

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

Before Dr. B. R. R. Kumar, Accountant Member,

Sh. Anubhav Sharma, Judicial Member

ITA No. 3880/Del/2023 : Asstt. Year: 2021-22

Hireight Limited, 15, Westferry Circus, Canary Wharf, London, United Kingdom	Vs	ACIT, Circle-2(1)(1), International Taxation, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAECH0080Q		

**Assessee by : Sh. Kishore Kunal, Adv. &
Ms. Ankita Prakash, Adv.**

Revenue by : Sh. Vizay B. Vasanta, CIT-DR

Date of Hearing: 08.04.2024

Date of Pronouncement: 27.06.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order dated 30.10.2023 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case and in law, Ld. AO, has grossly erred in determining the taxable income of the Appellant for the subject assessment year at INR 7,32,81,530/- as against nil returned income and, accordingly, the assessment order passed by the Ld. AO is bad in law and void ab-initio.

1.1. That on the facts and circumstances of the case and in law, the Ld. AO has erred in proposing addition of INR 7,32,81,530 based on mere conjunctures and surmises, ignoring the factual matrix of the case as well as the nature of the transactions undertaken by the Appellant.

1.2. That the Ld. AO has failed to appreciate the submissions made by the Appellant and further erred in making several observations and Inferences in the assessment order, which are fact fully incorrect and legally untenable.

2. That on the facts and circumstances of the case and in law, the Ld. AO erred in holding that the revenue received by the Appellant from provision of background screening and investigation services is in the nature of 'Royalty' or 'Fees for Technical Services' ("FTS") under the provisions of Article 13 of the Double Taxation Avoidance Agreement between India and UK ("India - UK DTAA").

2.1. That on the facts and circumstances of the case and in law, the Ld. AO erred in holding that the reports provided by the Appellant are protected by Copyright laws and therefore, the use of such reports by the clients will result in use of a Copyright chargeable to tax as Royalty.

2.2. That on the facts and circumstances of the case and in law, the Ld. AO erred in holding that the Appellant maintains a Database or Appellant has taken such database under license from its owner and the consideration received by the Appellant is for allowing the use of database to its clients and is chargeable to tax as Royalty.

2.3. That on the facts and circumstances of the case and in law, the Ld. AO erred in holding that the screening report provided by the Appellant contains confidential information which are not available in public domain and use of that information by the clients amounts to use of commercial experience of the Appellant and is chargeable to tax as Royalty.

2.4 That on the facts and circumstances of the case and in law, the Ld. AO erred in placing reliance on judicial precedents and clauses in agreements which are distinguishable on the facts of the case.

2.5 That on the facts and circumstances of the case and in law, the Ld. AO erred in holding that the revenue received by the Appellant is ancillary to the alleged 'Royalties' and therefore also taxable as FTS without appreciating the fact that provisions with regard to Royalties and FTS are

mutually exclusive to each other and it can either be a royalty or FTS.

3. That on the facts and circumstances and in law, the Ld. AO erred in denying exemption under Section 10(50) of the Act without appreciating the factual matrix of the case.

4. That on the facts and circumstances of the case and in law, without prejudice to ground number 3, the Ld. AO erred by not following the directions of Hon'ble Dispute Resolution Panel by not granting credit of equalization levy paid by the Appellant during the subject AY.

5. That on the facts and circumstances and in law. the Ld. AO has erred in increasing the income reported by INR 23.45.986 basis Form 26AS of the Appellant without appreciating that difference in receipts as per Form 26AS and as per books is on account of genuine reasons and does not merit incremental addition in hands of the Appellant.

6. That on the facts and circumstances of the case and in law. the Ld. AO has erred in making erroneous recovery of refund amounting to INR 70,37,551 without appreciating the fact that no refund has been granted to the Appellant for the said year in absence of a bank account in India.

7. That on the facts and circumstances of the case and in law, the Ld. AO has erred in levying interest under section 234A and 234B of the Act."

3. The present appeal challenges the Assessment Order dated 30.10.2023 ("Impugned Order") passed under Section 143(3) read with Section 144C (13) of the Income Tax Act, 1961 ("the Act") for the Assessment Year ("AY") 2021-22.

4. The assessee is incorporated under the laws of the UK and for the taxation purposes is a tax resident of the UK within the meaning of Article 4 of the India USA Double Taxation avoidance agreement ("DTAA"). The assessee company is

engaged in the business of providing background screening and investigation services to its customers in India.

5. The assessee claimed exempted income of Rs. 7,09,35,541/- in its ITR for the relevant assessment year and the case was selected for scrutiny under CASS and the draft assessment order was passed on 23.12.2022 alleging that the background screening services provided by the Appellant falls within the purview of Royalty or FTS under the provision of Article 13 of India-USA DTAA.

6. The assessee filed its objection on 19.01.2023 before the Dispute Resolution Panel-1, Delhi against the draft Assessment Order. The direction of DRP was passed on 18.09.2023 whereby, it reiterated its stand taken for AY 2019-20 and 2020-21. Pursuant to the DRP direction, Impugned Order was passed on 30.10.2023 whereby, the total income of the Appellant was determined at Rs. 7,32,81,530/-.

7. At the outset, the Id. AR brought to our notice that the case of the assessee is squarely covered by Order dated 06.09.2023 in ITA No. 373/Del/2023 and ITA No. 1884/Del/2022. The Id. DR has gone through the grounds in entirety and the order of the Tribunal and argued that the order of the Id. DRP be affirmed.

8. We find that the issues raised in the present appeal already stands decided by this Tribunal in ITA No. 373/Del/2023 and ITA No. 1884/Del/2022, vide Order dated 06.09.2023, the issue pertaining to the taxability of background screening

services as royalty was decided in favour of the Appellant. The relevant extract of the order is reproduced below:

"12. As regards the impugned receipts being in the nature of royalty, in our considered view, none of the requisites under Article 13(3) of the India-UK DTAA are satisfied so as to qualify such receipts as 'royalty'. What assessee is providing to the clients in India is merely a report summarizing its findings with respect to the background check undertaken by the assessee which is primarily a factual data and cannot per se qualify as literary or artistic or any other copyrightable work. Such a report cannot be copyrighted as it does not fulfill the requirements enlisted under section 13(1)(a) of the Indian Copyright Act, 1957. Also, none of the rights as mentioned in Section 14(a) of the Indian Copyright Act, 1957 have been rested with the client by the assessee while rendering its services. Income from provision of the services rendered by the assessee cannot be characterized as royalty for use of copyright in the report as the client merely has the right to use the findings in the report for its own internal consumption. The client does not have any rights to publicly display, sell/distribute, copy, edit, modify or undertake any other commercial exploitation of the said report. It is thus evident that the consideration received by the assessee under the terms of its agreement with its client is purely towards provision of background screening services and does not include any consideration for use or right to use any copyright or a literary, artistic or scientific work, patent, trademark, design, model, plan, secret formula, or process or information. Thus, the impugned receipts of the assessee from its clients in India cannot be regarded as 'Royalties' under the provisions of Article 13 of the India-UK DTAA. Support may be drawn by the decision of the Hon'ble Supreme Court in the case of Engineering

Analysis Centre of Excellence (P) Ltd. vs. CIT (2021) 125 taxmann.com 42 (SC)/432 ITR 471 (SC).

13. *Further the assessee does not provide access to any database to its clients but only access to reports requisition by the client in electronic form. Provision of online access of the report to its client is limited to providing access to the specific report providing relevant facts for the concerned candidates captured during the course of validation. Nothing has been brought on record by the Revenue to refute the aforesaid claim of the assessee. In the light of these facts, in our opinion online access to background screening results cannot be construed as providing access to database maintained by the assessee.*

14. *It is a fact on record that the information obtained by the assessee from various sources is in the nature of factual data about the prospective candidates proposed to be hired by the clients. In our view this information is not an information which involves imparting of any kind of commercial experience, skill or expertise. The validation report merely contains some personal details of candidates such as educational and professional details which would not amount to imparting of commercial experience etc. What is delivered to the client is validation report assuring its clients about the authenticity of information contained in the report on the basis the information collated in the process of validation. Hence it cannot tantamount to imparting of commercial experience. The screening report which is issued does not involve any transfer of commercial experience to the client or getting the right to use the experience. There is also no transfer of any skill or knowledge of assessee to the customers in the issuance of screening reports, as the client is only given access to findings of the assessee in the form of a report which contains factual information but nowhere the assessee imparts its experience, skill of carrying out background screening services to its client.*

It is thus clear that there is no imparting of information concerning industrial, commercial or scientific experience by assessee when it issues the reports to its clients.

15. As regards the characterization of impugned receipts as FTS, in our view, the services rendered by the assessee do not involve any technical skill/knowledge or consultancy or make available any technical knowledge, experience, skill, know-how or processes to the clients. Assessee's role is restricted to the verification of information provided by various candidates proposed to be hired by its clients. It involves seeking information from various sources that is accessible on specific requests and no advice/guidance on the credentials of the candidate is provided by the Assessee to its client. The role of the assessee is limited to validation of data provided by the candidate and provide relevant facts captured during the course of validation. The clients make an independent decision to hire the candidate. Hence, in our view the services should not be considered as FTS under Article 13(4) of the India-UK DTAA. Accordingly, ground No. 1 to 2.3 are decided in favour of the assessee."

9. The order dated 06.09.2023 passed in ITA No. 373/Del/2023 and ITA No. 1884/ Del/2022 was challenged before the jurisdictional High Court in ITA No. 138 of 2024 by the Department. The Hon'ble High Court vide order dated 26.02.2024 decided the aforesaid appeal in favour of the assessee and dismissed the Appeal filed by the Department holding as follows:

"5. In our considered opinion, the mere undertaking of background checks of an employee or the verification of testimonials cannot possibly be recognized as entailing the use of any technical knowledge, experience or skill as provided

under Article 13(4) of the India-UK DTAA. The assessee is merely verifying disclosures and which activity cannot be recognized as being imbued with any technological characteristic. There is also a complete absence of a transfer of data or information which could be described as "technical" as the word is commonly understood. In view of the aforesaid, we find no reason to take a view contrary to what has been expressed by the ITAT."

10. Apart from the above, the Co-ordinate Bench Tribunal in ITA No. 3413/Del/2023, on 19.01.2024 in assessee's own case, while relying upon the aforesaid order held that background screening services provided by an assessee does not qualify as royalty. The relevant extract is produced below:

"3. At the outset, it has been brought to our notice that the issue of the involved in the appeal before us, has been squarely covered by the order of the Tribunal in the case of HireRight Ltd., in ITA No. 373/Del/2023 & ITA No. 1884/Del/2022.

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4. Hence, in the absence of any material change on the facts of the issue and the legal proposition, we hold that no addition on account "Royalty" is warranted in this case."

11. Since, the matter stands covered by the order of the Hon'ble High Court in assessee's own case, in the absence of any change in the factual matrix and legal proposition, the appeal of the assessee is hereby allowed.

12. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 27/06/2024.

Sd/-

**(Anubhav Sharma)
Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**

Dated: 27/06/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR