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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA,ACCOUNTANT MEMBER

ITA No.2617 & 2618/Del/2024,A.Y.2016-17, 2017-18

LNRS DATA SERVICES LTD. QUADRANT HOUSE, The QUADRANT, SUTTON, SURREY, SM2 5AS, United Kingdon, 999999 PAN: AAKCR4632G	Vs.	Assistant Commissioner of Income Tax, Circle International Tax 2(2)(1), Civic Centre, New Delhi
(Appellant)		**(Respondent)**

Appellant by	Sr. Ravi Sharma, Advocate, Ms. Shruti Khitmta, CA, Sh. Jaskaran Sarkaria, CA
Respondent by	Shri Vijay B Vasanta, CIT-DR

Date of Hearing	14/10/2024
Date of Pronouncement	29/11/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

These appeals for Assessment Years (hereinafter, the 'AY') 2016-17 &2017-18 filed by the assessee are directed against the orders dated 26.03.2024 passed under section 143(3)/144C of the Income Tax Act, 1961 (hereinafter 'the Act') by the Assistant Commissioner of Income Tax, Circle International Tax -2(2)(1), New Delhi (hereinafter, the 'AO'). Since the facts of these appeals and issues involves are

similar; therefore, we heard these appeals together and the same are being disposed off by this common order.

2. The case of AY 2016-17; ITA No. 2617/Del/2024, is taken as a lead case. Following grounds have been taken in AY 2016-17:

> *"Ground No. 1:That on the facts and in the circumstances of the case and in law, the final assessment order passed by the Learned Assessing Officer ('Ld. AO'), pursuant to the directions of the Honorable Dispute Resolution Panel ('Hon'ble Panel') is based upon conjectures, surmises, preconceived notions, and incorrect application of law, is devoid of any merits and is hence, bad in law and void ab initio.*
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> *Ground No.2: That on the facts and in the circumstances of the case and in law, the Ld. AO has erred in assuming jurisdiction and thereby passing an assessment under Section 144 read with Section 144C(13) and Section 148 of the Act.*
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> *Ground No. 3:That on the facts and in the circumstances of the case & in law, the Ld. AO has grossly erred in computing the taxable income of INR 24,80,77,042 as against the nil income reported by the appellant in its Return of Income ('ROI') filed for the subject AY.*
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> *Ground No.4:That on the facts and in the circumstances of the case & in law, the Hon'ble Panel has grossly erred in confirming the action of the Ld. AO in proposing an addition of INR 24,80,77,042 from receipt of subscription fees by erroneously treating it as Fees for Technical Services ('FTS") under the Income-tax Act, 1961 ('the Act') and under Article 13 of the tax treaty between India-UK ('India-UK DTAA').*
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> *Ground No. 5:That on the facts and in the circumstances of the case & in law, the Ld. AO has grossly erred in not following the decision of the Hon'ble jurisdictional Delhi High Court in the case of a group entity, RELX Inc vs. CIT for AY 2018-19 (ITA 630/2023), wherein the Hon'ble Delhi High Court has held that subscription charges received for providing access to database cannot be considered as*

Royalty/FTS under the provisions of the Act as well as under the tax treaty between India and USA.

Ground No. 6: That on the facts and in the circumstances of the case and in law, the Hon'ble Panel grossly erred in confirming the action of the Ld. AO in proposing an addition of receipt from subscription fees of INK 24,80,77,042 by treating it as royalty under the Act as well as under Article 13 of the India-UK DTAA.

Ground No. 7:That on the facts and in the circumstances of the case & in law, the Ld. AO has grossly erred in computing the demand of INR 28,65,39,360. In doing so, the Ld. AO has erred in computing incorrect gross tax liability and incorrectly computing the consequential interest charged under section 234A and Section 234B of the Act.

Ground No. 8:That on the facts and in the circumstances of the case & in law, the Ld. AO has grossly erred in applying the tax rate of 40% plus surcharge and cess on the subscription income of the Appellant alleged as Royalty/FTS under the Act and under the India-UK DTAA.

Ground No. 9:That on the facts and in the circumstances of the case & in law, the Id. AO has erred in proposing the initiation of penalty proceedings under section 271(1)(C) of the Act.

The above grounds are independent of and without prejudice to each other. The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing."

2.1 In nut shell, the appellant/assessee has challenged the assumption of jurisdiction under section 148 of the Act, treating of subscription fees as Fees for Technical Services (hereinafter, the 'FTS') and or royalty under the Act as well as under Article 13 of the India-UK DTAA, chargeability of tax @ 40% and initiation of penalty proceedings

under the Act. Grounds numbered 1 and 3, being general in nature, do not require specific adjudication. Ground No. 7 and 8 being consequential also stand dismissed. Ground No. 9 is in respect of initiation of penalty proceedings, which is premature; hence, it is dismissed. Ground No. 4 to 6 are being adjudicated here as these involve the core issue that whether subscription fees received by appellant for publishing books, journals, articles in relation to various aspects such as legal, banking, risk management etc. and providing on line analytical tools to access the same is Fees for Technical Services (hereinafter, the 'FTS') and or royalty under the Act as well as under Article 13 of the India-UK DTAA.

3. The relevant facts giving rise to these appeals are that the appellant/assessee, incorporated in the United Kingdom (hereinafter 'UK'), is a tax resident of UK within the meaning of Article 4 of the India-UK DTAA. The appellant/assessee has not had any Permanent Establishment (hereinafter, the 'PE') in India. The appellant/assessee is engaged in the business of publishing books, journals, articles in relation to various aspects such as legal, banking, risk management etc. and providing on line analytical tools to access the same to the subscribers worldwide including India. The appellant/assessee is a non-filer asserting that no part of its income is taxable in India under

the Act. Later on, its case has been reopened on the reasoning that the appellant/assessee's receipts of subscription fee of INR 248,077,042 from Indian subscribers for use of its database is liable to tax in India.

3.1 The database of the appellant/assessee enables Indian subscribers to access books, journals, articles in relation to various aspects such as legal, banking, risk management etc. The appellant/assessee's claim is that the income earned from the subscription fee is in the nature of business income and thus, the same, in absence of its PE in India, is not liable to tax as the aforesaid income does not fall within the ambit of Article 12 of the India-UK DTAA.

3.2 The appellant/assessee has also claimed that since the access accorded to the Indian consumers was neither a transfer of copyright nor would it satisfy the requirement of included service comprising of an element where technical knowledge, experience, skill, know-how or processes has been made available. The Income Tax Department, by virtue of Section 144C of the Act hold that the income is in the nature of technical consultancy and will thus fall within the ambit of Article12.

3.3 Aggrieved by the Draft Assessment Order so framed, the appellant/assessee approached the Dispute Resolution Panel which

rejected the objections vide its order dated 23 February 2024 and confirmed the proposed assessment as framed by the AO. Pursuant thereto, a Final Assessment Order was on 26 March 2024. In the Final Assessment Order, the AO has taxed the subscription fee of INR 248,077,042 by holding these receipts fall in the purview of section 9(1)(vii) of the Act and also under the Article 13 of the India-UK DTAA. Alternatively, the AO has also held that the said receipts are in the nature of royalty and thus, the same is taxable under section 9(1)(vi) of the Act and also under Article 13 of the India-UK DTAA. Similar facts and issues are involved in AY 2017-18 also.

4. The Ld. Authorized Representative (hereinafter, the 'AR') contended that the receipts of INR 248,077,042 in absence of any PE in India were not taxable in India under Article 5 read with article 7 of India-UK DTAA. Further, he contended that such receipts would not qualify as a FTS under section 9(1)(vii) of the Act as these were not in the nature of fee for technical services. In support of the said argument, the Ld. AR placed reliance on the decision of the Hon'ble Delhi High Court in the case of RELX INC, ITA No. 630/2023 order dated 07.02.2024. It was categorically submitted that the RELX INC, a group entity of the appellant/assessee and was also engaged in the similar business and therefore, the appellant/assessee's case got squarely

covered by the decision of the Jurisdictional High Court in the case of RELX INC (supra). He prayed for relief following the judicial precedent. A copy of the Tax Residency Certificate (hereinafter, the 'TRC') issued by the UK Tax Authority bearing the erstwhile name of the assessee is filed not only during the assessment proceedings but before also.

4.1 The Ld. AR drew our attention on the finding of the Hon'ble Delhi High Court in the case of RELX INC. The relevant portion of the said decision is reproduced hereunder:

> *"10. It must at the outset be noted that Section 9(1)(vii) of the Act could have been resorted to, provided it were found to be more beneficial to the assessee when compared to the provisions of the DTAA. However, notwithstanding the above, it is apparent that the submissions addressed on this score are clearly unmerited. As is plainly evident from a reading of Explanation 2 of Section 9(1)(vii) of the Act and which defines FTS, it contemplates consideration which may be said to fall within the ambit of rendering of a managerial, technical or consultancy service. The mere access granted to a subscriber to the legal data base would clearly not fall within the ambit of Section 9(1)(vii) of the Act. All that the assessee does is provide access to the database. It has not been shown to be providing any further managerial, technical or consultancy service to a subscriber. We, in any case, find ourselves unable to countenance the contention that the access so granted could be construed as providing services of the nature spoken of in Section 9(1)(vii) of the Act.*
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> *11. We find that similar would be the position which would obtain when subscription fee is examined on the anvil of Article 12 of the DTAA. If the Department were to describe subscription fee as royalty', they would necessarily have to establish that the payments so received by the assessee was consideration for the use of or the right to use any copyright or a literary, artistic or scientific work as defined by Article 12(3) of the DTAA. Granting access to the database would clearly not*

amount to a transfer of a right to use a copyright. We must bear in mind the clear distinction that must be recognised to exist between the transfer of a copyright and the mere grant of the right to use and take advantage of copyrighted material. Neither the subscription agreement nor the advantages accorded to a subscriber can possibly be considered in law to be a transfer of a copyright. In fact, it was the categorical assertion of the assessee that the copyright remains with it at all times.

12. This issue in any case no longer appears to be res integra in light of the judgment of this Court in Director of Income Tax Vs. Infrasoft8. We deem it apposite to extract the following passages from that decision:-

……..

13. The distinction between the transfer of a copyright as distinct from a mere right to use copyrighted material was again highlighted by the Supreme Court in Engineering Analysis Centre for Excellence Vs. CIT9 when it observed-

……

14. The distinction between the right of access to copyrighted content as opposed to parting with the copyright itself was again explained by our Court in CIT Vs. Microsoft Corporation10 where the following pertinent observations were made:-

……

15. Similarly, in order for that income to fall within the ambit of fees for included services', it was imperative for the Department to establish that the assessee was rendering technical or consultancy services and which included making available technical knowledge, experience, skill, know-how or processes. As has been found by the Tribunal, the access to the database did not constitute the rendering of any technical or consultancy services and in any case did not amount to technical knowledge, experience, skill, know-how or processes being made available.

16. We note that while explaining the meaning liable to be ascribed to the expression make available', the Court in Commissioner of Income Tax (International Taxation) v. Bio-Rad Lab (Singapore) Pte. Ltd. had

affirmed the following opinion as expressed by the Tribunal. This is evident from a reading of paras 14, 14.1 and 15, which is extracted below:

.....

17. As we examine the nature of the transaction between an Indian subscriber and the assessee, it becomes manifest and apparent that it neither comprises of a transfer of copyright nor does it include a transfer of a right to apply technology and other related aspects which are spoken of in Article 12(4)(b) of the DTAA.

18. We thus find no justification to interfere with the view as expressed by the Tribunal. The appeal fails and shall consequently stand dismissed on the aforesaid terms."

5. The Ld. CIT-DR, placing reliance on the observations and finding in para 6.10 to 13.3 of the order of the DRP, submitted that the services provided by the appellant/assessee involved technologies and fulfilled the condition of make available clause. Therefore, the subscription fees should be taxed in India as the users and payers are based in India. He further put submitted that the appellant/assessee had provided services in India through cloud-based solutions. The Ld. CIT-DR submitted that the cloud-based solutions provided by the appellant/assessee involved technology. Further, the appellant/assessee also trained the employees of the Indian customers enabling them to Act independently. Thus, the make available clause also got fulfilled as users in India, over the years, would be able to use Data independently without the support of the appellant/assessee. The customer users were held responsible for any damage for the system

software. These attributes were nothing but independent performance. He prayed for dismissal of the appeal.

6. We have heard both the parties at length and have perused the material available on record. We are of the considered view that this case is squarely covered by the decision of the Hon'ble Delhi High Court in the case of RELX INC (supra). We therefore, following the reasoning given by the Hon'ble Delhi High Court in its decision in the case of RELX INC (supra), hold that the subscription fees received by the appellant/assessee is in the nature of business profit/income, which cannot be charged to tax in India in absence of the PE. Accordingly, we delete the addition of INR 248,077,042 which has been taxed in AY 2016-17. This finding shall apply mutatis mutandis in AY 2017-18 also. Thus, both appeals are allowed.

7. In the result, both appeals of the assessee are allowed.

Order pronounced in open Court on 29th November, 2024.

Sd/-	**Sd/-**
(VIKAS AWASTHY)	**(AVDHESH KUMAR MISHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated:29th/11/2024
Binita, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT (Int. Tax)
4. DRP
5. CIT-DR

ASSISTANT REGISTRAR
ITAT, NEW DELHI