आयकर अपीलीय अधिकरण, ए, न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
HON'BLE SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.258 /CHNY/2023**
& S.P.No.27/CHNY/2023
निर्धारण वर्ष/Assessment Year: 2013-2014.

Visteon Corporation, Grace Lake Corporation Centre, Van Buren Township, Michigan 48111.	Vs.	The Deputy Commissioner of Income Tax, International Taxation Circle 2(2) Chennai.

PAN: AADCV 5660K

(अपीलार्थी/Appellant)	(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. Ajoy Vohra, Sr. Advocate (By Virtual), Ms. Jyotsma Sivakumar and Shri. Aditya Vohra, Advocates

प्रत्यर्थी की ओर से/Respondent by : Shri. Nilay Baran Som, IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 30.09.2024
घोषणा की तारीख/Date of Pronouncement : 30.09.2024

आदेश /O R D E R

PER MANU KUMAR GIRI (Judicial Member)

The present appeal by the assessee in ITA Nos.258/CHNY/2023 is arising out of the final assessment order passed by the Assistant

Commissioner of Income Tax, International Taxation Circle 2(2), Chennai vide orders of even date 06.01.2023 in pursuant to the directions of the Dispute Resolution Panel-2, Bengaluru vide directions of even date 19.12.2022 for the assessment year 2013-14. The appeal by the assessee in ITA No.258/CHNY/2023 for the assessment year 2013- 14 is arising out of the order of the Commissioner of Income Tax (International Taxation), Chennai passed u/s.147 r.w.s 144C of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 06.01.2023. The assessee has also filed stay applications seeking stay of outstanding demand for the assessment years 2013-14.

ITA No.258/CHNY/2023

2 At the outset, the ld. Sr. Counsel, Shri Ajay Vohra for the assessee (Virtually argued) stated the ground raised at Sr.No.5 to 7 are covered by the recent order of the coordinate bench of this Tribunal in assessee's case for the AYs 2014-15, 2016-17 & 2017-18 in ITA Nos.259, 260 & 262/Chny/2023 dated 26.07.2024. Ground No.1 being general in nature, need not be adjudicated hence dismissed. Ground Nos. 2 to 4 was not pressed during course of hearing by the assessee hence dismissed as not pressed. The ld. Sr. Advocate for the assessee drew our attention to the following Ground Nos. 5 to 8 raised on merits:-

> *5. The learned AO and the DRP have erred in law by making an addition to the total income of the Appellant merely based on details of proposed remittances in the form of extracts of Form 15CA filed by the payer entities.*

6. The learned AO and DRP has erred in assessing a sum of INR 14,94,02,614 in addition to amount of INR 54,03,50,719 reported in the return of Income filed by the Appellant.

7. The learned AO and the DRP have erred in law by treating the amount as 'fees for included services' under Article 12(4) the India-USA Double Taxation Avoidance Agreement ('DTAA').

3. Briefly stated facts are that the assessee Visteon Corporation is a foreign Company and is a global leader in automotive cockpit electronics. The assessee is engaged in the business of designing, engineering, and manufacturing systems for various automotive clients as well as rendering IT support services. It acts as a global IT support service Centre. For the relevant assessment year, the assessee company entered into an IT support services agreement to provide routine operational and maintenance support services. The assessee company filed its return of income for the assessment year 2013-14 on 31.05.2021 in response to notice issued under 148 of the Act. The assessee Company is assessed to tax by the Assistant Commissioner of Income-Tax, International Taxation Circle 2(2), Chennai (AO) under Permanent Account Number AADCV5660K.The AO started the assessment proceedings by issuing notice u/s.142(1) of the Act seeking certain information. The assessee maintained that the receipts in relation to the services provided by the company were not taxable in India under the provisions of the Act and under the India-USA Double Taxation Avoidance Agreement. The AO issue show-cause notice dated 17.02.2022 requiring the assessee to show-cause as to why the said sum of Rs.14,94,02,614/- being receipts from remittances during the relevant financial year 2012-13 relevant

to this assessment year 2013-14 were not offered to tax in the return of income and why it should not fall under the category of 'fee for included services [FIS]' under the Act and the India-USA tax treaty. The company replied vide letter dated 28.02.2022 stating that the service provided by the company is not taxable as FIS under Article 12 of the India-US Tax Treaty and reiterated that it cannot reconcile the amount merely on the basis of exact data of Form No.15CA filed by the payer entity.

4. The ld. Sr. Counsel vehemently submitted that the grounds, Agreement dated 01.01.2012, Master Agreement and facts and circumstances are identical to the AYs 2014-15, 2016-17 & 2017-18 in ITA Nos.259, 260 & 262/Chny/2023 wherein co-ordinate bench in assessee's own case vide order dated 26.07.2024 has decided the issues in favour of assessee. Hence, for the sake of brevity we are not repeating the facts of the present appeal and proceed on the basis of facts as recorded by the co-ordinate bench (as identical) for AYs 2014-15, 2016-17 & 2017-18 in ITA Nos.259, 260 & 262/Chny/2023.

5. The facts and circumstances, issues, Article 12(4) of India-US Double Taxation Avoidance Agreement ('DTAA' in short) and decision thereon has been discussed by the co-ordinate bench in assessee's own case for AYs 2014-

15, 2016-17 & 2017-18 in ITA Nos.259, 260 & 262/Chny/2023 dated 26.07.2024 are as under:

'4. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee is engaged in the business of designing, engineering, and manufacturing systems for various automotive clients as well as rendering IT support services. The assessee company entered into an IT support services agreement to provide routine operational and maintenance support services. The Assessing Officer while preparing assessment order taxed the receipts from remittances received on account of services provided by the company amounting to Rs.1,26,58,51,703/- was brought to tax despite claimed by the assessee that services provided by the company is not taxable as FIS under Article 12 of the India-US Tax Treaty and also reiterated that these receipts could not be reconciled merely on the basis of exact data of Form No. 15CA filed by the payer entity. The DRP also rejected the claim of the assessee. Now before us, the ld.Counsel argued that the Assessing Officer as well as the DRP erred in observing that the services rendered under the services agreement are in the nature of business support services in the field of treasury, corporate quality, planning and logistics, legal, human resources, audit, material planning and logistics, environment and health safety etc rendered to its group entities who do not make available technical knowledge, experience etc to the business to whom such services being rendered and hence, these are not taxable as FIS under Article 12(4) of India-US Double Taxation Avoidance Agreement (DTAA) and even these services are not covered as fee for technical services as per Article 5 of India-US DTAA. The ld.Counsel took us through the services agreement dated 01.04.2013, which is effective from 01.01.2013 and he drew our attention to specific services included in Clause 2, which reads as under:

"2. Services

*2.1 Services Subject to the terms and conditions set forth in this Agreement and in the Service Description Schedules, during the periods starting on the Effective Date and ending on the applicable Service Termination Date (defined in Section 7.1 below), 'Visteon will, or will cause other Visteon Service Providers to, provide such services to the Service Recipients with respect to the Business and any Additional Services as the Parties may agree in a Service Description Schedule (all services provided, or to be provided, by Visteon or the Visteon Service Providers under this Agreement and a Service Description Schedule, including Projects and Additional Services, collectively, "Services"). As of the Effective Date, the initial IT Service Description Statement of Work is attached hereto as Exhibit A and the Services Agreement for IT Projects is attached hereto as Exhibit **B."***

Further, he took us through the obligations of the services recipients and usage of the services including performance of excluded services and others. The relevant obligations of services recipients are noted in this services agreement Clause 2.5 as under:

"2.5 Obligations of the Service Recipients

(a) Use of the Services VASI will, and will cause the other Service Recipients to: (i) use the Services only for their own internal business purposes and to support the conduct of the Business; and (ii) adhere to any and all conditions or policies applicable to use of the Services as set forth in this agreement or any Service Description Schedule. VASI will not, and will ensure that each of the other Service Recipients do not, resell any Services, act as a service desk, make the Services available to any third parties, or otherwise use all or any portion of the Services in any way other than in connection with the conduct of the Business in the ordinary course of business.

(b) Performance of Excluded Services VASI will, at its sole cost and expense, perform (or cause to be performed) all Excluded Services that are necessary to the continued operation of the Business or performance of the Services. Notwithstanding anything in this Agreement to the contrary, Visteon will have no obligation to perform (or cause the Visteon Service Providers to perform) any Service to the extent that such Service is dependent in any respect upon the performance of an Excluded Service that a Service Recipient fails to perform (or fails to cause to be performed).

(c) Correction of Processing Errors VASI is responsible for, and will cause the other Service Recipients to assume responsibility for: (i) the accuracy and completeness of all data of information submitted by a Service Recipient to the applicable Service Provider for processing or transmission in connection with the Services ("Data"); and (ii) any errors in and with respect to Data or information obtained from the Service Provider to the extent caused by any inaccurate or incomplete Data submitted by a Service Recipient.

(d) Other Obligations To the extent necessary or desirable to enable the provision of 1he Services by the Visteon Service Providers, VAST will, and will cause the other Service Recipients to: (i) provide timely responses to information requested by Visteon or any Visteon Service Provider, (ii) provide access to the personnel, facilities, assets, and books and «cords reasonably requested by Visteon or any Visteon Service Provider, (iii) comply with the Service Providers' policies and instructions; (Iv) maintain all telecommunications, data and network connections, hardware and other equipment, licenses, sublicenses, leases, and contracts; (v) maintain in good operating condition all equipment, software, and operational feature, consistent with the practice existing as of the Closing Date; and (vi) assume responsibility for their pro rata share of the cost of repair and maintenance of any equipment or other assets provided by a Visteon Service Provider (and

owned by Service Provider or a third party) to a Service Recipient, unless the repair and maintenance is performed solely for the purposes of providing transitional service Recipient will be solely responsible for the costs and expenses incurred.',

*(e) System and Network Upgrades With respect to an upgrade or an enhancement to the System or Networks of Visteon **or** any Visteon Service Provider that need to be made following the Effective Date, within thirty (30) days after Visteon and/or the applicable Visteon Service Provider has reasonably determined that such upgrade or an enhancement (i.e., an improvement and not a fix or patch) is necessary and provided information for the upgrade or the enhancement to VASI by Visteon Or Visteon Service Provider, VASI will, or will cause the applicable Service Recipients to, mutually agree with Visteon or the applicable Visteon Service Provider on a timeline to complete all such enhancements (at VAST's sole cost and expense if the enhancement is necessary solely for the purposes of providing Services or on a pro rata basis **if** the enhancement is performed across Visteon's or a Visteon Service Provider's system), in a manner consistent with past Practices of Visteon and/or the applicable Visteon Service Provider or, **if** past practices are not relevant, in a manner consistent with current practices of Visteon and/or the applicable Visteon Service Provider, and appropriately upgrade or enhance such equipment, software, and operational features maintained or controlled by the Service Recipients, as may be necessary to remain compatible with any systems used by Visteon and/or the applicable Visteon Service Provider as of and after the Effective Date in connection with providing the Services in a manner consistent with provision of such Services before Effective Date."*

The ld. Counsel further took us through the Clause 9 of the services agreement, wherein ownership of the intellectual property are described in Clause 9, which reads as under:

"9. Ownership of Intellectual Property and ITAssets

9.1 Intellectual Property

(a) Any Intellectual Property owned by Visteon or any Visteon Service Providers, or third- party licensors or other service providers that may be operated or used by Visteon or any Visteon Service Provider in connection with the provision of the Services under this Agreement will remain the property of Visteon or the applicable Visteon Service Provider or third-party licensors or other service providers, as applicable, and neither VASI nor any Service Recipient will have any rights or interests in such Intellectual Property, except as may otherwise be expressly provided in Section 9.1 (b) below.

(b) As between VASI and any Service Recipients, on one hand, and Visteon and any Visteon Service Provider, on the other hand, Visteon shall be the sole and exclusive owner of all Intellectual Property created hereunder. Subject to the terms and conditions of this Agreement, Visteon hereby grants to VASI Parties a non-exclusive, non-sub licensable, non-

transferable, limited license to use such Intellectual Property created by Visteon or a Visteon Affiliate specifically for the purpose of providing the Services hereunder during the Term, solely to the extent required to receive the Services hereunder in accordance with the terms and conditions of this Agreement.

(c) To the extent reasonably required by a Party to comply with any applicable Law (including interpretations or enforcements of applicable Law) relating to data protection, the Parties shall execute a written agreement sufficient to comply with such Laws.

9.2 Hardware and Software Used to Provide Services. VASI acknowledges and agrees that, to the extent it is granted access to any hardware or software of Visteon or any Visteon Service Provider is connection with the provision of the Services under this Agreement, neither VASI nor any of its Affiliates will acquire any right, title, or interest in or to any such hardware or software (other than the right to use (but not copy) such hardware .and software .to the extent set .forth in the Service Description Schedules); including the licenses therefore that are held by Visteon or its Affiliates.

9.3 Litigation As. of the Effective Date, there are no proceedings, claims, actions, suits or investigation by or before any governmental department, commission, board, bureau, agency, or instrumentality, or before any arbitrator, of any nature, pending, or, to the best of its knowledge, threatened against, involving, affecting or relating to it, that would affect Visteon's or Visteon Service Provider's ability to perform its obligations under this Agreement."

5. The ld.Counsel also took us through page nos. 140 to 150 of assessee's paper book, wherein in the services agreement, various services are described in 'Exhibit A- IT Services Description', in this services including Engineering IT Services, Business application services, Manufacturing IT solutions services, Data management services, End user computing services, Central IT support, Security services, Network services, Server services, Telecom services, IT staff support services, and consequently fees and expenses, how these are to be determined. The ld.Counsel drew our attention to the Appendix A, wherein usage of business applications and their functionalities are described at Pages 156 to 158 and in Appendix C –Responsibility chart as enclosed at pages 160 to 163 of assessee's paper book. The ld.Counsel also drew our attention to Exhibit B- Services Agreement for IT Projects, which is enclosed in assessee's paper book at pages 164 to 170 and further, copies of invoices are also enclosed.

6. In view of the above, ld.Counsel first of all took us through the Indo-US DTAA, which is enclosed at Pages 88 to 108 of assessee's paper book and referred Article 12(4), which reads as under:

Article 12

Royalties and fees for included services

"4. For Purposes of this Article, 'fees for included services' means payment of any kind to any person in consideration for the rendering of

any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:

(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 technical design."

The ld.Counsel also took us through the protocol signed on 12.09.1989, wherein in Paragraph 4(b) it is explained what is fee for technical services, how it has to make available. Paragraph 4 reads as under:

Paragraph 4(b)

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

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

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

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

1. *Bio-technical services;*
2. *Food Processing*
3. *Environmental and ecological services;*

4. *Communication through satellite or otherwise;*
5. *Energy conservation;*
6. *Exploration or exploitation of mineral oil or natural gas;*
7. *Geological surveys;*
8. *Scientific services; and*
9. *Technical training.*

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO while passing draft assessment order u/s.144C of the Act, proposed addition on account of receipts from remittances during financial year 2013-14 relevant to this assessment year 2014-15 on account of providing IT support services, maintenance services, etc., to its sister concerns in India for the reason that the operations of the assessee company is highly complicated and systems have been codified and methods to be adopted as per business need. The AO has not accepted the assessee's explanation above that the services rendered by it is not taxable. According to him, there is a clear nexus between services rendered and the compensation received by assessee company after going through the recital of service agreement entered into between assessee and its sister concern M/s. Visteon Automotive Systems India Pvt. Ltd. He noted the following aspects on the basis of which, he treated the total remittances amounting to Rs.126,58,51,703/- as fee for technical services u/s.9(1)(vii)(b) of the Act and taxed the same u/s.115A of the Act at the rate of 10% and also by applying the beneficial provisions, services rendered treating it as 'fee for included services' as per Article 12(4) of India-US DTAA and taxed at the rate of 10%. The AO noted the following aspects:-

1. Services provided by the assessee to its client was as per the initial IT Service Description Statement of work as per Exhibit-A and the Services Agreement for IT Projects as per Exhibit-B;

2. Additional Services may be activities that are performed on an on-going basis for the remainder of the Term or activities that are performed on a one-time or a Project basis;

3. Base Fees are those fees, costs and expenses for each such service as set
forth in the Agreement, as Base fees or Project Fees or Fees (Fees for Additional Services);
4. The assessee though shall be sole and exclusive owner of all Intellectual
Property created by it, has also granted to its clients a non-exclusive, non-sub licensable, non-transferable and limited license to use such Intellectual
Property;

5. As per 9.2, the assessee has granted access to any hardware or software to its clients, who, though will not acquire any right, title or interest in or to any such hardware or software other than the right to use;

6. Further, in Exhibit A - IT Services Description, as per Section 3(7), the assessee will for rendering the services, under "Conditions and Assumptions" will maintain full authority and control for access to the computer room. And, under the heads, Business Application Services, Manufacturing ITA Solutions Services, Data Management Services, End User Computing Services, Central IT Support, Security Services, Network services, Server services, Telecom Services and IT Staff Support Services, the assessee was rendered services to its clients. Except for the Security Services, Network services, Server services, Telecom Services and IT Staff Support Services, services rendered under Other heads is in the nature of Technical services and fall under the category of Fees for Technical Services under section 9(1)(vii)(b) of the IT Act, 1961 and as Fees for Included Services as per Article 12(4) of the India-US DTAA as the services rendered, as seen above, satisfied the 'make available' clause."

8. We noted that the DRP simpliciter confirmed the action of AO by observing that the assessee has not been able to demonstrate that the services rendered do not lead to 'make available' technical knowledge, experience, skill, know how or process to the assessee. Further, there is no information on what was the nature of services rendered and the information contained therein have to be head as 'fees for included services' as per Article 12(4)(a) of the Indo-USA DTAA. Hence, the panel confirmed the action of the AO in treating the payments received by the assessee during the year under consideration as 'fees for technical services u/s.9(1)(vii)(b) of the Act and 'fee for included services' under Article 12(4)(a) of the Indo-USA DTAA. Finally, the DRP held that the claim of assessee that such services were not 'made available' does not hold any merit.

9. Before us, the main argument of the assessee was that merely providing highly complicated services, as understood by Revenue and the same having nexus with the compensation received by it, by itself will not result in taxing such receipts as 'fees for included services' unless it satisfies the definition of FIS under DTAA between India and US. The ld.counsel had referred to the details submitted and argued that it is not able trace / source the reference of service description schedule in any of the documents submitted. Even the reference to Form No.15CA, the ld.counsel stated that the tax withholding obligation is triggered at the time of payment or credit whichever is earlier, whereas the details were available with the Revenue, which is yet to be provided by the company, relates to proposed remittance which may happen at a later point of time. The ld.counsel has pointed out the provisions of India-US DTAA para 4 of Article 12 of the India-USA DTAA which defines the term 'fees for included services' [the same are reproduced above in our order at para 6].

10. We are in agreement with the arguments of ld.counsel that in order to constitute a receipt 'fees for included services' [FIS] under Article 12 of India-US DTAA, services rendered must make available technical knowledge, expertise, skill, know how or processes or consist of the development and transfer of a technical

plan or technical design. We have gone through the Memorandum of Understanding explained the phrase 'make available' and the paragraph 4 (b) clarifies that the use of a product which embodies technology shall not per se be considered to make the technology available in paragraph 4(b) of the protocol as critical categories of services that jointly involves the development and transfer of technical plants or technical designs or making technology available as described in paragraph 4(b). In our view, these services rendered by assessee to its sister concern and compensation received on account of the same does not fall in these typical categories mentioned in paragraph 4(b) which includes 'making technology available' nor to be taxable under Article 12 of the tax treaty as FIS, the payment should fit into the terminology 'make available' wherein the technical knowledge, skill etc., must remain with the person receiving the services even after the particular contract comes to an end. Want to back of that, in the present case there is no such clause in the service agreement which we have gone through and substantially reproduced in our order. The nature of services provided by assessee which the company merely centralizes the IT related services to achieve a standardized IT environment and payment towards access to developed standard business / engineering applications, data management by providing disaster recovery / back up services, helpdesk support services, user administration, maintenance of IT infrastructure support services, telecom services do not make available any technical knowledge, experience, skills, etc., to the recipient, since the recipient cannot at any time independently manage the IT environment and requires continuous re-course to the company for the said services. Hence the service provided by the assessee company do not fall within the ambit of 'fee for included services' as defined under Article 12 of India US DTAA and hence, not taxable in India.

10.1 Admittedly, the assessee is a non-resident and having no PE in India. We have gone through the decision of Hon'ble Karnataka High Court in the case of CIT vs. De Beers India Minerals (P) Ltd., reported in 346 ITR 467, referred by the ld.counsel for the assessee and noted that the Hon'ble Supreme Court while interpreting the India US DTAA has held that the principle requirement of 'make available' technical services is made only if the service recipient is unable to independently apply the technical knowledge, skill, etc., in future without the aid of service provider, the same cannot be held as 'make available' and such technical services would not fall within the definition of technical services in term of DTAA and not liable to tax. The Hon'ble High Court of Karnataka observed as under:-

> *"14. Therefore, the clause in the Singapore agreement which explicitly makes it clear the meaning of the words "make available", the said clause has to be applied, and to be read into this agreement also. Therefore, it follows that for attracting the liability to pay tax not only the services should be of technical in nature, but it should be made available to the person receiving the technical services. The technology will be considered made available when the person, who received service is enabled to apply the technology. The service provider in order to render technical services uses technical knowledge, experience, skill, know-how or processes. To attract the tax liability, that technical knowledge, experience, skill, know-how or process which is used by the service provider to render technical*

service should also be made available to the recipient of the services, so that the recipient also acquires technical knowledge, experience, skill, know-how or processes so as to render such technical services. Once all such technology is made available it is open to the recipient of the service to make use of the said technology. The tax is not dependent on the use of the technology by the recipient. The recipient after receiving of technology may use or may not use the technology. It has no bearing on the taxability aspect is concerned. When the technical service is provided, that technical service is to be made use of by the recipient of the service in further conduct of his business. Merely because his business is dependent on the technical service which he receives from the service provider, it does not follow that he is making use of the technology which the service provider utilises for rendering technical services. The crux of the matter is after rendering of such technical services by the service provider, whether the recipient is enabled to use the technology which the service provider had used. Therefore, unless the service provider makes available his technical knowledge, experience, skill, know-how or process to the recipient of the technical service, in view of the clauses in the DTAA the liability to tax is not attracted."

and finally at para 31 held as under:-

"31. Therefore, the assessees not being possessed with the technical knowhow to conduct this prospecting operations and reconnaissance operations, engaged the services of Fugro which is expert in the field. By way of technical services Fugro delivered to the assessees the data and information after such operations. The said data is certainly made use of by the assessees. Not only the said data and information was furnished in the digital form, it is also provided to the assessees in the form of maps and photographs. These maps and photographs which were made available to the assessees cannot be construed as technology made available. Fugro has not devised any technical plan or technical design. Therefore, the question or Fugro transferring any technical plan or technical design did not arise in the facts of these cases. The maps which are delivered are not of kind of any developmental activity. As such, earlier the information which is furnished to the assessees by way of technical services in the digital form is also given in the form of maps. Therefore, the case on hand do not fall in the second part of the aforesaid clause dealing with development and transfer of plans and designs. Therefore, the second substantial question of law is also answered in favour of the assessees and against the Revenue."

10.2 Similarly, the ITAT, Pune Bench in the case of Sandvik Australia Pty. Ltd., vs. DDIT in ITA No.93/PUNE/2011, order dated 31.01.2013, held that the services rendered consisted of IT helpdesk support, back up related services, maintenance and administrative support etc., and while providing these services the assessee did not impart / make available any technical knowhow, skill, process or transferred technology plan or design. The Tribunal in para 16 held as under:-

16. In the present case, as per the terms of the agreement between the assessee company and Sandvik Asia Ltd., does not support the case of the Revenue that the assessee's case is covered in clause (g) of para 3 to Article 12 of the India Australia Treaty as the assessee has not made available any technical knowledge or expertise to the recipient Indian company. In our opinion, the assessee has only provided the back-up services and IT support services for solving IT related problems to its Indian subsidiary. Hence, unless and until the services are not made available, same cannot be taxable in India. We, therefore hold that the services rendered by assessee company to its Indian group companies, though are in the nature of technical services, but is not covered in para (3)(g) to Article 12 of the India Australia Treaty and hence, the same is not taxable in India. We also hold that the amount received by the assessee cannot be treated as a Royalty even under the normal provisions of I.T. Act. But under the normal provision of the I.T. Act the same constitute consideration for rendering the technical services covered u/s.9(1)(vii) of the I.T.Act. Accordingly, Ground No.1 is allowed and issue is decided in favour of the assessee.

10.3 Another case cited by ld.counsel for the assessee of ITAT, Delhi Bench in the case of GE Energy Management Services Inc., vs. ADIT reported in [2022] 135 taxmann.com 173, wherein the Delhi Tribunal noted that the assessee company entered into an agreement with the Indian company to provide off-shore maintenance and support services. As per agreement, the assessee's broad scope of work was to provide off-shore maintenance and support services from outside India and no part of services was defined under the agreement were rendered by the assessee from India. The Tribunal in these facts, held as under:-

27. From the above explanation provided in the MOU that forms an integral part of tax treaty that service only, if it makes available technical knowledge, experience, skill, know-how or processes to the service recipient. The receiver of this service can be said to acquire the relevant skills used by service provider only if he acquires those skills in such a way that he can himself use them independently without getting any assistance or being dependent on the service provider in future.

28. The facts of the present case clearly show that the offshore maintenance and support services provided by the assessee PGCIL are not geared towards making available any technical knowledge, experience, skills, know how or processes to PGCIL.

29. Our view is supported by the fact that the term of the agreement is five years and services provided by the assessee are repetitive and ongoing in nature. This means that PGCIL is not able to apply technical or skill use by the assessee for rendering such services. Given that repetitive nature of the services, it would be factually incorrect to allege that the services make available any technical knowledge, expertise, skill, knowhow or processes to PGCIL.

10.4 In our view, since the assessee is not having any PE in India and he is covered by India US DTAA and MOA, the nature of services rendered by the assessee on account of which received the remunerations cannot be described as 'fee for included services' and hence, not taxable in India. We also hold that the amount received cannot be treated as royalty even under the provisions of section 9(1)(vii), because the service rendered cannot constitute technical services so as to cover u/s.9(1)(vii) of the Act. Hence, we delete the addition and allow this issue of assessee's appeal on merits.

11. As regards to the point of reconciliation being difference in figures between Form No.26AS and Form No.15CA, as pointed out by ld.counsel for the assessee, we are of the view that Form No.15CA filed by the banker and the assessee was not in a position to verify the details forming part of Form No.15CA. The assessee has made claim as per Form No.26AS, this is subject to verification. The assessee will be provided necessary details as received by the AO in Form No.15CA and will confront the same to the assessee so that the assessee can peruse the same and provide suitable response and reconcile the figures. In term of the above, this particular verification is restored back to the file of the AO.

12. As regards to appeal for assessment year 2015-16, which is an appeal against revision order passed by the PCIT u/s.263 of the Act in ITA No.260/CHNY/2023 for the assessment year 2015-16, the issue on merits is exactly identical as we have deal with in ITA No.659/CHNY/2023 for the assessment year 2014-15 above. Hence, taking a consistent view, we adopt the decision of assessment year 2014-15 and accordingly delete the addition.

13. Similarly, for the assessment year 2016-17 & 2017-18 in ITA Nos.260 & 261/CHNY/2023, the facts and circumstances of the case and the issue on merits are exactly identical to assessment year 2014-15, hence taking a consistent view, we adopt the decision of assessment year 2014-15 and accordingly delete the addition.

6. Hence, respectfully following consistent view, we adopt the order of the co-ordinate bench in assessee's own case for AYs 2014-15, 2016-17 & 2017-18 in ITA Nos.259, 260 & 262/Chny/2023 dated 26.07.2024 and held that since the assessee is not having any PE in India and it is covered by India US DTAA and MOA, the nature of services rendered by the assessee on account of which received the remunerations cannot be described as 'fee for included

services' and hence, not taxable in India. We also hold that the amount received cannot be treated as royalty even under the provisions of section 9(1)(vii), because the service rendered cannot constitute technical services so as to cover u/s.9(1)(vii) of the Act. Hence, we delete the addition and allow this issue of assessee's appeal on merits.

7. Similarly, respectfully following consistent view, we adopt the order of the co-ordinate bench in assessee's own case for AYs 2014-15, 2016-17 & 2017-18 in ITA Nos.259, 260 & 262/Chny/2023 dated 26.07.2024 with regard to the point of reconciliation being difference in figures between Form No.26AS and Form No.15CA, as pointed out by Ld.AR for assessee, we are of the view that Form No.15CA filed by the banker/payers and the assessee was not in a position to verify the details forming part of Form No.15CA. The assessee has made claim as per Form No.26AS, this is subject to verification. The assessee will be provided necessary details as received by the AO in Form No.15CA and will confront the same to the assessee, to enable the assessee to peruse the same and provide suitable response and reconcile the figures. In term of the above, this particular verification is restored back to the file of the AO in this year also.

8. Regarding managerial services, authorities below has not discussed the issue at all. Hence, we refrain from adjudicating the same.

SA Nos.27/CHNY/2023

9. Since we have heard the appeal and decided, the Stay petition becomes infructuous and hence, dismissed.

10. In the result, the appeal filed by the assessee in ITA Nos.258/CHNY/2023 is allowed and the stay applications in SA Nos.27/CHNY/2023 is dismissed as infructuous.

Order pronounced in the open court on 30th day of September, 2024 at Chennai.

Sd/-	Sd/-
एस.आर. रघुनाथा	**(मनु कुमार गिरि)**
(S.R. RAGHUNATHA)	**(MANU KUMAR GIRI)**
लेखा सदस्य/ ACCOUNTANT MEMBER	**न्यायिक सदस्य /JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated, the 30th September, 2024.
KV
आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.