for each of JIPL client engagement, each of JIL, JEFKO and JHKL may provide JIPL with access to its selling, distribution and settlements abilities to assist JIPL in the identification of investors to effect the completion of capital markets and private placement fund raising engagements i.e. the distribution services. The distribution services are in relation to Jefferies Investment Banking activity and shall include the deployment by above said intra-group companies, as the case may be, of its personal to secure investors in a fundraising engagement by JIPL and if requested by JIPL may provide settlements services to it by the above said intra-group companies as part of its distribution services.

**9.** With regard to marketing and consultancy services, JIPL shall provide certain marketing and consultancy services to each of JIL, Jefco and JHKL as set out in schedule B to the intra group agreement in relation to Jefferies Investment banking activity. Here the schedule B plays an important role in understanding the real activity carried on by the JIPL in the Indian territory and market. We observe from the terms mentioned in the schedule B are:

- a. JIPL primary activity is to market the corporate finance services provided by JIL, Jefco and JHKL and assistance to promote contact between JIL, Jefco and JHKL and existing as well as potential clients in India.
- b. Provision of an advisory services to above mentioned intra group companies regarding development within the markets in India.
- c. Liaising and providing feedback
- d. Providing assistance, consents or approvals which may be required from regulator agencies to enable any services offered by the intra group companies
- e. Undertaking due diligence with respect to potential clients or assisting the intra group companies in their performance
- f. Providing other assistance as per requirements to the intra group.

**10.** From the above, it is clear that JIPL scope of work and activities are limited to marketing and introduction of clients to intra group in order to

facilitate the group object of providing investment banking activities. We also observe from the observation of TPO in the case of JIPL as well as the AR of the assessee submitted itself in para no 7(d) in the submissions made before us that JIPL does not have the requisite no of employees who can carry out the aforesaid functions. Therefore, all the services relating to investment banking activities are carried out by the intra group companies through the intermediary company i.e., JIPL as per the requirements of customers/clients in India.

**11.** From the above, we observe that the assessee provides the administrative and day to day management services to the JIPL, this fact is confirmed by the observation and relevant material placed before us that the Indian entity JIPL does not have any support team and administrative set up to carry out the business independently. All the support services are provided by the intra-group entities and particularly, the administrative and day to day management services are provided by the assessee. The Ld.CIT(A) has confused with the two schedules viz., Schedule A and Schedule B and came to wrong conclusion by observing the bill copies submitted before him for reimbursement of certain charges for which the assessee has outsourced certain services for the whole group and whatever the services are utilized by the assessee are alone

charged to the JIPL. Therefore, in our considered view, the services provided by the assessee in order to support and provide the administrative and day to day management services to the JIPL are in the nature of group support services. These services are not to fall under the category of FIS or FTS. This is supported by the decision of ITAT Delhi bench in the case of Everest Global Inc. v. DDIT (2022) 136 taxmann.com 404, it is held as under: -

*"9.3 We have carefully considered the rival submissions and perused the facts on record. Article 12(4)(b) of the India-USA DTAA provides the meaning of the term FIS as under:*

*"4. For purposes of this Article, "fees for included services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:*

*.....*

*(b) make available technical knowledge, experience, skill, knowhow, or processes, or consist of the development and transfer of a technical plan or technical design."*

*9.4 Now coming to the facts of the present appeal, the assessee has rendered management support services of the description listed at Annexure C of Master Support Services Agreement to Everest India on independent and non-exclusive basis. These services are centralized services which are being provided to all group entities in order to maintain uniformity and rationalize and standardize the practices across global location. No element of profit is earned by the assessee in course of rendering these services. These services include-*

*1. Management Oversight*

- a Strategic direction*
- b Contract review*
- c Financial and legal guidance*

- d *Client Relationship Management*
- e *Insurance*
- f *Peer Review*

## 2. Marketing

- a *Brand Awareness*
- b *Marketplace analysis*
- c *Competitive analysis*
- d *Webinars*
- e *Leadership forum*
- f *Speaking engagements*

## 3. Finance and Accounting

- a *Payroll*
- b *General ledger*
- c *Employee time and expense*
- d *Revenue and expense accruals*
- e *Payables*
- f *Accounts Receivables*
- g *Cash Management*
- h *Financial Reporting*
- i *Budgeting*
- j *Line of credit access management*

## 4. Human Resource management

- a *Recruiting*
- b *Compensation*
- c *Benefits administration*
- d *Legal*

## 5. Information Technology

- a *Laptop Maintenance*
- b *Help desk support*
- c *Desk side support*
- d *User Id and password*
- e *Remote access*
- f *System/antivirus*
- g *Intranet*
- h *Inter site communication links, email, voice mail etc*
- i *Standard computer platform*
- j *New hardware and software*
- k *Training on IT resources*
- l *Licenses and compliance*
- m *Computer and phone networks*

## 6. Training

- a *Global training conferences*
- b *Monthly training sessions*
- c *Ad hoc training as required*

## 7. Legal

- a *Contract review*
- b *Litigation management*
- c *Other legal services as required*

*9.5 We agree with the contention of the assessee that managerial services are outside the scope of the meaning of FIS under Article 12(4) of the IndiaUSA DTAA. Wherever the intention of the legislature is to include managerial services within the scope of FTS/ FIS, the same has been expressly mentioned therein. This contention of the assessee finds support by the jurisdictional Delhi Court judgment in the case of Steria (supra). The relevant para of the judgment is reproduced below.*

*19. The next question that arises is concerning to extent to which the benefit under the India-UK DTAA can be made available to the Petitioner. As already noticed, the definition of "fee for technical services" occurring in Article 13(4) of the Indo-UK DTAA clearly excludes managerial services. What is being provided by Steria France to the Petitioner in terms of the Management Services Agreement is managerial services. It is plain that once the expression 'managerial services' is outside the ambit of 'fee for technical services', then the question of the Petitioner having to deduct tax at source from payment for the managerial services, would not arise. It is, therefore, not necessary for the Court to further examine the second part of the definition, viz., whether any of the services envisaged under Article 13(4) of the Indo-UK DTAA are "made available" to the Petitioner by the DTAA with France."*

*9.6. The assessee's case also finds support from the MOU annexed to the India-USA DTAA explaining the FIS wherein it is clarified that clause 4(b) of Article 12 excludes any service that does not make technology available to the person acquiring the service.*

*"Memorandum of Understanding (MOU) annexed to the India-USA DTAA dated 15.05.1989 concerning FIS states as under:*

*Article 12 includes only certain technical and consultancy services. But technical services, we mean in this context services requiring expertise in a technology. By consultancy*

*services, we mean in this context advisory services. The categories of technical and consultancy services are to some extent overlapping because a consultancy service could also be a technical service. However, the category of consultancy services also includes an advisory service, whether or not expertise in a technology is required to perform it.*

*Under paragraph 4, technical and consultancy services are considered included services only to the following extent: (1) as described in paragraph 4(a), if they are ancillary and subsidiary to the application or enjoyment of a right, property or information for which a royalty payment is made; or (2) as described in paragraph 4(b), if they make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design. Thus, under paragraph 4(b), consultancy services which are not of a technical nature cannot be included services. {emphasis supplied}*

#### *Paragraph 4(b)*

*Paragraph 4(b) of Article 12 refers to technical or consultancy services that make available to the person acquiring the services, technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design to such person. (For this purpose, the person acquiring the service shall be deemed to include an agent, nominee, or transferee of such person). This category is narrower than the category described in paragraph 4(a) because it excludes any service that does not make technology available to the person acquiring the service. Generally speaking, technology will be considered "made available" when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service may require technical input by the person providing the service does not per se mean that technical knowledge, skills, etc., are made available to the person purchasing the service, within the meaning of paragraph 4(b). Similarly, the use of a product which embodies technology shall not per se be considered to make the technology available.*

*{emphasis supplied}*

*Typical categories of services that generally involve either the development and transfer of technical plans or technical designs, or making technology available as described in paragraph 4(b), include :*

1. *Engineering services (including the sub-categories of bioengineering and aeronautical, agricultural, ceramics, chemical, civil, electrical, mechanical, metallurgical, and industrial engineering) ;*
2. *Architectural services ; and*
3. *Computer software development.*

*Under paragraph 4(b), technical and consultancy services could make technology available in a variety of settings, activities and industries. Such services may, for examples, relate to any of the following areas :*

1. *Bio-technical services ;*
2. *Food processing ;*
3. *Environmental and ecological services ;*
4. *Communication through satellite or otherwise ;*
5. *Energy conservation ;*
6. *Exploration or exploitation of mineral oil or natural gas;*
7. *Geological surveys ;*
8. *Scientific services ; and*
9. *Technical training.”*

*From the above, it is evident that none of the services provided by the assessee are in the nature of FIS.*

*9.7 Further, considering the services provided by the assessee (listed above), in our view, these are not technical services nor do they require any technological knowledge, skill or experience. There is no transfer of technology involved. Everest India is not enabled to apply any technology on its own without recourse to the service provider i.e. the assessee. These services have not resulted in any enduring benefit to Everest India by way of any knowledge which could be applied by it on its own in future without depending on the assessee. These are general managerial services which are received by the assessee on recurring basis. Therefore, the test laid down under Article 12(4)(b), in our considered view, are not satisfied in the present factual scenario.*

9.8 Thus, management fee received by the assessee from Everest India is not taxable as FIS under the provisions of India-USA DTAA. Accordingly, this ground is allowed in favour of the assessee."

**12.** Further, the coordinate bench decided similar issues in the case of Edenred Pte Ltd v. DDIT [2020] 118 taxmann.com 2 (Mumbai – Trib.) and held as under: -

"9. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

We find that the services provided under the management agreement broadly include (i) consultancy services to support the sales activities of Surf Gold, (ii) legal services, (iii) financial advisory services and (iv) human resource assistance. There is no dispute here that under the provisions of section 9(1)(vii) of the Act, rendering of management services will be taxable as FTS. However, Edenred, by virtue of section 90(2) of the Act, is eligible to rely on the provisions of the India-Singapore DTAA, should the same be more beneficial than the provisions of the Act. In this regard, we fruitfully rely on the judgment of the Hon'ble Delhi High Court in the case of New Skies Satellite BV & Ors (ITA No. 473/2012) wherein it is held that provisions of DTAA shall prevail over the provisions of the Act, if they more beneficial.

At this moment, we refer to Article 12(4) of the India-Singapore DTAA which explains the expression 'make available' as under:

"Article 12(4):

The term "fees for technical services" as used in this Article means payments of any kind to any person in consideration for services of a managerial, technical or consultancy nature (including the provision of such services through 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, which enables the person acquiring the services to apply the technology contained therein; or
- c consist of the development and transfer of a technical plan or technical design, but excludes any service that does not

*enable the person acquiring the service to apply the technology contained therein."*

*Thus as per the India-Singapore DTAA, the services in the nature of managerial, technical or consultancy nature are taxable as FTS if such services are 'made available' to the service recipient.*

*We find that in the instant case, the management services are provided only to support SurfGold in carrying on its business efficiently and running the business in line with the business model, policies and best practices followed by the Edenred group. These services do not make available any technical knowledge, skill, knowhow or processes to SurfGold.*

*9.1 Now we discuss the case laws relied on both sides.*

*We begin with the reliance placed by the Ld. counsel. In the case of De Beers Mineral (P.) Ltd., the Hon'ble Karnataka High Court has observed as under :*

*"The technical or consultancy services rendered should be aimed at and result in transmitting of technical knowledge etc., so that the payer of the service could derive an enduring benefit and utilize the knowledge or know-how on his own in future without the aid of the service provider. In other words, the technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without depending on the provider."*

*In the case of Intertek Services (307 ITR 418), the AAR has observed on the term 'make available' as under :*

*"By making available the technical skills or know-how, the recipient of service will get equipped with that knowledge or expertise and be able to make use of it in future, independent of the service provider. In other words, to fit into the terminology 'make available', the technical knowledge, skills etc. must remain with the person receiving the services even after the particular contract comes to an end. The services offered may be the product of intense technological effort and lot of technical knowledge and experience of the service provider would have gone into it. But, that is not enough to fall within the description of services which make available the technical knowledge, etc. The technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in future without depending on the provider."*

*In the case of M/s Bharati Axa General Insurance Co. Ltd., the AAR has ruled as under :*

*"9. The definition of FTS as contained in clause (b) of Article 12.4 is explicitly designed to restrict the scope and ambit of the technical and consultancy services. Even if we proceed on the basis that some of the services have the flavour of imparting technical knowledge and experience to the recipient of service, the further question is whether such provision of services enables the person acquiring the services to apply the technology contained therein. This test specifically laid down in clause (b), in our view, is not satisfied and the legal position clarified by this Authority while interpreting more or less similar Treaty provisions applies with greater force to the present case in view of the narrow language employed in the India-Singapore DTAA.*

*Providing comments and suggestions after reviewing the strategies and plans developed by the Applicant, giving suggestions to the Applicant to improve the product developed by it so as to bring it in line with the common practices followed by other AXA entities across the globe, providing HR support assistance, assisting the Applicant in choosing cost effective re-insurance partners, reviewing the actuarial methodologies developed by the Applicant and providing suggestions and inputs to achieve standard actuarial practices and processing guidelines in connection with the settlement of claims, marketing and risk analysis, fall short of the requirements laid down in the definition of fees for technical services in DTAA between India and Singapore. It will be too much to say that by providing such services (assuming they are technical or consultancy services), the Applicant receiving the services is enabled to apply the technology contained therein i.e. the technology, knowledge, skills, etc. possessed by the service provider or technical plan developed by the service provider. We do not find anything in the IT support services that answer the description of technical services as defined in the Treaty."*

9.2 Then we turn to the case laws relied on by the Ld. DR. in US Technology Resources Pvt. Ltd. (*supra*), in terms of management service agreement between the assessee and the USA company, the latter provides highly technical services which are used by the assessee for making managerial decision, financial decision, risk management decision etc. The service of technical input, advice, expertise etc. rendered by the USA company are technical in nature as provided in clause 4(b) of the Article 12 of the DTAA. It is found that this case is reversed by the Hon'ble Kerala High Court in 97

*taxmann.com 642 dated 09.08.2018, wherein it is held that fees for management services received by US company would not be taxable in India as there is no transfer of technical knowledge by US company to Indian company.*

*In Shell India Markets (P.) Ltd. (supra), the applicant is an Indian company, it has a network of retail fuel stations in India. SIPCL is a group company of assessee incorporated in UK. It is in the business of providing consultancy services to various group companies. The applicant has entered into Cost Contribution Agreement (CCA) with SIPCL for provisions of General Business Support Services (BSS). While providing General BSS, SIPCL works closely with the employees of the applicant and supports/advices them. Thus, General BSS is made available to the applicant. However, we find that subsequently, after considering the decision in the case of Shell India (supra), the Mumbai ITAT in the case of Linklaters LLP (ITA No. 1690/Mum/2015) dated 31.01.2017 held that from none of legal advisory services it can be said that technical knowledge, skill, experience, knowhow or process remained with the clients to whom services were rendered by the assessee, even after the rendition of services was completed and agreement came to an end. These services were of purely legal advisory nature; it cannot be said that recipient of the services was in a position to duplicate similar skill or technology or techniques in future without the aid or assistance of the assessee for carrying out similar assignments.*

*In the case of Perfetti Van Melle Holdings BV (supra), the applicant is a company based in Netherlands and it is in the business of manufacture and sale of sugar confectionary and gun. It also provides operational and other support services for the benefit of companies of Perfetti group situated in various countries. It has entered into a service agreement with the group company (Perfetti India). The AAR held that when the expertise in running the industry run by the group is provided to the Indian entity in the group to be applied in running the business, the employees of the Indian entity get equipped to carry on that business model on their own without reference to service provider, when the service agreement comes to an end. It is not as if for making available, the recipient must also be conveyed specially the right to continue the practice put into effect and adopted under the service agreement on its expiry. It is found that this case is reversed and set aside for fresh adjudication by the Hon'ble Delhi High Court in 52 taxmann.com 161 dated 30.09.2014 and hence cannot be made applicable.*

*9.3 We find that in view of the factual matrix delineated at para 9 above, the case laws narrated at para 9.1 hereinbefore i.e. De Beers Mineral (P.) Ltd; Intertek Services; M/s Bharati Axa General Insurance Co. Ltd. are applicable to the instant case. Therefore, we delete the addition of Rs.73,61,951/- made by the AO towards management services fees and allow the 3<sup>rd</sup> ground of appeal.”*

**13.** From the above discussions and case law, the services provided by the group entities or holding company to its subsidiaries as support services to run their business effectively will not be considered as FTS or FIS under the treaty and these services does not amount to make available technical or skill or expertise while providing these services. Therefore, in our considered view, the services provided by the assessee to its subsidiaries are only to support to function the administration and day to day management of JIPL considering the fact that JIPL does not have any infrastructure to carry out any administration and day to day management. These facts are confirmed by the lower authorities and also facts on record. Therefore, these services are outside the ambit of FIS and FTS. Hence we are incline to allow the grounds raised by the assessee.

**14.** Coming to the next issue of reimbursement of expenses, the assessee has raised ground numbers 6 to 9. Ld AR has brought to our notice various third party invoices which are for the services rendered to

JIPL and the assessee has reimbursed the same without their being any mark up. It was submitted that the expenses were incurred by the assessee on behalf of the JIPL, which are towards Bloomberg Finance LLC, Dow Jones & Company Inc, Merger Market US Ltd, Royale Logistics Ltd, Business Wire, Verizon Network Integration Corp, Universal E Business Solutions LLC, Chris Fowler Integration Corp, J2 Global Communications Inc etc., These expenses are clearly certain services required by the JIPL and we have already indicated in the previous paragraph that the JIPL does have any administrative office, all the necessity day to day managements are controlled thru the Holding Company. Accordingly, the assessee arranged the various services and all these services are utilized by JIPL and these expenses were reimbursed by JIPL to the assessee and also it is brought to our notice that these are reimbursed by JIPL without any mark up, it is settled position that reimbursement of expenses at cost is not taxable as fees for technical services since there is no element of income attached to the transaction. The Hon'ble Supreme Court held in the case of DIT v. AP Moller Maersk (392 ITR 116) SC as under: -

*"11. Aforesaid are the findings of facts. It is clearly held that no technical services are provided by the assessee to the agents. Once these are accepted, by no stretch of imagination, payments made by the agents can be treated as fee for technical service. It is in*

*the nature of reimbursement of cost whereby the three agents paid their proportionate share of the expenses incurred on these said systems and for maintaining those systems. It is re-emphasised that neither the AO nor the CIT (A) has stated that there was any profit element embedded in the payments received by the assessee from its agents in India. Record shows that the assessee had given the calculations of the total costs and pro-rata division thereof among the agents for reimbursement. Not only that, the assessee have even submitted before the Transfer Pricing Officer that these payments were reimbursement in the hands of the assessee and the reimbursement was accepted as such at arm's length. Once the character of the payment is found to be in the nature of reimbursement of the expenses, it cannot be income chargeable to tax."*

**15.** Further the services provided by the third party through the holding company do not allow the make available any technical knowledge, skill, know how or processes to the JIPL or to the assessee within the meaning of Article 12 of Treaty between India – US. Therefore, even in this count, the reimbursement of expenses outside the tax net in the source country. Accordingly, the grounds raised by the assessee are allowed.

**16.** With regard to Ground Nos. 10 and 11, which are consequential in nature, hence dismissed. With regard to Ground Nos. 12, 13 and 14 these grounds are premature, hence dismissed.

**17.** In the result, appeal filed by the assessee is partly allowed.

**ITA.No. 5275/MUM/2017 (A.Y. 2012-13)**

**18.** Coming to the appeal in the case of M/s. Jefferies International Limited in ITA.No. 5675/Mum/2017 for the A.Y. 2012-14, since facts in this appeal are mutatis mutandis to the case of M/s. Jefferies LLC., for the A.Y. 2012-13, therefore the decision taken in M/s. Jefferies LLC., for the A.Y. 2012-13 is applicable mutatis mutandis to this appeal also. Accordingly, the appeal filed by the assessee is partly allowed.

**19.** In the result, both the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 28<sup>th</sup> March, 2023.

Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 28.03.2023  
Giridhar, Sr.PS

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

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER  
(Asstt. Registrar)  
**ITAT, Mum**