

**IN THE INCOME TAX APPELLATE TRIBUNAL
“I” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.3231/Mum/2023
(A.Y. 2020-21)**

Edenred Pte. Ltd. C/o, Walker Chandiook & Co. LLP, 11 th Floor, Tower II, One International Center, S.B. Marg, Prabhadevi (West), Mumbai – 400013	Vs.	Deputy Commissioner of Income-tax, International Taxation-2(2)(1) Room No.1722,17 th Floor, Air India Building, Nariman Point, Mumbai Maharashtra – 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCE8636P		
Appellant	..	Respondent

Appellant by :	Jitendra Singh
Respondent by :	Anil Sant
Date of Hearing	13.03.2024
Date of Pronouncement	12.04.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the ld. CIT(DRP-1), Mumbai -2, for A.Y. 2020-21. The assessee has raised the following grounds before us:

“1. General Ground

Erred in assessing total income at INR 4,98,58,610/- as against returned income of INR 2,07,010/-

2. Infrastructure Data Center charges taxed as Royalty

The Assessing Officer ('AO') has erred in considering Infrastructure Data Centre charges of INR 3,90,76,883/- taxable as Royalty under the India Singapore Double Taxation Avoidance Agreement ('DTAA').

3. Other service charges taxed as Royalty

The AO has erred in considering Other Service Charges (Referral Fees) of INR 16,83,953/- taxable as Royalty under the Act as well as under the India Singapore DTAA

4. Management Service Fees taxed as Royalty

The AO has erred in considering Management Service Fees of INR 88,90,764/- taxable as Royalty under the Act as well as under the India - Singapore DTAA.

5. Management Service Fees taxed as Royalty

The Dispute Resolution Panel ('DRP') erred in directing the AO to follow its Directions of AY 2018-19 & AY 2019-20 for taxing Management Service fees as royalty in view of the fact that the appellant was not in receipt of such services during AY: 2018-19 & AY: 2019-20.

6. *The appellant craves leave to add, alter, and supplement any ground or grounds, if necessary at the time of hearing of the appeal."*

2. The fact in brief is that the assessee company is a tax resident of Singapore and is incorporated under the laws of Singapore. The assessee company belongs to a French Edenred Group of Company which operates worldwide. The assessee filed its return of income on 11.02.2021 declaring total income at Rs.2,07,010/- for the year under consideration. It is engaged in the business of provisions of services relating to developing marketing and implementing incentive based strategies and technologies to build loyalty and to reward long term relationship through utilization of internet, wireless technology and offline solution to its clients. For the year under consideration the assessee received Rs.4,98,58,610/- from companies which were incorporated in India, namely Edenred (India) Pvt. Ltd. Accentiv (I) Pvt. Ltd. and claimed the same as not liable to be taxed in India as per Article 12 of the India Singapore Double Taxation Avoidance Agreement (DTAA).

Sr. No.	Particulars	Amount (in Rs.)
1.	Infrastructure data centre Charges	3,90,76,883
2.	Other Service charges	16,83,953
3.	Management Services Fees	88,90,764

4.	<i>Income on income-tax refund</i>	<i>2,07,010</i>
	<i>Total Income</i>	<i>4,98,58,610</i>

The assessing officer passed draft assessment order u/s 143(3) r.w.s 144C(1) of the Act on 06.09.2022 treating the aforesaid receipt on account of infrastructure data centre charges, other service charges, management service fees as royalty and added to the total income of the assessee.

3. The assessee filed objection before the Dispute Resolution Panel (in short 'DRP'). The ld. DRP vide order dated 27.06.2023 rejected the objection filed by the assessee and directed the assessing officer to pass the final assessment order as per the draft proposed in terms of provisions of Sec. 144C(13) of the Act. Thereafter the assessing officer has passed final assessment order on 15.07.2023 in conformity with the direction issued by the ld. DRP and total income was assessed at Rs.4,98,58,610/- after making the additions proposed in the draft assessment order as referred above.

4. Aggrieved, the assessee filed the appeal before the ITAT. Further facts are discussed while adjudicating different grounds of appeal filed by the assessee.

Ground No. 1: This ground of appeal is general in nature therefore needs no adjudication and hence dismissed.

Ground No. 2: Infrastructure data centre charges of Rs.39,07,688/- taxed as royalty:

5. The assessee company provides Infrastructure Data Centre (in short 'IDC') services to its Indian Group Companies. These services include IT Infrastructure Management and mailbox and website hosting services. During the year under consideration the assessee has earned total income of Rs.3,90,76,883/- under the heads of infrastructure data centre (IDC) services. These payments were received from its group

companies namely Edenred (India) Pvt. Ltd. and Accentive (India) Pvt. Ltd. as discussed above in this order. In the draft assessment order the assessing officer treated the amount of Rs.3,90,76,883/- as Royalty Taxable @ 10% under the beneficial rate as per DTAA in terms of Article 12(3)(a) of the DTAA. The assessing officer was of the view that the payment has been received as consideration for use of or right to use design or model, plan, secret formula or process or for information concerning industrial, commercial or scientific experience within the meaning of the term “royalty” as per Article 12(3)(a) of the Act.

6. The assessee filed objection before the DRP and the DRP has dismissed the objections filed by the assessee following the directions of the DRP in A.Y. 2019-20.

7. During the course of appellate proceedings before us the ld. Counsel submitted that similar issue on identical facts has been adjudicated in favour of the assessee by the coordinate benches of the ITAT pertaining to assessment year 2017-18 to 2019-20 after following the earlier years orders of the ITAT.

On the other hand, the ld. D.R supported the order of lower authorities.

8. Heard both the sides and perused the material on record. We find this is a recurring issue since A.Y. 2010-11 and in the various decisions of different assessment years as referred in para 7 of this order the Tribunal has deleted the additions. With the assistance of ld. representative we have perused the decision of ITAT in assessee's own case for assessment year 2017-18 vide ITA No. 370/Mum/2022. The relevant extract of the decision is reproduced as under:

“9. We have heard both the sides and perused the materials on record. With the assistance of Ld. representatives, we have perused the decision of ITAT in assessee's own case for A.Y. 2019-20 vide ITA No.1562/Mum/2022 dated 29/12/2022 wherein similar issue, following the judicial pronouncements

earlier decided in assessee's own case was followed. The relevant finding of the Tribunal in the aforesaid decision are as under:-

“4. The assessee claimed the aforesaid receipt as not taxable in India under Article 12 of the India Singapore Double Taxation Avoidance Agreement (“DTAA”). The AO vide draft assessment order dated 15/09/2021 passed under section 143(3) of the Act treated the aforesaid receipts on account of Infrastructure Data Centre (“IDC”) charges, referral fees, and member login fees as royalty and added the same to the total income of the assessee. The learned DRP rejected the objections filed by the assessee. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

5. The issue arising in ground No. 1 is general in nature and therefore needs no separate adjudication.

6. The issue arising in ground No. 2, raised in assessee's appeal, is pertaining to the taxability of IDC charges as royalty under the India Singapore DTAA.

7. The brief facts of the case pertaining to this issue are: The assessee provided IDC services in the nature of IT infrastructure management and mailbox and website hosting services to its Indian group companies. During the year, the assessee earned a total income of Rs.2,85,01,345 under the head IDC services. These payments were received from its group companies, namely, Edenred (India) Private Ltd, Accentiv (India) Private Ltd (erstwhile SurfGold.com (India) Private Ltd). The AO vide draft assessment order following the directions issued by the learned DRP in assessee's own case for the assessment year 2017-18 treated the aforesaid income as royalty within the meaning of section 9(1)(vi) of the Act read with Article 12 of India Singapore DTAA. In further proceedings, the learned DRP following the directions rendered in assessee's own case for the preceding assessment year rejected the objections filed by the assessee on this issue. In conformity, the AO passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

8. During the hearing, the learned Authorised Representative (“learned AR”) submitted that similar issue has been decided in favour of the assessee by the coordinate bench of the Tribunal in the preceding assessment years. On the other hand, the learned Departmental Representative (“learned DR”) vehemently relied upon the orders passed by the lower authorities.

9. We have considered the rival submissions and perused the material available on record. We find that the coordinate bench of the Tribunal in assessee's own case in *Edenred Pte Ltd. vs DCIT*, in ITA No. 6267/Mum./2019, vide order dated 22/09/2021, for the assessment year 2016-17, decided similar issue in favour of assessee by following the judicial precedents rendered in assessee's own case. The relevant findings of the coordinate bench of the Tribunal, in the aforesaid decision, are as under:

“4. Having considered rival submissions and perused facts on record, we find that the first issue as raised in ground 3 relates to taxability of infrastructure data centre (IDC) charges as royalty. As submitted by both the parties, this is a recurring dispute between the parties since assessment year 2010-11. In the latest order passed for assessment years 2014-15 and 2015-16, the Tribunal has deleted the addition with the following observations:-

“7. We have considered rival submissions and perused materials on record. Pertinently, identical issue relating to taxability of IDC charges as royalty came up for consideration before the Tribunal in assessee's own case in assessment years 2010-11, 2011-12 and 2012-13 in ITA No.1718/Mum/2014 & others dated 20-07-2020, The Tribunal, while deciding the issue has held, as under:-

“6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below. We find that (i) under the said IDC agreement, the appellant, essentially provides IT infrastructure management and mail box/website hosting services to its India group companies; these IDC services are performed by the appellant's personnel in Singapore; the Indian group companies directly remit IDC service payments towards the appellant's bank account in Singapore, (it) IDC is an ISO 27001 certified data centre owned by Edenred Pte. and located in Singapore; IDC services are provided using the IDC and IT/security team in Singapore, (Hi) the services under the IDC agreement comprise of administration and supervision of central infrastructure; mailbox hosting services and website hosting services, (iv) IDC services ensure 100% uptime for critical external facing applications which need highly secured web environment and dedicated team of security experts to ensure 100% uptime Edenred Pte Ltd. 11 ITA Nos. 1718/M/2014, 254/M/2015 & 507/M/2016 of security systems (firewall, antivirus, access controls) which are also hosted on server in Singapore.

We further observe that examples of websites/applications/software hosted by Indian group companies on the data centre in Singapore are web ordering application, corporate website, websites created for customers of Edenred India entities while making a loyalty program for them.

A perusal of the documents filed before the AO and DRP clearly indicate that (i) appellant has an infrastructure data centre, not information centre at Singapore, (H) the Indian group companies neither access nor use CPU of the appellant, (Hi) no CDN system is provided under the /DC agreement, no such use/access is allowed, (iv) the appellant does not maintain any such central data (v) IDC

is not capable of information analytics, data management, (vi) appellant only provides IDC service by using its hardware/security devices/personnel ; all that the Indian group companies received are standard IDC services and not use of any software, (vii) bandwidth and networking infrastructure is used by the appellant to render IDC services; Indian companies only get the output of usages of such bandwidth and network and not its use, (viii) consideration is for IDC services and not any specific program and (ix) no embedded/secret software is developed by the appellant.

Against the above factual backdrop, let us discuss below the case laws relied on both sides.

6.1 We begin with the case laws relied on by the id. counsel. A plethora of precedents on the subject in which we are presently concerned compels us, in order to avoid prolixity, to refer only a few decisions below.

Edenred Pte Ltd. 12 ITA Nos. 1718/M/2014 254/M/2015 & 507/M/2016 In the case of Bharati Axa General Insurance Co. Ltd. (supra), the appellant, an Indian company carrying on business of general insurance entered into a service agreement with a Singapore company AXA ARC for receiving assistance such as business support, market information, technology support services and strategy support etc. from the latter. The AAR held that

(i) though the services rendered by AXA ARC may well be brought within the scope of the definition of FTS under the IT Act as they answer the description of consultancy services or some of them may be categorized as technical services but the qualifying words "make available technical knowledge, experience, skill, know-how, which enables the recipient of services to apply the technology contained therein" in ArUde_12A of the DTAA make material difference, (ii) all technical or consultancy services cannot be brought within the scope of this definition unless they make available technical knowledge, knowhow etc. which in turn facilitates the person acquiring the services to apply the technology embedded therein, (iii) services provided by AXA ARC to the applicant do not fulfill the requirements of the definition of FT5 in the DTAA, (iv) even assuming that they are technical or consultancy services, it cannot be said that the applicant receiving the services is enabled to apply the technology contained therein, (v) also there is nothing in the IT support services that answers the description of technical services as defined in the DTAA, (vi) therefore, the fees paid to AXA ARC by the applicant does not amount to fees for technical services within the meaning of the DTAA, (vii) as regards the payments made for providing access to software applications and to the server hardware system hosted in Singapore for internal purposes and for availing of related support services under the terms of the service agreement, same cannot be brought within the scope of the definition of Edenred Pte Ltd. 13 ITA Nos. 1718/M/2014 254/M/2015& 507/M/2016

'royalty' in Article 12.3, (viii) there is no transfer of any copyright in the computer software provided by AXA ARC and it cannot be said that the applicant has been conferred any right of usages of the equipment located abroad, more so, when the server is not dedicated to the applicant.

Similarly, in the case of Standard Chartered Bank (supra), the assessee entered into an agreement with a Singapore company SPT, for the provision of data processing support for its business in India and that data processing is done outside India. Application software by which data is transmitted to hardware at Singapore and processed by SPL at Singapore is owned by the assessee. Thus what is used by the appellant is the computer hardware owned by SPL. The Tribunal held that (i) payment in question can be said to be a payment for a facility which is available to any person willing to use the facility, (ii) system software which is embedded in the computer hardware by which the computer hardware functions is not owned by SPL and SPL only has a license to use the system software ; (iii) consideration received by SPL is for using the computer hardware which does not involve use or right to use a process, (iv) there is nothing on record to establish that the hardware could be accessed and put to use by the assessee by means of positive acts, (v) therefore, it cannot be said that the payment by the assessee to SPL is royalty within the meaning of Article 12 of the treaty.

In ExxonMobil Company India (P.) Ltd. (supra), the assessee had paid certain amount to 'EMCAP', Singapore towards global support fees. The AO opined that payment made by the assessee was in the nature of FTS as defined in Explanation 2 to section 9(1)(vii) of the Act. The Tribunal observed that as per terms of agreement, EMCAP had to provide management consulting, Edenred Pte Ltd. 14 ITA Nos. 1718/M/2014 254/M/2015 & 507/M/2016 functional advice, administrative, technical, professional and other supporting services to the assessee; however, there was nothing in agreement to conclude that in course of such provision of service, EMCAP had made available any technical knowledge, experience, skill, knowhow or process which enabled assessee to apply technology contained therein on its own. Therefore, the Tribunal held that payment made by the assessee could not be considered as FTS as defined under Article 12(4)(b) of the India-Singapore DTAA.

In M/s Reliance Jio Infocomm Ltd. (supra) for AY 2016-17, the Tribunal observes that though the India-Singapore Tax Treaty is amended by Notification No. SO 935(E) dated 23.03.2017, however, the definition of 'royalty' therein has not been tinkered with and remains as such.

6.2 Now we turn to the case laws relied on by the id, DR. In the case of Cargo Community Network (P.) Ltd. (supra), the assessee, a nonresident company has its registered office at Singapore. It is engaged in the business of providing access to an internet based air cargo portal known as Ezycargo at Singapore. The applicant received payments from an Indian subscribers for providing

password to access and use the portal hosted from Singapore. The AAR held that payments made for concurrent access to utilize the sophisticated services offered by the portal would be covered by the expression royalty.

We find that subsequently, after considering the decision in Cargo Community Network (P.) Ltd. (supra), Mumbai ITAT in the case of Standard Chartered Bank 11 ITR 721 and Yahoo India Pvt. 140 TTJ 195 held that no part Edenred Pte ltd. 15 ITA Nos. 1718/M/2014 254/M/2015& 507/M/2016 of the payment could be said to be for use of specialized software on which data is processed as no right or privilege was granted to the company to independently use the computer.

In the case IMT Labs (India) (P.) Ltd. (supra), the assessee, on Indian company, entered into an agreement with a non-resident American company for securing license of a particular software, which the applicant is entitled to use. The applicant has to pay license fee for usage of software to the American company. The AAR held that 'Smarterchild' application software on the American company's server platform is scientific equipment licensed to be used for commercial purposes and therefore, payments made for producing and hosting 'Interactive Agent' applications would be covered by the expression 'royalties' as used in Artjefe_I2.

However, we find that in the instant case, appellant only provides service by using its hardware/security devices/personnel and not use of any software and therefore the above case is distinguishable from the present appeal.

In ThoughtBuzz (P.) Ltd. (supra), the applicant, a Singapore company was engaged in providing social media monitoring service for a company, brand or product. It was a platform for users to hear and engage with their customers, brand ambassadors etc. across the internet. The applicant offered service on charging a subscription. The clients, who subscribe, can login to its website to do a search on what is being spoken about various brands and so on. The AAR held that the amount received from offering the particular Edenred Pte Ltd. 16 IT A Nos. 1718/M/2014 254/M/2015& 507/M/2016 subscription based service is taxable in India as 'royalty' in terms of paragraph 2 of Article 12 of the DTAC between India & Singapore.

However, we find that in the instant case, the appellant is only providing IDC service which includes administration and supervision of central infrastructure, mailbox hosting services and website hosting services and therefore, the ratio laid down in the above ruling is not applicable to the facts of the appellant's case.

6.3 From the enunciation of law in Bharati Axa General Insurance Co. Ltd; ExxonMobil Company India (P.) Ltd; Standard Chartered Bank v. DOIT; DCIT v. M/s Reliance Jio Infocomm Ltd narrated at para 6.1 hereinbefore, it is quite iuculent that revenues under the IDC agreement ought not to be taxed in the hands of the appellant as royalty under the Act and/or India-Singapore DTAA. Therefore,

we delete the addition of Rs.95,62,479/- made by the AO towards IDC charges and allow the 2nd ground of appeal.”

8. Facts being identical, respectfully following the aforesaid decision of the coordinate bench, we hold that IDC charges received by the assessee is not in the nature of royalty. Accordingly, additions are deleted. Ground 2 in both the appeals are allowed.”

5. There being no difference in the factual position in the impugned assessment year, respectfully following the earlier decisions of the Tribunal in assessee's own case, we delete the addition. This ground is allowed.”

10. We find that this issue is recurring in nature and has been decided in favour of the assessee by the decision of the coordinate bench of the Tribunal for the preceding assessment years. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the order passed by the coordinate bench of the Tribunal in assessee's own case cited supra, we uphold the plea of the assessee and direct the AO to delete the addition on account of IDC charges. As a result, ground No. 2 raised in assessee's appeal is allowed.”

10. We find that the issue raised before the Tribunal in this year is similar to the issue raised in assessment year 2019-20 which has been adjudicated by the Tribunal in favour of the assessee as above. Since identical issue was dealt by the Tribunal for earlier assessment years as cited supra in assessee's own case, therefore, following the same, the ground of the assessee is allowed.”

9. After considering the decision of the ITAT on similar issue and identical fact as discussed supra we find that the issue raised in the assessment year 2020-21 is squarely covered by the decision of the ITAT as referred above, therefore, following the same this ground of appeal of the assessee is allowed.

Ground No. 3 to 5: Other service charges taxed as Royalty & Management Service Fees taxed as Royalty:

10. During the year under the consideration the assessee has received Rs.16,83,953/- & Rs.88,90,764/- on account of other service fees and management service fees from M/s Accentiv (India) Pvt. Ltd. The assessee has an agreement with M/s Accentiv (India) Pvt. Ltd. as per the agreement Global Clients of the assessee interested in availing

customer services may avail services from M/s Accentiv (India) from their offices in India. The assessee claimed that the payment received on account of other service charges and management service charges are not taxable in India as per Article 12 of the Treaty between India & Singapore. However, assessing officer has not agreed with the submission of the assessee and treated the aforesaid receipts as royalty income within the meaning of Sec. 9(1)(vi) of the Act r.w. Article 12 of India Singapore DTAA.

10. The assessee filed objection before the DRP. The DRP following the directions of the DRP in A.Y. 2019-20 has dismissed the objection filed by the assessee.

11. During the course of appellate proceeding before us the Id. Counsel submitted that similar issue on identical fact has been adjudicated by the coordinate benches of the ITAT in the case of the assessee itself for A.Y. 2017-18 to 2019-20.

12. On the other hand, the Id. D.R supported the order of lower authorities.

13. Heard both the sides and perused the material on record. With the assistance of Id. Representative we have perused the decision of ITAT in the assessee's own case for A.Y. 2017-18 vide ITA No. 370/Mum/2012 dated 28.02.2023 wherein the similar issue on identical fact has been decided in favour of the assessee. The relevant extract of the decision is reproduced as under:

"13. We have heard both the sides and perused the materials on record. With the assistance of Ld.representatives, we have perused the decision of ITAT in assessee's own case for A.Y. 2019-20 vide ITA No.1562/Mum/2022 dated 29/12/2022 wherein similar issue, following the judicial pronouncements earlier decided in assessee's own case was followed. The relevant finding of the Tribunal in the aforesaid decision are as under:-

“13. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal in assessee’s own case in Edenred Pte Ltd. (supra), for the assessment year 2016–17, decided similar issue in favour of the assessee by following the judicial precedents rendered in assessee’s own case. The relevant findings of the coordinate bench of the Tribunal, in the aforesaid decision, are as under:

“6. In ground 3, assessee has challenged the addition of other service charges (referral fee) as royalty. As could be seen, identical issue came up for consideration in assessee’s own case in the preceding assessment years. In the latest order passed for the assessment years 2014-15 and 2015-16 (supra), the Tribunal has deleted the addition with the following observations:-

“23. We have considered rival submissions and perused materials on record. It is observed that identical issue came up for consideration before the Tribunal in assessee's own case in assessment year 2010-11, 2011-12 and 2012-13. While deciding the issue, the Tribunal, negating the stand of the departmental authorities held as under:-

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

In the instant case, the appellant has received fees for referral services/other services of Rs.39,94,209/-from Surf Gold in the year under consideration.

It is relevant to mention here that 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. In the instant case, referral services/other services are provided to support Surf Gold in carrying on its business. These services do not make available any technical knowledge, skill, knowhow or processes to Surf Gold because there is no transmission of the technical knowledge, experience, skill etc. from the appellant to Surf Gold or its clients.

In the case of Cushman & Wakefield (S) Pte. Ltd. (supra), the applicant a foreign company based in Singapore is engaged in the business of rendering real estate services to its local and international clients. The applicant has developed certain international client relationships and in accordance with Edenred Pte Ltd. 29 ITA Nos. 1718/M/2014 254/M/2015& 507/M/2016 global policy of the group, various offices provide referral services to other Cushman & Wakefield (C&W) Offices. The applicant entered into a referral agreement with Indian group company whereby the applicant refers/recommends potential customers desirous of obtaining real estate consulting and associated services in India, Further the

applicant was not responsible for persuading the customers to avail the services of the Indian group company, nor negotiating or collecting fee charged by Indian group company from the referred customers. As consideration for such referral services, a percentage of the amount realized from the referred customers (i.e. 30% on gross amount realized) was paid to the applicant. The AAR held that "referral fee received in Singapore by the applicant, a Singaporean company from an Indian company for referring customers to the latter is neither business income u/s 9(l)(i) nor royalty u/s 9(l)(vi) nor fee for technical services u/s 9(l)(vii) r. w. Article 12(4)(b) of the DTAA between India & Singapore and, therefore, it is taxable as business income in Singapore only as the applicant has no PE in India; impugned receipt not being chargeable to tax under the provisions of the IT Act or under the provisions of DTAA, section 195 is not attracted".

In Real Resourcing Ltd. (supra), the AAR, in the context of the India-UK DTAA, after relying on the Cushman & Wakefield Ruling (supra) held that referral fee received by a UK company (applicant) from India based recruitment agency for referring potential Indian clients and candidates was not royalty or FTS. The relevant observations of the AAR in the context of Article 13 dealing with royalty/FTS is as under:

Edenred Pte Ltd. 30 ITA Nos. 1718/M/2014 254/M/2015& 507/M/2016 "10. Collecting data and analyzing it and making a database for providing information on suitable candidates for recruitment, even if they are in the nature of consultancy services, cannot be considered to be ancillary and subsidiary to the enjoyment/application of the right or information referred to in para 3(a). Moreover, by access to the database, it cannot be said that the information concerning industrial, commercial or scientific experience will be transmitted by the applicant to the recruiting agencies. If the contention of Revenue is accepted, it would amount to unwarranted expansion of the terms FTS and royalties. Consideration for providing information concerning industrial, commercial or scientific experience basically involves the sharing of technical know-how and experience which is not the case here.....

We do not think that the criterion envisaged by art. 13.4(a) of DTAA has been satisfied in the instant case."

In Knight Front (India) (P.) Ltd. (supra), the Tribunal held that (i) where referral fees was received by foreign concern for introducing clients to assessee-Indian company, providing international real estate advisory and management services, since referral services were

rendered entirely outside India, it would not fall within the scope of 'total income' of so id foreign concern as per section 5(2) and (ii) referral fees paid by assessee Indian company for availing referral services which were rendered by foreign concern entirely in USA would constitute business profits of foreign company under Article 7 of the India-USA DTAA; in absence of PE in India, it was not taxable in India. The distillation of precedents must now be applied by us to the facts of the present case. We are of the considered view that in the context of the above factual scenario and position of law, the revenues under the referral Edenred Pte Ltd. 31 ITA Nos. 1718/M/2014 254/M/2015 & 507/M/2016 agreement is not taxable in the hands of the appellant as royalty under the Act and/or India-Singapore DTAA or FTS under the India-Singapore DTAA, Therefore, we delete the addition of Rs.39,94,209/- made by the AO towards referral fee and allow the 4th & 5th ground of appeal."

24. Identical view was expressed by the Tribunal while deciding the issue again in assessee's own case in assessment year 2013-14 in ITA No.2178/Mum/2017 dated 23- 10-2020. Edenred Pte. Ltd. IT

25. Facts being identical, respectfully following the decisions of the Tribunal in assessee's own case as referred to above, we hold that referral fee received by the assessee is not in the nature of royalty. Accordingly, addition made in both the assessment years under dispute is deleted. Respective ground is allowed."

7. There being no difference in factual position in the impugned assessment year, respectfully following the earlier decision of the Tribunal as referred to above, we delete the addition. This ground is allowed."

14. We find that this issue is recurring in nature and has been decided in favour of the assessee by the decision of the coordinate bench of the Tribunal for the preceding assessment years. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the order passed by the coordinate bench of the Tribunal in assessee's own case cited supra, we uphold the plea of the assessee and direct the AO to delete the addition on account of other service charges (referral fees). As a result, ground No. 3 raised in assessee's appeal is allowed."

14. We find that this issue is recurring in nature and has been adjudicated in favour of the assessee by the Tribunal as quoted supra. Since identical issue on same facts is involved, following the decision of the co-ordinate bench as referred above, we direct the Assessing Officer to delete the addition on account of 'other service charges taxed as royalty'. This ground of appeal of the assessee is allowed."

14. We consider that similar issue on identical fact has been adjudicated in favour of the assessee in the earlier years as discussed supra in this order. Therefore, following the decision of ITAT this ground of appeal filed by the assessee is allowed.

15. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 12.04.2024

Sd/-

(Kavitha Rajagopal)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 12.04.2024

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.