

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT
AND
SHRI SAKTIJIT DEY, VICE-PRESIDENT**

ITA No.2311/Del/2022
Assessment Year: 2018-19

Global Schools Holdings Pte. Ltd. Singapore, B-23, Sector-63, Gautam Buddha Nagar, Noida	Vs.	ACIT, International Taxation, Circle-1(3)(1), New Delhi
PAN :AAF CG0275R		
(Appellant)		(Respondent)

Assessee by	Sh. Kanchan Kaushal, FCA Sh. Anubhav Rastogi, CA
Department by	Sh. Vizay B. Vasanta, CIT(DR)

Date of hearing	10.11.2023
Date of pronouncement	21.11.2023

ORDER

This is an appeal by the assessee challenging the final assessment order passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961, pertaining to assessment year 2018-19, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. The solitary dispute in the present appeal is in relation to taxability of an amount of Rs.6,43,50,748/- as Fees for Technical

Services (FTS) under Article 12(4) of India – Singapore Double Taxation Avoidance Agreement (DTAA).

3. Briefly the facts are, the assessee is a non-resident limited liability company incorporated under the laws of Singapore and is a tax resident of Singapore. As stated, the assessee is the regional headquarters of the Global Indian International School ('GIIS') group, which consists of about 21 schools spanning across 7 countries viz. Singapore, Malaysia, Japan, Thailand, UAE, Vietnam and India. The assessee has two Associated Enterprises (AEs) in India, one is Global India School Education Services Ltd. ('GISES') and other is GIIS K 12 Education Pvt. Ltd. Both these AEs have created an individual trust, which runs the respective schools at various locations in India. The assessee has entered into two separate Licensing Intellectual Property (IP) agreements with the Indian AEs, which comprises of licensing of GIIS brand name, proprietary IT system etc. Additionally, the assessee has entered into one more agreement with GISES only for providing intra group services, such as, legal, finance, accounting etc. to streamline business processes, ensure compliance and promote cost-efficiencies etc. Under the Licensing IP Agreement, the assessee has granted licence for access to trade names and "My

GIIS” portal to the Indian AEs. Under the said agreement, the assessee also provided intellectual property rights and proprietary specialized software. In terms with Licensing IP Agreement, the assessee received licence fee of Rs. 5,38,42,826/- from both the Indian AEs, which has been treated as royalty income and offered to tax in India in the return of income filed for the impugned assessment year. Besides the royalty income, the assessee also earned revenue of Rs.6,43,50,748/- from GISES towards provision of management support services. However, the assessee did not offer this amount to tax in India pleading that it is in the nature of business income and in absence of PE is not taxable.

4. In course of assessment proceedings, the Assessing Officer, after calling for and examining the agreement as well as other details formed a view that the receipts from intra group services is in the nature of FTS, both under section 9(1)(vii) of the Act as well as under Article 12(4)(a) of India – Singapore DTAA, as such, receipts are in relation to the services, which are ancillary and subsidiary to the royalty income. Therefore, he issued a show-cause notice to the assessee to explain, why the amount should not be brought to tax in India.

5. In response to the show-cause notice, the assessee furnished a detailed submission stating that the receipt from intra group services cannot be treated as FTS under Article 12(4) of the treaty as neither it is ancillary and subsidiary to the royalty income nor while rendering such services, the assessee had made available any technical knowledge, know-how, skill etc. to the Indian AEs. The Assessing Officer, however, did not find merit in the submissions of the assessee. He held that not only the nature of services rendered is managerial, technical, and consultancy services, but such services are ancillary and subsidiary to the use or right to use of brand name, and other intellectual property rights. Thus, he held that the fee received would qualify as FTS under Article 12(4)(a) of India – Singapore DTAA. Without prejudice, the Assessing Officer held that while rendering services, the assessee has made available technical knowledge, know-how, skill, expertise and experience, which has been gained by the assessee over a period of time. He observed, such assistance and guidance to the Indian entity has enabled it to take better decisions and perform its functions in more effective manner, which in turn, helps maintaining the brand value and fulfillment of commercial interest of business. Thus, he held that

the fee received would also qualify as FTS under Article 12(4)(b) of the treaty. In the above lines, the Assessing Officer framed the draft assessment order. Though, the assessee raised objections before learned DRP against the draft assessment order, however, the draft assessment order was affirmed. In terms of the above, the final assessment order was passed bringing to tax the receipts from intra group services.

6. Before us, Sh. Kanchan Kaushal, learned counsel appearing for the assessee and Sh. Vizay B. Vasanta, learned CIT(DR) appearing for the Revenue have made elaborate submissions supporting their respective stand. Learned counsel for the assessee has also relied upon various judicial precedents.

7. We have given a thoughtful consideration to the rival submissions and perused the materials on record. We have also applied our mind to the decisions relied upon. As discussed earlier, the assessee has entered into separate sub-licensing and training agreements with the two Indian AEs. Whereas, the assessee has entered into a separate service agreement with GISES, one of the Indian AEs. On going through the Sub-Licensing and Training Agreement with GISES, it is observed that under the agreement the assessee has provided licences for use of

certain brand name/trade-mark owned by the assessee. In addition, the assessee has also sub-licensed certain software, being “My GIIS School Enterprise Resource Planning Software”, including all its modules to GISES so as to enable the Indian AE to use the specialized software for facilitating convenient communication amongst the school students, parents, teachers and management of school. Admittedly, the licence fee received by the assessee from sub-licensing of trade-mark/brand name and software has been offered to tax in India as royalty income. Similar income received from other Indian entity, viz., GIIS K 12 Education Pvt. Ltd. has also been offered to tax in India as royalty income.

8. So far as receipts from intra group services are concerned, on perusal of the said agreement, it is observed that in terms of the agreement, the assessee provides routine services like, Human Resources (HR) support, marketing and operation support etc. The detail nature of services provided by the assessee under the support service agreement can be tabulated as under:

Division	Brief description of activities performed
Administration	Providing assistance to management of Trust/schools, to get CBSE (and other boards) affiliations.

Admissions	Providing assistance to management of the Trusts/Schools in student admissions & counselling process, assistance in running a student scholarship drive etc.
Academic advisory and management	Providing assistance to management of the Trust/Schools in overall operations of Schools, providing academic advisory for excellence in education, overall continuous improvement of the schools. These are done through providing guidance on teaching methodologies, developing knowledge modules and curriculum, developing the process of quality management, assistance in maintaining library at Schools (like selection of books for library).
Finance	<p>Providing assistance in accounting, preparation of financial statements, MIS, budgeting and financial modelling, assistance in working capital management of Trusts/Schools. There are regular meetings and discussions with the school finance team on the financial position of the school.</p> <p>It also co-ordinates with management of the schools and statutory auditor to ensure statutory compliance like filing of financials with CBSE/Registrar of Societies under respective Societies Act, preparation of income-tax return preparation etc. for the Trusts/Schools.</p>
Human Resource	<p>Assist in recruitment of teachers with appropriate experience needed for a specialist curriculum. The HR personnel of GSH also provides inputs on selection of teachers and school Principals.</p> <p>GISES assists in providing recruitment services (like hiring of teachers, principals, school administrative staff), co-ordinate and manage exit formalities, counselling and retention, settlement, conducting exit interviews and analysis, implement disciplinary norms & standards, reward & recognition schemes, HR policies, payroll processing, PF, ESI compliances, for the Trusts/Schools.</p>
Marketing	Providing assistance in marketing and communications. This involves digital marketing campaigns, social media marketing, affiliate marketing, internal communications, out of home promotions, below the line promotions, online reputation management and content marketing campaigns, besides corporate communications, press announcements, new campus launches etc.

9. On a comparative analysis of Licence Agreement and Service Agreement, it is observed that under the Licence Agreement, in addition to the use or right to use of trademark/trade name, the

assessee has licensed use or right to use of a software system which has various modules, such as, e-services, Management Information System Reports, Exam and Results, Finance Services, Parent Feedback etc. With the assistance of the software system, all critical data is available at the click of a button, thereby saving lots of storage space as well as man hours, which otherwise, would have been required to get physical copies. By using software system a common platform is provided to connect students, parents, teachers and school management. The teachers and the administration department, connected through this portal in a seamless manner to get access to the following details:

- Personal details of the student, viz. name, class, passport size photo, admission number, date of birth, parents name, residential address
- Financial details: Fee that is required to be paid, overall and on a quarterly/ monthly basis, penal charges on late payment of the fees, status of the lunch coupons, routing through to the payment gateways for online fee payments, any other payments that may have to be done, viz. payment for school photograph, any outing, if any, etc.
- General circulars and notifications impacting the school and the student viz. consent forms to be signed by parents for any particular activity, availability of books and uniforms, whether cafeteria will be open or closed on specific days, list of holidays, birthdays in class ass in a coming week and birthday wishes, special achievements of the school, competitions to be held in coming weeks/ months etc.
- Class related: time table, curriculum to be covered in the academic year, feedback from **the** teacher, school timings and changes from summer timings to winter timings, PTM details etc.
- Result oriented - detailed report card, details of assessments done, student's ranking, list toppers subject wise for 10th and 12th grades, winners in inter school tournaments and other competitions etc.

10. Further, the teachers through their separate login credentials accessed various details, as under:

- Personal details of the teacher including the employee ID no.
- Subjects that the teacher is supposed to teach
- Timetable of the week and the classes that the teacher has to take
- Communication from the principal and the school board
- Meeting schedules with other teachers and principal
- Deadlines for preparation of assignments/ question papers
- Details of exam schedules for different classes

11. Whereas, the nature of services provided under the service agreement, as tabulated elsewhere in the order, would go to show that the services rendered are not in relation to the activities undertaken under the licence agreement. The administrative functions under the service agreement relates to providing assistance to management of trusts/schools to get affiliations from various boards for providing assistance to the management in respect of admission of students and counseling process, assistance in running students' scholarship drive. Other services are in relation to overall operations of schools providing academic advisory for excellence in education and overall improvement of school, providing guidance on teaching methodologies, developing knowledge, module curriculum, providing assistance in accounting, preparation of financial statements, teaching,

statutory compliance, assistance in recruitment of teachers for specialized curriculum, school principals, administrative staffs, providing assistance in marketing and communications, including digital marketing campaigns, social media marketing, affiliate marketing, internal communications etc.

12. Thus, a critical analysis of both the agreements, would certainly bring out the fact that the services rendered under the service agreement in no way are connected to the Licence Agreement. Of course, it may be said that some of the marketing activities under the service agreement may result in sustaining the trade-mark/brand name, however, that by itself may not be enough to conclude that the service rendered under the service agreement are ancillary and subsidiary to the use or right to use of trademark/brand name software. This view is further fortified from the fact that the assessee has entered into service agreement with only one of the AEs. Whereas, there is no such agreement with the other AE in India. Thus, logical conclusion would be that there is no connection between the licence agreement and service agreement. Had it been the case, both the agreements would have been dependent upon each other. One could not have gone without the other. Viewed in this perspective, it would have been

necessary for both the Indian AEs to enter into both license agreement and the service agreement to derive the benefit/result. However, that is not the case as one of the AE has not entered into the service agreement. This fact clearly shows that the service agreement, at best, can be at the option of India AE depending upon the fact, whether it requires such services or not. Thus, in our view, the receipts cannot come within the ambit of Article 12(4)(a) of India – Singapore DTAA.

13. Having held so, it is necessary to examine, whether the service fee received would qualify for FTS under Article 12(4)(b). A reading of Article 12(4)(b) of the treaty makes it clear that to fall within its ambit the make available condition has to be satisfied. In the facts of the present appeal, the departmental authorities have not brought any materials on record to establish that the services rendered by the assessee has resulted in transfer of technology, know-how, skill to the Indian AE so as to enable the India AE to perform such service independently in future without the aid and assistance of the assessee. Though, learned Departmental Representative has submitted that the Indian AE is providing similar services to various other schools managed by it, however, we are not impressed. Instead of making general

statements that the assessee has made available technology, know-how, skill etc., Departmental Authorities must bring cogent material on record to establish such facts. Which, in the facts of the present appeal, they have failed to do.

14. Thus, in our view, the fee received would also not fall within Article 12(4)(b) of the treaty. Thus, on overall consideration of facts and materials on record and in the light or decisions cited before us, we conclude that the amount in dispute is not in the nature of FTS. Grounds are allowed.

15. In the result, appeal is allowed.

Order pronounced in the open court on 21st November, 2023

Sd/-
(G.S. PANNU)
VICE-PRESIDENT

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 21st November, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi