

2. The solitary substantive grievance of the assessee is that the Assessing Officer has erred in determining the taxable income of the assessee at Rs. 2,69,82,819/- for the A.Y under consideration as against NIL income returned by the assessee.

3. Representatives of both the sides were heard at length. Case records carefully perused.

4. At the very outset, the ld. counsel for the assessee vehemently submitted that this issue is squarely covered in favour of the assessee and against the Revenue by the decision of the co-ordinate bench of the Tribunal in assessee's own case.

5. The ld. DR relied on the orders of the authorities below. The ld DR, however did not controvert the factual situation as narrated by the ld counsel of the assessee.

6. The facts briefly stated is that the assessee company is incorporated under the laws of United States of America (USA) and qualifies as a tax resident of USA within the meaning of Article 4 of the Indo-USA Double Taxation Avoidance Agreement (DTAA). It is engaged

in the business of providing background screening and investing services to its customers in India. The issue at dispute is whether the amount received by the assessee amounting to Rs 2,66,69,104/- during the year under consideration on account of screening services provided to Indian clients are royalty or not under section 9(1)(vi) and article 12 of India-US tax treaty.

7. We have heard the rival submissions and have perused the relevant material on record. We have perused the Tribunal order and find that this issue is squarely covered in favour of the assessee and against the Revenue by an order of the co-ordinate bench in assessee's own case for Assessment Years 2019-20 and 2020-21 in ITA Nos. 373/DEL/2023 and 1884/DEL/2024 dated 06.09.2023. The relevant findings of the co-ordinate bench read as under:

"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 Copy right 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 (S C)/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 capture d 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 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.

8. The hon'ble Delhi High Court in the case of the associate concern of the assessee in CIT V HireRight Ltd ITA 138 of 2024, on similar facts and circumstances confirmed the findings of the ITAT as follows:

5. In our considered opinion, the mere undertaking of background checks of an employee or the verification of testimonials cannot possibly be recognised 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 recognised 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.

9. In the absence of any material change on the facts of the issue and the legal proposition, we hold that no addition on account of "Royalty" is warranted in this case. The ground no 1 and 2 with its sub-grounds are allowed.

10. The ground no 3 pertains to initiation of penalty u/s 270A. The same is premature and is accordingly dismissed.

11. In the result, the appeal of the assessee in ITA No. 1915/DEL/2024 is partly allowed.

The order is pronounced in the open court on 14.11.2024.

Sd/-

[VIKAS AWASTHY]
JUDICIAL MEMBER

Sd/-

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 14th November, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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