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

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA Nos. 1928 & 1929/Mum/2022
(A.Ys. 2015-16 & 2016-17)

Deputy Commissioner of Income Tax (IT)-4(2)(2) Room No. 1604, 16th Floor, Air India Building, Nariman Point, Mumbai – 400 021	Vs.	Sun Life Assurance Company of Canada, 150 King Street West, Ontario Toronto M5H1J9 Canada C/o Ernst & Young LLP, Golf View Corporate Tower-B, Sector Road, Gurugram-122002 Haryana, India-122002
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFCS5993L		
Appellant	..	Respondent

Appellant by :	Soumendu Kumar Das
Respondent by :	P.J. Pardiwala & Hiten Chande

Date of Hearing	15.06.2023
Date of Pronouncement	30.06.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

These two appeals filed by the revenue are directed against the different order of CIT(A)-58, Mumbai, for assessment year 2015-16 & 2016-17. Since common issue on identical facts are involved in these appeals, therefore, for the sake of convenience both these appeals are adjudicated together by taking ITA No. 1929/Mum/2022 as a lead case and its finding will be applied mutatis mutandis to the other appeal.

ITA No.1929/Mum/2022

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was correct in holding that there was distributor and end

user relationship between assessee and Sun Life India for use or right to use any process (software and networking facilities) despite the fact that the software (licenses) were not transferred by the assessee to Sun Life India and the ownership of licenses of the software remained with the assessee.

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was correct in holding that the payments received by the assessee as corporate charges cannot be treated as royalty under Article 12(4) of the India-Canada DTAA when as per the facts of the case, the said payments fall within the ambit of royalty as defined in the Income-tax Act, 1961 as well as the India Canada DTAA?"*

3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in law in holding that for determining the nature of the payments received by the assessee for Consulting and support services as "Fee for Included Services" (falling under para- 4(a) of India-Canada DTAA) related to the property given for use or right to use to Sun Life India, there is requirement of fulfillment of 'make available' clause also.?*

4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in law in holding that reimbursements received by the assessee in addition to the other fees (Royalty & FIS) are also not chargeable to tax under Article 12 of DTAA?*

5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deciding the same questions of law in assessee's favour ignoring the fact that the same questions are pending before the Hon'ble AAR in the application filed by the assessee u/s 245Q(1) of the IT Act?"*

2. Fact in brief is that assessee is a tax resident of Canada. It is a diversified financial services company providing savings, retirements and pension and insurance product to individual and groups in Canada, US, UK and Asia. The assessee is a 100% subsidiary of Sun Life Financial Inc. It has a wholly owned subsidiary company in India Sun Life India Service Centre Pvt. Ltd. referred to as 'SLI' or Sun Life India. During the year under consideration the assesse filed its original return of income on 20.11.2015 declaring total income of Rs.15,46,31,400/-. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 19.09.2017.

3. During the course of assessment proceedings the AO noticed that during the year the assessee has earned revenue of Rs.15,46,31,400/-

as corporate service fees from SLI. The SLI has also deducted TDS of Rs.234,73,700/- on the aforesaid amount paid to the assessee. The assessee was asked to explain why the corporate service fees has not been offered to tax as FIS under the DTAA. The assessee explained that assessee provide services to Sun Life Group companies (including Sun Life India (either with the help of its own resources or with the help of third party service provider under the global arrangement. The assessee cross charges (corporate charges) these costs to various entities of the group (including Sun Life India) which are the beneficiary of such services without marking up the cost. The assessee also explain that it was not having any permanent establishment (PE) in India in terms of Article 5 of the DTAA between India & Canada. The assesse also referred Master Service Agreement (MSA) dated 20.02.2006 and submitted that assesse provides following services to Sun Life India from outside India.

"1.1 Consulting services:- which includes business analysis, application development and testing for IT Solutions;

The assessec has employed certain Information Technology (IT) consultants/contractors and as aforesaid also relies on support from third-party IT consulting firms for its IT performance consultancy requirement. The asséssee helps in troubleshooting IT issues which cannot be locally resolved by Sun Life India.

- *Network connection Provision of shared WAN infrastructure and inter connecting offices which includes troubleshooting, Firewalls/IDS, Network management, network access*
- *Service desk for resolution of queries*
- *Physical security through emergency call handling fraud and investigation tips, real time travel tracking, datacentes monitoring, global mentoring etc.*
- *Financial shared services provision of local implementation and usage of Oracio financials and interactions with corporate Oracle general ledger.*

➢ *Productivity Tools:- The ancludes alocation of cost towards various IT related business productivity application and includes support for*

- *Access to Notes database*
- *Mobile support*

- *Remote access / VPN*
- *Email Notes*

- *Instant Messaging through Lotus and Web Conferencing (Sametime)*

The cost on account of productivity tools are allocated on the basis of the number of users for each set of tools.

- *Telephony:- Provision of and support on the telephone and voicemail infrastructure including cost of desktop, local and inter office toll tree calling, telephony management, voicemail.*
- *Workstation*

  - *File share in terms of which employees can store data, including MS Word, Excel, Power point, which are stored on file servers located in outside India*
  - *Desktop-Citrix Servers, software and infrastructure support of Citrix workstation*

The above services thus comprises of application software and infrastructure support. The cost allocation is done based on the usage

12. *Human Resource services:- These services help with the standardization of resource activities across group companies and help in easing global policy implementation for the company and includes:*

- *Talent Management - This includes support in terms of various employee development programs and surveys including Global Employee Survey, administration of 360 feedback, Talent review programs development of performance management process. Core competencies and global employee development program.*

- *HR Leadership Development Resources and support pertaining to the leadership and development programs*

- *HR platforms (third party)*

  i. *Authoria Performance Advisor Access to talent review process system support and administration costs thereto.*
  ii. *Solium: online system to maintain and keep track of long-term incentive plans for the human resource management team.*

These services are performed remotely and are controlled by the Corporate Human Resource (HR) team of the assessee For the provision of these services, the Corporate HR team of the assessee has entered into various agreements with various global HR application platforms.

In terms of the facts stated above and discussion below, the payments received from Sun Life India for the aforementioned services would not fall under the purview of Article 12 of the India- Canada Tax Treaty as Royalty or 'Fees for Included Services."

In view of nature of services as referred above, the assesse submitted that payment received from Sun Life India for the aforesaid services would not fall under the purview of Article 12 of the India Canada Tax Treaty as royalty or fee for included services.

4. The assessee also explained that receipts from Sun Life India towards corporate charges are not liable to tax in India as the same are merely reimbursement of cost by Sun Life India. In this regard, the assessee explained that it provides the services every year under the service agreement on a cost to cost basis. There is no income element in the provision of such services and it is merely a reimbursement of cost incurred by Sun Life Assurance under provision of services by Sun Life India to SLA. It is also submitted that the payment is towards expenses incurred on behalf of payer.

5. The assessee also explained that receipt from Sun Life India towards consulting services comprising of various software applications/involving use of software license by Sun Life India is not taxable as royalty. It is submitted that assesse merely provide the use of standard off- the shelf software to Sun Life India as part of the rendering of service and there is no right to use the process which is granted by the assessee. The provision of services involve merely use of an article that is subject to copyright and not the actual acquisition of copyright in the software. The training and other services in connection with the said supply were rendered outside India. It is also submitted that the actual physical control of the infrastructure (being the server, lease lines and network) solely remains with the assessee or the third party service provider appointed by the assessee and Sun Life India merely receives a service without receiving any right to use or for any control over the physical infrastructure equipment etc. The assesse also referred Article 12 of the India Canada Treaty regarding definition of royalty and also referred provision of Sec. 90 of the Income Tax Act.

6. The assessee also explained that receipt from Sun Life India towards provision of consulting, I.T support services and other routine, HR related services are not taxable as Fees for Included Services (FIS). In this regard, the assesse referred para 4 of Article 12 of Tax Treaty, regarding FIS which are as under:

> *"4.4 In terms of Para 4 of Article 12 of the tax treaty, payments of any kind in consideration for rendering of services result in FIS where:*
>
> *(i) such services are technical or consultancy services (first condition").*
> *(ii) they "make available knowledge, experience, skill, know-how, or processes or alternatively. consist of the development and transfer of a plan or design (second condition"), and*
> *(iii) such knowledge, experience, skill, know-how, etc. is technical (third condition")"*

By referring above, the assessee submitted that corporate office services rendered by assesse to Sun Life India are in the nature general management, accounting service, IT support, communication, human resource services etc. These services rendered to Sun Life India only support in carrying on the business efficiently and run the business in line with the business model followed by Sun Life Group.

7. However, the A.O has not agreed with the submission of the assessee. The assessing officer was of the view that the payment received by the assessee for providing consulting services comprising of various software applications/involving use of software licence are for the right of access and use of software (the intellectual property rights and the ownership of which belong to the assessee), which would qualify as royalty under Article 12(3) of the DTAA between India and Canada, being payments received for use of process. Accordingly, the payments received by the assessee are in the nature of royalty as defined under the India-Canada DTAA. The royalty would be taxed @ 15% as per Article 12(2) of DTAA with the Canada.

The Receipts from SLI towards provision of consulting, IT support services and other routine HR related services, (other than software applications etc.) are taxable as Fees for Included Services ('FIS') under Article 12 of the DTAA as well as the Income Tax Act, 1961

Regarding the contention of the assessee that it does not "make available any knowledge, experience, skill, know-how or process etc. The AO referred provision of Section 9(1)(vii) of I.T Act. The relevant part of the observation of the AO is reproduced as under:

6.2 "Section 9(1) of the IT Act, 1961 reads as below:

"(vii) income by way of fees for technical services payable by

a person who is a non-resident, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India

Explanation (2) - For the purposes of this cause, fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, muting or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries"]"

*6.3 The term 'Fees for Technical Services, under the Income-tax Act, are defined to mean rendering of services of a technical, commercial or managerial nature. These services are in the nature of scientific, commercial and industrial knowledge and experience it has to be understood that the term technical" in technical service does not mean that there has to be a transfer of ally technical know-how, or rendering of any technical advice. All it requires to cover a service within the realms of provisions of section 9(1)(vii) is that whether or not any service rendered is such that it requires specialized knowledge or expertise of personnel without which the task at hand cannot be completed. Explanation 2 to section 9(1)(vii) of the Act defines the expression *fees for technical services (FTS) to mean any consideration for the rendering of any technical or consultancy services (including the provision of services of technical or other personnel).*

6.4 The expression used in parentheses in the explanation is very important It suggests that even the rendering of any service by a technical or other personnel, i.e, a personnel with any specialized skill, without any technology being transferred as such, would also fall within the ambit of PTS. If the intention of the legislature was not to bring within the ambit of FIS the services of any personnel having any specialized skill, then there would have been no

need to include the expression in the parentheses in the definition of FTS. The relevant meanings of the word 'technical' given in the New Shorter Oxford Dictionary (Thumb Index Edition) are 1. Of a person: having knowledge of or expertise in a particular art, science, or other subject. 2. pertaining to, involving, or characteristic of a particular art, science, profession, or occupation, or the applied arts and sciences generally.

6.5 In the assessee's case it cannot be disputed that to provide trouble shooting on IT issues, providing network connection (firewalls/IDS), network management, network access, physical security through emergency call handling, real time travel tracking and provision of local implementation and usage of Oracle Financials, and other productivity tools like Notes Database, Mobile Support, VPN, Email Notes, Instant Messaging etc. it would require the expert acumen of the assessee's employees, which the asscsace provided to SLI. Further, the process/services that the assessee offers to SLI, do involve some kind of consultation Thus there has to be some incidence of advise at the time of evaluation and provision of the service. In this case it is an undisputable fact that the Applicant provides services in the form of above services. It is trite that these services would be consultancy services if the element of expertise or special knowledge on the part of the consultant is established."

Therefore, the AO considered that consulting IT support services and other routine HR related services rendered by the assessee to SLI would fall in line with any other technical services within the ambit of Sec. 9(1)(vii) of the Act.

8. The AO also considered that receipt from Sun Life India as reimbursement of cost are taxable as fees for included services under Article 12 of the DTAA as well as Income Tax Act. The assessing officer stated that these reimbursement expenses were relating to the services agreement entered by the assessee. The assessing officer of the view that the amount received by the assessee company did not fall under the category of reimbursement of expenses. Therefore, the contention of the assessee that amount received was in nature of reimbursement was rejected, by treating the payment received by the assessee company towards reimbursement of expenses as part of the fees for technical services.

9. The AO stated that assessee has not filed any objection before the DRP therefore, the final assessment order was passed as per the provision of Sec. 144C(2) of the Act on 05.02.2018.

10. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee. The ld. CIT(A) has considered the submission of the assesse that its case is squarely covered by the recent decision of the Hon'ble Supreme Court in the case of Engineers Analysis Centre of Excellence P. Ltd. and other decisions. The relevant part of the decision of CIT(A) is reproduced as under:

*"**FINDINGS***

6.1 Ground No.1 is general in nature

6.2 Ground No 2

During the course of hearing, it was seen that assessee has placed strong reliance on the case of "Engineers Analysis Centre of Excellence P. Ltd" (Supreme Court) On going through the said judgement it was seen that Hon'ble Supreme Court has divided the payments into 4 categories. For ready reference, the same are reproduced below:

> *Category 1 - Sale of software directly to an end user by non-resident taxpayer*
>
> *Category 2 - Sale of software by non-resident taxpayers to Indian distributors for resale to end customers in India*
>
> *Category 3- Sale of software by non-resident taxpayer to a foreign distributor for resale to end customers in India*
>
> *Category 4 - Software bundled with hardware and sold by foreign suppliers to Indian distributors or end users*

The assessee was asked to explain how its case is covered in any of these categories. In reply the assessee submitted as under:

- *The Hon'ble SC gave a common ruling in all the four categories mentioned above and held that payment for use of shrink-wrapped software by end user does not constitute "royally under the Double Taxation Avoidance Agreement (OTAA), The Hon'ble SC, inter alia, held that a limited right to use the software, making copies of the software for the purpose for which the same was granted without granting nights of copyright owner (such as reproduction, issuing copies, commercial exploitation) does not quality as grant of copyright under the Indian Copyrights Act 1957 (ICA) and hence, not taxable under the various DTAAS (including India-Canada DTAA.*

- *While deciding the batch of appeals on plethora of issues, inter alia, involving 1) Definition of copyright 2) Treaty override in terms of scope of the term royalty: 3) consequent obligation of deductors to withhold taxes under section 165, the Hon'ble SC decided these issues in favour of the taxpayers and held that payment made by the end users and*

distributors did not involve payment for grant of any right specified under the ICA payments made by the distributors and end users does not quality as royalty under DTAA as well as the pre amended provisions of Income Tax Act, 1951 (ITA).

- *Further, the Hon'ble SC also held that the machinery provisions of withholding under the Act in respect of payment made to non-resident taxpayers is triggered only in respect of payments chargeable to tax in India after considering the provisions of the Act as well as the DTAA In case where a payment is not chargeable to tax in India under the DTAA, then no withholding is required on such payments*

  Key principles laid down by Hon'ble SC relevant in the present case:

  (i) In case of software license, the end user only gets a right to use computer software and not any of the rights conferred on the owner of a copyright under the ICA. There is a difference between the ownership of a physical Item In which the software is embedded and ownership of the copyright (i.e. copyrighted article vs. copyright). For e.g. in a case where a publisher sells books to an Indian distributor who then resells the same at a profit, would not involve transfer of any rights to the Indian distributor On the other hand if the publisher sells the book to an Indian publisher, with the right to reproduce and make copies of the book, it would result in grant of copyrights to the Indian publisher and payment made by the Indian publisher would quality as royalty (refer para 43 to 47 of the decision at page 72-74) Basis the above, the use of software licenses was regarded as 'sale of copyrighted article by the non-resident to the resident user, as if it was a product which could be used on as 'as-is' basis

  (ii) Further, it was stated that a limited right to use the software, making copies of the software for The purpose for which the same was granted without granting rights of copyright owner (such as production, issuing copies, commercial exploitation) does not quality as grant of copyright uncer the ICA and hence, not taxable under the various DTAAS (including India-Canada DTAA) (refer para 35 30 of the decision of pogo 50-54)

  (iii) What is licensed by the foreign, non-resident supplier to the distributor and resold to the resident end user or directly supplied to the resident end user is, in fact, the sale of a physical object which contains an embedded computer program. This is sale of goods, which does not involve transfer of a copyright in the software. Reliance in this regard was placed on the decision of Hon'ble SC In the case of Tata Consultancy Services (2005) (1) SCC 303] (refer para 52 of the decision at page 82)

  (iv) The DTAA contains an exhaustive definition of the term "royalty It includes payment made for the use or right to use any copyright in a literary work. The royalty definition under the ITA is different and wider as compared to the royalty definition under the DTAA. As the license granted to distributors and end users does not create any interest or right in the software, grant of such license

would not amount to the use of or right to use of copyright and hence, it would not quality as royalty under the DTAA (refer para 63-78 of the decision at page 100-113).

(v) The ITA was amended in 2012 to provide that transfer of all or any rights includes transfer of all or any rights for use of a computer software. This amendment expands the royally definition and may not be considered as clarificatory in nature However, such payments would not quality as royalty for the purposes of the DTAA (refer para 79-85 of the decision at page 113-124).

(vi) Definition of "royalty under an the relevant DTAAS (Including India Canada DTAA) under consideration is identical or similar to the definition of royalty under the OECD Model Convention Hence, the OECD Commentary on the same becomes relevant (refer para 150 and 158 of the decision at page 203 and 217 respectively).

(vii) The OECD Commentary supports that making a copy or adaptation of a computer program to enable the use of the software for which it was supplied does not constitute royalty This also supports that the payment made by distributors and end users does not qualify as royally. DTAA provisions that are aligned to the OECD Model Convention should be interpreted in light of the OECD Commentary (refer para 152 of the decision at page 206-212)

Relevant extracts of the decision are reproduced for your ease of reference as Annexure A1.

***Applicability of key principles laid down by Hon'ble SC in the instant case We submit that the case of the Appellant is squarely covered by the Supreme Court decision as discussed below**.*

order to manage s global resources in an efficient manner. Sun Life Group has put in place a Centralized shared service set up The Appellant has entered into a Master Service Agreement and Statement of services with its group companies including Sun Life India in terms of which the Appellant provides them services either with the help of its own resources of with the help of third-party service providers in terms of the global agreements This, inter alia, include use of third-party software licenses which are purchased by the Appellant for its own use and use by its group companies including Sun Me India. Such licenses procured by the Appellant from third party third party software companies, is provided by the Appellant to its group companies on a cost to cost basis. The software / applications procured by the Appellant are provided strictly for internal use of its affiliates including Sun Life India with very limited non-transferable, non-exclusive, royalty free right to use, while the copyright always remains/vests with the third-party software owners as has been agreed in terms of the internal Master Service Agreement between the Appellant and Sun Life India This helps in the

standardization of systems and policies across the globe for all Sun Life Group entities

As a process when the software (say for instance MS office) needs to be installed on the laptop of a new employee of Sun Life India, the Appellant as mentioned above has procured limited licenses from Microsoft for distribution to its affiliated entities internal business use. Accordingly, these software/applications are available on the server of the Appellant In case of a new recruit of Sun life India a service request is raised for installation of all basis requisite software on the laptop The employee/local IT team remotely connects to the Appellants server which hosts all the softwares (including MS office) procured from various third-party software providers. Thereafter, by using the imaging technology, all the basic software are instated (including MS office) on the said laptop which the employees of Sun Life India then uses for internal purposes and for preparing derivative products out of the same.

In case where an existing employee of Sun Life India Rents to install a specific software (for example Microsoft Project Adobe Microsoft Visio, etc.) to cater to specific business needs, for internal usage a service request as raised by the employee. The service request is processed by the Appellant IT team outside India, where in the software is uploaded on the Appellants server and therefore, the same is pushed/installed on the employee's laptop

- *To reiterate what is obtained by the Appellant ended user right and/or limited distribution to its affiliates. This is evidence by the form of a typical End-user License Agreement (EULA) for using ms office apps (including MS word MS excel, MS PPT) which would be signed by the Appellant [To be confirmed by SLA]*

- *agrees to use the software for its own internal use and business purposes;*

- *is not entitled to reversed engineer, decompile or disassemble any product or attempt to so*

- *cannot distribute, sublicense, rent, lease or lend any Products, in whole or in part or use them to offer hosting services to a third party.*

- *may order products for is affiliates and in such cases, the customer shall ensure compliance with the terms and conditions of the agreement.*

Accordingly, as a user, an affiliate is also bound by the terms and conditions of the EULA and hence a limited night to use the software for its own internal use with no right to distribute, sublicence, rent, lease, to a third party is granted to Sun Life India

Thus the said procurement of third-party software licenses by the Appellant (such as, Lotus notes, Same Time MS Word, Excel, PowerPoint, Citrix, Authoria, Sollum, etc) can be viewed as procurement of third-party software Licenses by the Appellant in its capacity as an agent of its global affiliates including Sun

Life India Alternatively, it may be said that the Applicant procures such software licenses from the third-party software provider and distributes the same as global affiliates including Sun life India. In either case the Applicant only seeks reimbursement of the costs paid to the third party software providers and all copyrights in such software vests at all times with the third-party software providers.

To this extent, there is only a procurement and provision of copyrighted licensed article by the Appellant and no right to use 'copyright in the licensed article is provided by the third-party software provided either to the Appellant or to Sun Life India.

Our primary contention is that the instant case is squarely covered by Category 1 mentioned by the Supreme Court viz the Appellant procures the software from third-party non-resident software providers on behalf of its affiliates including Sunlife India Sunlife India only receives limited right to use the software for its own business with all the copyrights vesting with the third-party software providers at all times Thus, bass above, nature of payment made by Sun Life India to the Appellant is squarely covered under the first category noted by the Hon'ble SC i.e, to say Sale of software directly to an end user (Sun Life India) by non-resident third party software providers wherein the Appellant mere recovers the amounts paid to such third party software providers from Sun Life India on a cost to cost basis

Alternatively, where the transaction is seen as procurement and sale of software licenses by the Appellant to Sunlife India, then in such a case, then the arrangement in the present case would be Squarely covered by Category 3 above viz. Sale of software by non-resident taxpayer (third party software owners) to a foreign distributor (ie. the Appellant) for resale to end customers in India (Sun Life India)

Accordingly what is being paid by Sun Life India to the Appellant is merely the cost reimbursement of procuring the software licenses from the third party software provider on behalf of Sun Life India As aforesaid, this achieves operating economies and improve services to the benefit of both the Appellant and Sun Life India.

In view of the above, the nature of the payments made by Sun Life India to the third-party software providers (via Appellant) for the use software licenses is squarely covered under category 1 or alternatively under Category 3 of the Hon'ble SC ruling as mentioned above. The software licenses have been obtained by the Appellant and are subsequently provided to the affiliates (including Sun Life India) for internal use in their business only. There was neither any transfer of night to use intellectual property of the software nor to commercially exploit the software and accordingly the payments made by Sun Life India was for copyrighted product only. Therefore, the same are not taxable as royalty in terms of Article 12(3) of India-Canada DTAA

We would also like to draw your attention to the recent decision of Hon'ble Pune Tribunal in the case of Husco International Inc. (TS-908-ITAT-2021(PUN)] which dealt with the taxability of revenue from software licenses procured centrally by a group service company for use by its affiliates In the facts of the assessee company (a non-resident) centrally negotiated and procured standardized software from third party vendors for its own use as well as other group entities

globally (including Indian group entity). Allocation of such costs was done between the group entities on cost-to-cost basis without any mark up. The Hon'ble Tribunal after analyzing the facts of the case and after relying on the decision of Hon'ble SC in the case of Engineering Analysis Centre of Excellence Pvt Ltd (Supra) has held that the receipts from transfer for various software licenses is not taxable as royalty in terms of Article 12(3) of the DTAA Relevant extract of the case is reproduced hereunder

> *9. We have noted above the assessee's contention that it purchased a certain number of different software products and transferred some of them to the Indian entity at the same cost and hence no taxable event occurred. The AO, apart from not accepting the contention of reimbursement observed that "Further one of the transaction pertaining to software of Rs.86,55,225 is a disputed matter and pending before the Hon'ble Supreme Court Given the stand of the department, the sad amount should be considered as royalty income taxable in the hands of the assessee The DRP held the receipt to be in the nature of Royalty by relying on the Samsung Electronics (Karn). Thus it is established that the authorities below have treated the amount charged from the Indian entity as royalty in the hands of the assessed on account of transfer of software licenses to the former For doing this they relied on the judgments, inter alia. Samsung (Karn)(supra). The question whether the transfer of computer software partakes of the character of Royalties recently came up for consideration before the Hon'ble Supreme Court in Engineering Analysis Contro of Excellence Pvt. Ltd. Vs. CIT (2021) 432 ITR 472 (SC) After analyzing the identical issue in the backdrop of similar expression as used in Article 12(3) of the DTAA, it has been held that ownership of copyright in a work is different from the ownership of the physical material in which the copyrighted work may happen to be embodied. Parting with copyright entails parting with the right to do any of the acts mentioned in section 14 of the Copyright Act Where the core of a transaction is to authorize the end-user to have access to and make use of the "licensed computer software product over which the licensee has no exclusive nights no copyright is parted with*
>
> *10. Adverting to the facts as obtaining in the instant case, it is seen that the assessee acquired only a limited night of user in respect of specific software products from PTC Inc, and two other vendors which are in the nature of copyrighted articles. As such. there cannot possibly be a situation of it passing on the copyright in them to its group entities. It hardly needs to be accentuated that no one can transfer a better right in a product than he himself has Since the assesse itself obtained only a limited access to the software products de hors the right to copy the same, the sequitur is that it could not have transferred anything more than that to its entities globally including India. Ergo, there can be no question of treating the amount received from the Indian entity on transfer of copyrighted articles as Royalty in the hands of the assessee within the meaning of Article 12(3) of the DTAA. Respectfully following the ratio decidendi in the case of Engineering Analysis Centre of Excellence Pvt. Ltd. (supra), we hold that the authorities below were not justified in including the amount in question in the total income of the assessee as Royalty by relying on the judgment in the case of Samsung (Karn)(supra), which is no more a good law after the advent of the Engineering Analysis (SC)(supra). Resultantly, the receipt is held to be*

not taxable notwithstanding the rejection of the contention of Reimbursement.

Emphasis supplied

Given the principles laid down by the Hon'ble SC on the use of Software licenses, the Appellants case is now squarely covered by the aforementioned ruling of Hon'ble SC, as the issue under consideration pertains to the taxability of receipts in the hands of the Appellant from Sun Life India Service Centre Private Limited (Sun Life India) for the use of shrink-wrapped standard off the shelf software.

The relevant DTAA in the instant case is India-Canada DTAA which has been considered by Hon'ble SC in its decision and accordingly, the payment received in relation to merely right to use a standard. off the shelf software supplied by the Appellant without transfer of any right in the copyright, or any right to exploit the software for commercial purpose, did not qualify as payments for right to use of copyright.

In view of the above submission, the Appellant submits that the case of the Appellant is squarely covered by the Hon'ble SC not only on the facts but also on the principles laid down by the Hon'ble SC on the taxability of limited use of software licenses in cross-border arrangements We would like to bring to your attention that the law laid down by the Hon'ble SC in terms of its judgement is binding on all and considered to be the law of the land. The said principal has been specified under Article 141 of the constitution of India which states that the law declared by the SC shall be binding on all courts within the territory of India. This has been further affirmed by the Hon'ble SC in the case of Shenoy & Co. Vs. C10 (1585) (155 ITR 178) which held that law laid down by it is binding on all, notwithstanding the fact that is against a state or a private party; it is binding even on those who were not parties before the

I have gone through the submissions of the assessee. It appears that the case of the assessee is covered by Category 3 mentioned above wherein assessee acts like foreign distribution who resells the software to the customers in India Here assessee may be treated as a foreign distributor and Sun Life India is treated as a customer in India

Considering the above, I am of the opinion that charges recovered by assessee for sharing software with its associate enterprise in India cannot be treated as royalty payment. This ground of appeal is Allowed.

Ground No.3

The main argument of assessee is that it does not "make available" any knowledge, experience, skill knowhow or process. The A.O. mainly relied on the judgement of GVK Industries dated 18th February 2015. For ready reference the relevant portion of assessment order is reproduced below:

6.13 Now the only condition to be examined is whether the condition of "make available' is required to be satisfied under article 12(4)(b) of the DTAA with Canada. An already held by apex court that the consultancy service u/s 9(1)(vii) can be rendered with or without technology. Thus a consulting service which is not technology driven but driven by domain

knowledge, experience or professional skills would still fall within the domain of FTS u/s 9(1)(vii) and under 12(4) of DTAA with Canada as per the ratio of SC decision rendered on 18/2/2015 in case of GVK Industries(supra). Hence, the expression 'make available' technical experience, knowledge, skill as appearing in under the clause (b) of article 12(4) of DTAA, would mean to refer only to such services where the technical knowledge, experience, skill based on technology is being rendered and not to the consulting services based on professional knowledge, experience or skill which does not involve an expertise in technology. Thus all the earlier decisions of courts which have tested the meaning of 'make available' based on whether or not there was a transfer of knowledge/experience/skill based on technology or a transfer of technology itself, may no longer withhold the ground. If the meaning assigned now by the SC to the expression consultancy services is looked in juxtaposition of the expression "experience, knowledge, skill" used in the DTAA, then it would imply that the services not based on technology, which use professional experience, knowledge or skills would also be covered with the ambit of consultancy services as appearing under 12(4) of DTAA, in addition to the consultancy services which may be based on technical expertise. A consultancy services will remain to be so whether or not it is based on technology. The meaning of consultancy service cannot change from one DTAA to another just due to presence or absence of make available clause in it. It is therefore logical that a technology based expertise can be rendered by making available' the technical experience but rendering of consultancy services which involves only professional/intellectual skills of human based on its based on experience, knowledge, skills cannot be transferred or made available. It can only be shared with others for the use of the latter into its business processes. It is a well settled principle recognized by courts that any provision cannot be expected to seek a compliance which is impossibility. Applying this principle, the 'make available' clause can also never mean to refer to such consultancy services only, which transfer the technology or technical skill also. If this is not held to be so, then it would imply that the consulting services which do not use of technology shall not at be in nature of FTS under any DTAA whether or not it has make available clause. The distinction between technical services based on technology and the consultancy services based on human professional experience, knowledge or skills, needs to be maintained. In short, the condition of make available shall apply only in case where the services are of such nature where there is a possibility of making the technology or technical expertise available or transferring to the recipient of tervice. In this case, the services are being rendered on professional skills of the employees, the provision of network and related services, emergency services etc. which is in nature of consultancy services, the condition of make available shall not be applicable.

6.14 Without prejudice to the above, there is fulfilment of 'make available' condition also. In the assessee's case it cannot be disputed that for providing trouble shooting on IT issues, network connection (firewalls/IDS), network management, network access, physical security through emergency call handling, real time travel tracking and provision of local implementation and usage of Oracle Financials, and other productivity tools like Notes Database, Mobile Support, VPN, Email Notes, Instant Messaging etc. it would require the expert acumen of the

assessee's employees, which the assessee provided to SLI. Further, the process/ services that the assessee offers to SLI, do involve some kind of consultation. Thus there has to be some incidence of advise at the time of evaluation and provision of the service.

6.15 In this case it is an undisputable fact that the Applicant provides trouble shooting on IT issues, network connection (firewalls/IDS), network management, network access, physical security through emergency call handling, real time travel tracking and provision of local implementation and usage of Oracle Financials, and other productivity tools like Notes Database, Mobile Support, VPN, Email Notes, Instant Messaging etc. Hence, the case of assessee is not restricted to just doing some tasks tests abroad and giving a report. Rather it involves joint exercise by both assessee and SLI in India to meeting the challenges of IT and networks issues. All these services could not Have been rendered by assessee just sitting in Canada. The IT issues have to be monitored on a continuous basis and corrective measures taken on SOS basis Thus it is the services rendered are based on professional skills rendered by assessee which allows the SLI to conduct its business in a seamless manner, thereby 'making available' the benefit of such assessment to SLI.

6.16 In case of US Technology Resources P. Ltd (2013) 28 ITR 26 (Cochin) (Trib.), the assessee made use of assistance rendered by foreign company in its decision making process for management. The ITAT Held that service falls under definition of technical services and tax was deductible at source.

6.17 In Perfetti Van Melle Holding B.V. AAR No 869 of 2010, dated 9 December 2011 it was held that the expression 'make available' only means the recipient of the service should be in a position to derive an enduring benefit and be in a position to utilize the knowledge or know-how in future on his own. However, in the present case industry specific expertise is provided to the applicant which is applied in running its business and the employees get equipped to carry on that business model or service model on their own without reference to the service provider, when the agreement comes to an end.

6.17 The Authority for Advance Rulings (the AAR) in the case of Shell India Markets Pvt. Ltd. [AAR No 533 of 2009, dated 17 January 2012] held that payments made to a foreign company for General Business Support Services (GBSS) are Fees for Technical Services (FTS) under Article 13(4) of India UK tax treaty (the tax treaty). The AAR held that services provided include special knowledge and use of expertise on the part of a foreign company. Therefore, such services are treated as consultancy services under the tax treaty. The AAR also held that the expression 'make available only means that the recipient of the service should be in a position to derive an enduring benefit and be in a position to utilise the knowledge or know-how in future on his own. It is not necessary that the same should be specifically stated in the service agreement. Further, the AAR held that while providing GBSS, a foreign company works closely with the employees of the applicant and supports or advises them. Therefore, GBSS made available technical knowledge, skills, etc, to the applicant under Article 13(4)(c) of the tax treaty. Also,

since the applicant comes the owner of any know-how generated through the services, the applicant will be able to use any know-how/ intellectual property generated from general business support services independent of the service provider and hence the services under the agreement were clearly made available to the applicant.

6.18 Thus looking at the facts of the case the compensation/ receipts on account of consulting IT support services and other routine HR related services, (other than software applications etc) received by the assessee from SLI need to be taxed @15% as Fee for Included Service within the meaning of section 9(1)(vii) r/w Article 12(4) of the DTAA with Canada. Penalty proceedings are initiated u/s 271(1) (c) for furnishing inaccurate particulars of income.

I have gone through the judgement of Hon'ble Supreme Court in the case of GVK Industries Ltd. It was seen that this decision was with relation to Section 9(1)(vii) of the IT Act This decision did not consider the DTAA and "make available" clause. The Assessing Officer tried to extrapolate the definition of consultancy service and held that for consultancy service "make available" clause does not apply. Alternatively, the A.O. tried to show that the condition of "make available" clause is also satisfied.

In my opinion "make available" clause can be treated as satisfied if the recipient of the service is in a position to derive enduring benefit and in a position to utilise the knowledge or knowhow in future on his own without the help of service provider

In the present case the recipient is continuously engaging the assessee to provide these services or year to year basis and is making payment for the same to the assessee. This itself shows that the recipient is not in a position to utilise the knowledge or knowhow in future on his own

It is seen that the nature of services provided are a bundle of services which included standard 1.1. support services / share for maintaining IT Global infrastructure and H.R. projects and allocation of cost for using productivity tools In my opinion, the above services are standard management related services wherein no knowledge is made available to the service recipient.

In view of the above, I am of the opinion that the condition of "make Available clause is not satisfied in the present case and therefore, the services cannot be taxed as fee for included services under Article 12 of DTAA Act.

This ground of appeal is, therefore, Allowed.

6.4 Ground No.4

This ground relates to reimbursement. In my opinion reimbursement will take the same nature to which the original transaction relates. As I have already held that the original transaction is not covered under Article 12 of DTAA, therefore reimbursement will also not fall under Article 12 of DTAA Act.

This ground of appeal is treated as Allowed

7. In the result, the appeal is treated as Allowed."

11. During the course of appellate proceedings before us the ld. D.R referred the various pages of the assessment order and after referring page no. 14 of the assessment order stated that amount received from SLI by the assessee was in the nature of royalty which has been righty assessed by the assessing officer. Regarding fees for included services the ld. DR referred page no. 40 of the assessment order and submitted that assessing officer has rightly stated that payment received by the assessee was of the nature of fees for included services. The ld. D.R further submitted that ld. CIT(A) has not given detail finding while deleting the appeal of the assessee.

On the other hand, the ld. Counsel vehemently contended that in the case of the assessee no right to use copyright was granted and only merely the use of standard off the shelf software has been provided to the Sun Life India. No right to exploit the software was granted to the SLI no access to the source code in the software was granted to SLI. The ld. Counsel has submitted that Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence (P) Ltd. Vs. CIT (2021) 125 taxmann.com 42 (SC) dated 02.03.2021 has laid down the law with respect to taxability of software payment received by the assessee and the Hon'ble Supreme Court held that a limited right to use the software does not qualify as granted of copyright under the Indian copyright Act. The ld. Counsel has also referred the decision in the case of US Technology Resources (P) Ltd. Vs. CIT (Thiruvananthpuram) (2018) 97 taxman.com 642 (Kerala) dated 09.08.2018 and the decision of Hon'ble Supreme Court in the case of DIT(IT)-1 Vs. A.P. Moller Maersk (2017) 78 taxman.com 287 (SC) dated 17.02.2017 and the decision of Hon'ble High Court in the case of Perfetti Van Melle Holding B.V. Vs. Authority of Advance Ruling (2014) 52 taxman.com 161 (Delhi) dated 30.09.2014.

On the other hand, ld. D.R has referred the decision of Hon'ble Supreme Court in the case of GVK Industries Ltd. & Anr. Vs. The ITO & Anr. Civil Appeal No. 7796 of 1997.

12. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above we have perused the copy of Master Service Agreement dated 20.02.2006 filed by the assessee. It is observed that assessee provide the following services to Sun Life India from outside India either through the assessee's enterprise service group or engaged a third party to provide these services.

> *"**A.** **Consulting services; which includes business analysis, application** development and testing for IT Solutions;*
>
> *The Appellant has employed certain Information Technology (IT) consultants/contractors and as aforesaid also relies on support from third-party IT consulting firms for its IT performance consultancy requirement. The appellant helps in troubleshooting IT issues which cannot be locally resolved by Sun Life India.*
>
> ***B.** **Allocation of costs for use of various resource:***
>
> - *Network connection Provision of shared WAN infrastructure and inter connecting offices which includes troubleshooting, Firewalls/IDS, Network management, network access.*
> - *Service desk for resolution of queries*
> - *Physical security through emergency call handling fraud and investigation tips, real time travel tracking, data centre monitoring, global mentoring etc.*
> - *Financial shared services provision of local implementation and usage of Oracle financials and interactions with corporate Oracle general ledger.*
>
> ***C.** **Productivity Tools** – This includes allocation of cost towards various IT related business productivity application and includes support for:*
>
> - *Access to Notes database*
> - *Mobile support*
> - *Remote access /VPN*
> - *Email Notes*
> - *Instant Messaging through Lotus and Web Conferencing (Sametime)*

The cost on account of productivity tools are allocated on the basis of the number of users for each set of tools.

D. ***<u>Telephony</u>*** *- Provision of and support on the telephone and voicemail infrastructure including cost of desktop, local and inter office toll tree calling, telephony management, voicemail.*

E. ***<u>Workstation</u>***

- *File share: in terms of which employees can store data, including MS Word, Excel, Power point, which are stored on file servers located in outside India.*
- *Desktop- Citrix Servers, software and infrastructure support of Citrix workstation.*

The above services thus comprises of application software and infrastructure support. The cost allocation is done based on the usage

F. ***<u>Human Resource services:</u>*** *These services help with the standardization of resource activities across group companies and help in easing global policy implementation for the company and includes:*

- *<u>Talent Management</u> - This includes support in terms of various employee development programs and surveys including Global Employee Survey, administration of 360 feedback, Talent review programs development of performance management process. Core competencies and global employee development program.*
- *<u>HR Leadership Development</u> - Resources and support pertaining to the leadership and development programs*
- *HR platforms (third party):*
    i. *Authoria Performance Advisor Access to talent review process system support and administration costs thereto.*
    ii. *Solium: online system to maintain and keep track of long-term incentive plans for the human resource management team.*

These services are performed remotely and are controlled by the Corporate Human Resource (HR) team of the assessee. For the provision of these services, the Corporate HR team of the assessee has entered into various agreements with various global HR application platforms.

13. The assesse explained by referring the various services as incorporated in the master service agreement that it had received an amount of Rs.15,46,31,400/- as corporate service fees from SLI. It is undisputed fact that assessee was not having any Permanent Establishment (PE) in India in terms of Article 5 of the DTAA between India and Canada. The assesse provide various services under the different categories as included in the terms of the Master Servies

Agreement on cost to cost basis as per the relevant part of the agreement reproduced supra in this order. The assessee has explained before the assessing officers with supporting details that corporate service fees was merely reimbursement of cost and no income element was included in the amount reimbursed to the assessee. The assessee also provides services in the nature of consulting IT support and other routine administrative HR related services. These services include troubleshooting IT issues, provision of network connection, network management, network access, etc. The assessee explained that these services were not of the nature of Fees for Included Services ('FIS') in terms of Article 12(4) of the India Canada Tax Treaty which defines (FIS) Fees for included services as under:

"4.3 Article 12(4) of the India Canada Tax Treaty defines FIS as under

"4. For the 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 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 or consist of the development and transfer of a technical plan or design.

4.4 In terms of Para 4 of Article 12 of the tax treaty, payments of any kind in consideration for rendering of services result in FIS where:

(i) such services are technical or consultancy services (first condition")

(ii) they "make available" knowledge, experience, skill, know-how, or processes or alternatively, consist of the development and transfer of a plan or design (second condition"), and

(iii) such knowledge, experience, skill, know-how, etc. is technical (third condition")"

14. The India Canada Tax Treaty specifically provides that the services should enable the recipient to apply the technology otherwise it would

not constitute "fees for included services" under the treaty. Make available means the recipient of the services should be able to independently apply the technology/knowledge gained. As discussed in the findings of the ld. CIT(A) that the recipient is continuously engaging the asesssee to provide these services year to year basis and the assessing officer has not brought any material on record to prove contrary that the assessee was in a position to utilise the knowledge in future on his own without the help of the service provider. After considering the above facts and finding of the ld. CIT(A) we do not find any material brought on record by the assessing officer to demonstrate that "make available" clause in terms of Article 12(4) of the India Canada Tax Treaty is satisfied in the case of the assessee.

15. The AO has alternatively held that software is a property similar to patent, invention, design process, etc. therefore, taxable as per Article 12(2) of the India-Canada DTAA. In this regard, the royalty as per Article 12 of the India Canada DTAA is defined as under:

> *"5.1 Article 12 of the Canada DTAA defines Royalty as*
>
> *"3. The term royalties di used in this Article means:*
>
> *(a) payment of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work including cinematograph films or work on film tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and*
>
> *(b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 from activities described in paragraph 3(c) or 4 of Article 8."*

16. The AO was of the view that the assesse had cleverly worded the agreement to avoid characterised the payment as royalty. However, the

AO has failed to substantiate with any relevant supporting material that the recipient (SLI)has received right to use software as described under Article 12 of the India Canada DTAA contrary to the terms of the agreement and submission of the assessee as discussed supra in this order.

17. In this regard, as discussed supra in this order the AO has not brought any material to disprove the submission of the assessee that the recipient did not acquire any right to exploit copyright in the software. No access to the source code in the software (i.e. know-how, logic programming techniques etc. underlying the software) was granted to Sun Life India, the assessee explained with the relevant supporting material that assessee has provided mere right to use of standard off the shelf software without transfer of any right in the copyright or any right to exploit the software for commercial purpose, therefore, receipt from SLI was not constitute royalty under the provisions of India Canada Double Taxation Avoidance Agreement. The ld. CIT(A) has considered the recent decision of Hon'ble Supreme Court in the case of Engineering Analysis Centre Excellence Pvt. Ltd. as referred supra wherein held that a limited right to use the software, making copies of software for the purpose of which the same was granted without granting right and copyright owner (such as reproduction, issuing a copies, commercial exploitation) does not qualify as grant of copyright under the Indian Copyright Act 1957 hence not taxable under the various DTAA including India Canada DTAA. We have also perused the decision of Hon'ble Supreme Court in the case of above referred Engineering Analysis Centre Excellence Pvt. Ltd. wherein it is held as under:

> *"INTERNATIONAL TAXATION: Amount paid by resident Indian end- to manufacturers/ suppliers, as consideration for resale/ use of computer software through EULAs/ distribution agreement, is not payment of royalty for use of*

copyright in computer software, and thus, same does not give rise to any income taxable in India."

18. We have also perused the decision of Hon'ble High Court of Kerala in the case of US Technology Resources (P) ltd. Vs. CIT, Thiruvananthapuran where it is held as under:

"IT/ILT: Where advises offered by US company to Indian company regarding management, financial, legal services would have to be on a factual basis with respect to problems arising at various points of time without transfer of technical or other know-how, remuneration would not be taxable in India."

Then we have also perused the decision of Hon'ble Supreme Court in the case of DIT (IT) –I Vs. A.P. Moller Maersk A.S wherein it is held as under:

"IT/LT: Where assessee, a foreign shipping company, set up a telecommunication system in order to enable its agents across globe including India to perform their role more effectively, payment received for providing said facility was not taxable as fee for technical services."

We have also perused the decision in the case of GVK Industries Ltd. as referred supra by the Ld. D.R. However we find that the fact of the case of the assesse are distinguishable from the fact of the case referred by the ld. D.R as in that case the assesse non-resident Indian Company has rendered professional services regarding how to execute the documents for sanctioning of loan by the financial institution within and outside country and the nature of services rendered by the assessee were of the nature of consultancy services which was taxable as the fees for technical services whereas in the case of the assessee no such professional services consultancy services was rendered. The ld. CIT(A) has also elaborately discussed the decision of Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence (P) Ltd. Vs. CIT in his findings on the issue of Royalty on the nature of use of computer software. After taking into consideration the findings of the Hon'ble Supreme Court in that case the ld. CIT(A) held that the Hon'ble Supreme Court has divided the payments into four categories and the case of the

assesse covered under category 3 as sale software by non-resident taxpayer to a foreign distributor for resale to end customers in India is not taxable in India. After considering the above facts and judicial findings we don't find any infirmity in the decision of the ld. CIT(A) therefore, all the ground of appeal of the Revenue stand dismissed.

ITA No. 1928/Mum/2022

19. Since the facts and issue involved in this appeal are similar to the ITA No. 1929/Mum/2022 which we have adjudicated supra therefore applying its finding as mutatis mutandis this appeal of the revenue is also dismissed.

20. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 30.06.2023

Sd/-	Sd/-
(Sandeep Singh Karhail) Judicial Member	(Amarjit Singh) Accountant Member

Place: Mumbai
Date 30.06.2023
Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.