

**IN THE INCOME TAX APPELLATE TRIBUNAL ‘I’ BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VP AND MS. PADMAVATHY S, AM**

ITA No.1774/Mum/2024 (Assessment Year: 2018-19)

ITA No.1775/Mum/2024 (Assessment Year: 2019-20)

ITA No.2341/Mum/2024 (Assessment Year: 2021-22)

ITA No.2342/Mum/2024 (Assessment Year: 2020-21)

Dy. CIT (IT)-3(1)(2) Room No. 1628, 16 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400 028	Vs.	Jefferies International Ltd. C/o. Ernest and Young LLP, 14 <sup>th</sup> Floor, The Ruby 29, Senapati Bapat Marg, Dadar (W), Mumbai-400 028
PAN/GIR No. AABCJ 7041 C		
<b>(Revenue)</b>	:	<b>(Assessee)</b>

C.O. Nos. 100 & 101/Mum/2024  
(Arising out of ITA Nos.1774 & 1775/Mum/2024)  
(Assessment Years: 2018-19 & 2019-20)

C.O. Nos. 102 & 103/Mum/2024  
(Arising out of ITA Nos. 2342 & 2341/Mum/2024)  
(Assessment Years: 2020-21 & 2021-22)

Jefferies International Ltd. C/o. Ernest and Young LLP, 14 <sup>th</sup> Floor, The Ruby 29, Senapati Bapat Marg, Dadar (W), Mumbai-400 028	Vs.	Dy. CIT (IT)-3(1)(2) Room No. 1628, 16 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400 028
PAN/GIR No. AABCJ 7041 C		
<b>(Assessee)</b>	:	<b>(Revenue)</b>

<b>Assessee by</b>	:	Shri Nishant Thakkar & Shri Hiten Thakkar
<b>Revenue by</b>	:	Shri Krishna Kumar
<b>Date of Hearing</b>	:	17.12.2024
<b>Date of Pronouncement</b>	:	31.12.2024

**ORDER**

Per Bench:

The captioned appeals by the Revenue and cross objections by the assessee, arise out of separate orders of learned Commissioner of Income Tax (Appeals), Mumbai ('ld.CIT(A) for short), pertaining to the assessment years (A.Ys.) 2018-19 to 2021-22.

2. Since, the appeals relate to the same assessee and issues arising in appeals and cross objections are identical, they have been clubbed together and disposed of in a consolidated order, as a matter of convenience.

3. At the very outset, learned counsel appearing for the assessee submitted, the tax effect on the disputed issues arising in Revenue's appeal for A.Ys. 2019-20 and 2020-21 is below the threshold limit of Rs.60 lacs, thus, he submitted, the appeals of the Revenue are not maintainable.

4. In response to query raised by the Bench, in the context of the aforesaid submission of learned counsel for the assessee, the learned Departmental Representative ('ld. DR' for short) fairly agreed that the tax effect in both the appeals is below the threshold limit of Rs.60 lacs.

5. In view of the aforesaid submissions of the parties, we dismiss the appeals of the Revenue, being ITA Nos. 1775/Mum/2024 and 2342/Mum/2024 as well as the corresponding cross objections, being CO Nos. 101/Mum/2024 and 102/Mum/2024.

6. As regards the rest of the appeals of the Revenue, being ITA Nos. 1774/Mum/2024 and 2341/Mum/2024, the first common issue is with regard to taxability of administrative support service charges as fees for technical services (FTS) in terms of Article 13 of Double Taxation Avoidance Agreement (DTAA) between India – United Kingdom (UK).

7. Briefly stated, facts relating to these issues are, the assessee is a non-resident corporate entity, incorporated in United Kingdom and is a tax resident of UK. The assessee has a subsidiary in India, being Jefferies India Private Ltd. (JIPL), which is registered with Securities and Exchange Board of India (SEBI), as a Category 1 Merchant Banker and a stock broker. As stated by the Assessing Officer (AO), the principal activities of JIPL is to provide merchant banking and investment advisory services to investors, corporate and stock broking services to domestic and foreign Institutional Investors. As observed by the A.O., the assessee had provided administrative support services to the Indian subsidiary during the year under consideration and received revenue on that account. He has further stated that such administrative support services were provided towards compliance advisory/ support, general financial statement preparation, regulatory reporting, information technology helpdesk support, internal audit of systems, etc. He has further stated that, the consideration for such services were recovered from the Indian subsidiary at cost.

8. Before the A.O., the assessee claimed that the consideration received towards provision of administrative support services, is not taxable in India. However, the A.O. was of the view that such services, being in the nature of technical service fee, has to be treated as 'FTS', hence, has to be brought to tax in India. Accordingly, he issued a show cause notice to the assessee. In response to the said show cause notice, the assessee reiterated its stand that, fees received on account of provision of administrative support service does not fall within the ambit of FTS, as provided under Article 13(4) of India – UK Tax Treaty, firstly, because they are not in the nature of technical and

consultancy services, and, secondly, assuming them are of such nature, however, while providing such services, the assessee had not made available technical knowledge, experience, skill, knowhow or processes or development of transfer of technical plan or technical design to the service recipient. The assessee further emphasized before the A.O. that the Indian subsidiary had entered into an unilateral Advance Pricing Agreement (APA) with Government of India on 08.08.2019, whereunder, it has been provided that the Indian subsidiary has accepted the support services, on a cost to cost basis without any mark-up. Thus, it was submitted by the assessee that in the given facts and circumstances, the administrative support services fee cannot be made taxable as FTS under the treaty provisions. The A.O., however, did not agree with the contentions of the assessee and proceeded to complete the assessment treating the administrative support services fee as FTS under the treaty provision and brought it to tax.

9. The assessee contested the afore-said addition before learned first appellate authority.

10. After considering the submissions of the assessee, in the context of the facts and materials on record, learned first appellate authority noticed that while deciding identical issue in assessee's own case for A.Y. 2012-13 the Tribunal had held that the fee received towards administrative support services cannot be regarded as FTS under Article 13 of the Treaty. Thus, following the said decision, the learned first appellate authority decided the issue in favour of the assessee.

11. Before us, it is a common point between the parties that the issue is squarely covered by the decision of the co-ordinate bench in assessee's own case in A.Y. 2012-13. While going through the afore-said decision in ITA Nos. 5674 and 5675/Mum/2017, vide order dated 28.03.2023, it is noticed, while considering identical nature of dispute arising between the assessee and the Revenue, the co-ordinate bench dealing with the nature of the services rendered under the agreement between the parties has concluded that fee received towards administrative support services, will not qualify as FTS under the treaty provisions. For better appreciation, the detailed observations of the co-ordinate bench is reproduced here-under:

*“6. Considered the rival submissions and material placed on record. We observe from the record that the principal activity of the assessee is to provide merchant banking and investment advisory services to investors, corporates and associated entities and stock broking services to domestic and foreign institutional investors. The Jefferies Group Inc. and its subsidiaries operate as a global full-service, integrated securities and investment banking firm. The group provide investors fundamental research and trade execution in equity, equity linked and fixed income securities including investment grade corporate bonds, high yield and distressed securities, government and agency securities, markets and asset backed securities, municipal securities, bank loans, leveraged loans and emerging markets depths as well as derivatives and engage in securities financing and commodities derivative trading activities. The group offers companies capital markets merger and acquisition, restructuring and other financial advisory services. The group also provides certain assets management services and products to institutions and other investors.*

*7. We observe from the record that the Jefferies Group Inc functions in such a way that services of the intragroup companies are shared, executed and utilised by all the group companies in order to service the targeted customers, in this case customers in Indian territory. Based on the above, the assessee has entered intragroup agreement for services between Jefferies India Private Limited (JIPL), Jefferies International Ltd (assessee), Jefferies & Co (Jefco) and Jefferies Hong Kong Ltd (JHKL). The latest agreement submitted before us, which is made effective as of April 20, 2010. As per the terms and condition mentioned in the above said intragroup agreement, we observe that the intragroup companies i.e. JIL, Jefco and JHKL shall wishes to provide one or more of the administrative services to JIPL as set out in schedule A to this agreement. The JIPL is willing to identify potential clients for each of JIL, Jefro and JHKL for such corporate finance services as each of those intragroup companies mentioned above (in technical terms, provide marketing services to its group concerns) and in turn the group companies (JLLC, Jefco and JHKL) may engage in and to provide various administrative, day to day management and similar consulting functions in relation thereto. The fact that even the assessing officer has confirmed that the assessee has provided the administrative services to the JIPL and he is of the opinion that the services are received by the Indian entity in the course of their normal business activities and it has benefitted by employing best talent in the business to improve their business and their project. Therefore, it is continuous in nature, hence it amounts to make available. It is fact on record that the assessing officer is not disputing the fact that the assessee has provided the administrative and day to day management services to the JIPL.*

8. We observe, as per clause 4 of the agreement, for each of JIPL client engagement, each of JIL, JEFECO and JHKL may provide JIPL with access to its selling, distribution and settlements abilities to assist JIPL in the identification of investors to effect the completion of capital markets and private placement fund raising engagements i.e. the distribution services. The distribution services are in relation to Jefferies Investment Banking activity and shall include the deployment by above said intragroup companies, as the case may be, of its personal to secure investors in a fundraising engagement by JIPL and if requested by JIPL may provide settlements services to it by the above said intra-group companies as part of its distribution services.

9. With regard to marketing and consultancy services, JIPL shall provide certain marketing and consultancy services to each of JIL, Jefco and JHKL as set out in schedule B to the intra group agreement in relation to Jefferies Investment banking activity. Here the schedule B plays an important role in understanding the real activity carried on by the JIPL in the Indian territory and market. We observe from the terms mentioned in the schedule B are:

a. JIPL primary activity is to market the corporate finance services provided by JIL, Jefco and JHKL and assistance to promote contact between JIL, Jefco and JHKL and existing as well as potential clients in India.

b. Provision of an advisory services to above mentioned intra group companies regarding development within the markets in India.

c. Liaising and providing feedback

d. Providing assistance, consents or approvals which may be required from regulator agencies to enable any services offered by the intra group companies

e. Undertaking due diligence with respect to potential clients or assisting the intra group companies in their performance f. group. Providing other assistance as per requirements to the intra

10. From the above, it is clear that JIPL scope of work and activities are limited to marketing and introduction of clients to intra group in order to facilitate the group object of providing investment banking activities. We also observe from the observation of TPO in the case of JIPL as well as the AR of the assessee submitted itself in para no 7(d) in the submissions made before us that JIPL does not have the requisite no of employees who can carry out the aforesaid functions. Therefore, all the services relating to investment banking activities are carried out by the intra group companies through the intermediary company i.e., JIPL as per the requirements of customers/clients in India.

11. From the above, we observe that the assessee provides the administrative and day to day management services to the JIPL, this fact is confirmed by the observation and relevant material placed before us that the Indian entity JIPL does not have any support team and administrative set up to carry out the business independently. All the support services are provided by the intra-group entities and particularly, the administrative and day to day management services are provided by the assessee. The Ld.CIT(A) has confused with the two schedules viz., Schedule A and Schedule B and came to wrong conclusion by observing the bill copies submitted before him for reimbursement of certain charges for which the assessee has outsourced certain services for the whole group and whatever the services are utilized by the assessee are alone charged to the JIPL. Therefore, in our considered view, the services provided by the assessee in order to support and provide the administrative and day to day management services to the JIPL are in the nature of group support services. These services are not to fall under the category of FIS or FTS. This is supported by the decision of ITAT Delhi bench in the case of Everest Global Inc. v. DDIT (2022) 136 taxmann.com 404, it is held as under: -

“9.3 We have carefully considered the rival submissions and perused the facts on record. Article 12(4)(b) of the India-USA DTAA provides the meaning of the term FIS as under:

“4. For purposes of this Article, "fees for included services" means payments 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:

.....

(b) make available technical knowledge, experience, skill, knowhow, or processes, or consist of the development and transfer of a technical plan or technical design.”

9.4 Now coming to the facts of the present appeal, the assessee has rendered management support services of the description listed at Annexure C of Master Support Services Agreement to Everest India on independent and non-exclusive basis. These services are centralized services which are being provided to all group entities in order to maintain uniformity and rationalize and standardize the practices across global location. No element of profit is earned by the assessee in course of rendering these services. These services include-

1. Management Oversight

- a Strategic direction
- b Contract review
- c Financial and legal guidance
- d Client Relationship Management
- e Insurance
- f Peer Review

2. Marketing

- a Brand Awareness
- b Marketplace analysis
- c Competitive analysis
- d Webinars
- e Leadership forum
- f Speaking engagements

3. Finance and Accounting

- a Payroll
- b General ledger
- c Employee time and expense
- d Revenue and expense accruals
- e Payables
- f Accounts Receivables
- g Cash Management
- h Financial Reporting
- i Budgeting
- j. Line of credit access management

4. Human Resource management

- a Recruiting
- b Compensation
- c Benefits administration
- d Legal

5. Information Technology

- a Laptop Maintenance
- b Help desk support
- c Desk side support
- d User Id and password
- e Remote access
- f System/antivirus
- g Intranet
- h Inter site communication links, email, voice mail etc
- i Standard computer platform
- j. New hardware and software
- k Training on IT resources
- l Licenses and compliance

*m Computer and phone networks*

6. *Training*

- a Global training conferences*
- b Monthly training sessions*
- c Ad hoc training as required*

7. *Legal*

- a Contract review*
- b Litigation management*
- c Other legal services as required*

9.5 *We agree with the contention of the assessee that managerial services are outside the scope of the meaning of FIS under Article 12(4) of the India USA DTAA. Wherever the intention of the legislature is to include managerial services within the scope of FTS/ FIS, the same has been expressly mentioned therein. This contention of the assessee finds support by the jurisdictional Delhi Court judgment in the case of Steria (supra). The relevant para of the judgment is reproduced below.*

*19. The next question that arises is concerning to extent to which the benefit under the India-UK DTAA can be made available to the Petitioner. As already noticed, the definition of "fee for technical services" occurring in Article 13(4) of the Indo-UK DTAA clearly excludes managerial services. What is being provided by Steria France to the Petitioner in terms of the Management Services Agreement is managerial services. It is plain that once the expression 'managerial services' is outside the ambit of 'fee for technical services', then the question of the Petitioner having to deduct tax at source from payment for the managerial services, would not arise. It is, therefore, not necessary for the Court to further examine the second part of the definition, viz., whether any of the services envisaged under Article 13(4) of the Indo-UK DTAA are "made available" to the Petitioner by the DTAA with France."*

9.6. *The assessee's case also finds support from the MOU annexed to the India-USA DTAA explaining the FIS wherein it is clarified that clause 4(b) of Article 12 excludes any service that does not make technology available to the person acquiring the service.*

*"Memorandum of Understanding (MOU) annexed to the IndiaUSA DTAA dated 15.05.1989 concerning FIS states as under:*

*Article 12 includes only certain technical and consultancy services. But technical services, we mean in this context services requiring expertise in a technology. By consultancy services, we mean in this context advisory services. The categories of technical and consultancy services are to some extent overlapping because a consultancy service could also be a technical service. However, the category of consultancy services also includes an advisory service, whether or not expertise in a technology is required to perform it.*

*Under paragraph 4, technical and consultancy services are considered included services only to the following extent: (1) as described in paragraph 4(a), if they are ancillary and subsidiary to the application or enjoyment of a right, property or information for which are royalty payment is made; or (2) as described in paragraph 4(b), if they make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design. Thus, under paragraph 4(b), consultancy services which are not of a technical nature cannot be included services. {emphasis supplied}*

*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.*

*{emphasis supplied}*

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

- 1. Engineering services (including the sub-categories of bioengineering 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."*

*From the above, it is evident that none of the services provided by the assessee are in the nature of FIS.*

*9.7 Further, considering the services provided by the assessee (listed above), in our view, these are not technical services nor do they require any technological knowledge, skill or experience. There is no transfer of technology involved. Everest India is not enabled to apply any technology on its own without recourse to the service provider i.e. the assessee. These services have not resulted in any enduring benefit to Everest India by way of any knowledge which could be applied by it on its own in future without depending on the assessee. These are general managerial services which are received by the assessee on recurring basis. Therefore, the test laid down under Article 12(4)(b), in our considered view, are not satisfied in the present factual scenario.*

9.8 Thus, management fee received by the assessee from Everest India is not taxable as FIS under the provisions of India-USA DTAA. Accordingly, this ground is allowed in favour of the assessee.”

12. Further, the coordinate bench decided similar issues in the case of *Edenred Pte Ltd v. DDIT [2020] 118 taxmann.com 2 (Mumbai – Trib.)* and held as under: -

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

We find that the services provided under the management agreement broadly include (i) consultancy services to support the sales activities of Surf Gold, (ii) legal services, (iii) financial advisory services and (iv) human resource assistance. There is no dispute here that under the provisions of section 9(1)(vii) of the Act, rendering of management services will be taxable as FTS. However, Edenred, by virtue of section 90(2) of the Act, is eligible to rely on the provisions of the India Singapore DTAA, should the same be more beneficial than the provisions of the Act. In this regard, we fruitfully rely on the judgment of the Hon’ble Delhi High Court in the case of *New Skies Satellite BV & Ors (ITA No. 473/2012)* wherein it is held that provisions of DTAA shall prevail over the provisions of the Act, if they more beneficial.

At this moment, we refer to Article 12(4) of the India-Singapore DTAA which explains the expression ‘make available’ as under:

“Article 12(4):

The term "fees for technical services" as used in this Article means payments of any kind to any person in consideration for services of a managerial, technical or consultancy nature (including the provision of such services through 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, knowhow or processes, which enables the person acquiring the services to apply the technology contained therein; or

c consist of the development and transfer of a technical plan or technical design, but excludes any service that does not enable the person acquiring the service to apply the technology contained therein.”

Thus 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.

We find that in the instant case, the management services are provided only to support SurfGold in carrying on its business efficiently and running the business in line with the business model, policies and best practices followed by the Edenred group. These services do not make available any technical knowledge, skill, knowhow or processes to SurfGold.

9.1 Now we discuss the case laws relied on both sides.

We begin with the reliance placed by the Ld. counsel. In the case of De Beers Mineral (P.) Ltd., the Hon'ble Karnataka High Court has observed as under :

*“The technical or consultancy services rendered should be aimed at and result in transmitting of technical knowledge etc., so that the payer of the service could derive an enduring benefit and utilize the knowledge or know-how on his own in future without the aid of the service provider. In other words, the technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without depending on the provider.”*

In the case of Intertek Services (307 ITR 418), the AAR has observed on the term 'make available' as under :

*"By making available the technical skills or know-how, the recipient of service will get equipped with that knowledge or expertise and be able to make use of it in future, independent of the service provider. In other words, to fit into the terminology 'make available', the technical knowledge, skills etc. must remain with the person receiving the services even after the particular contract comes to an end. The services offered may be the product of intense technological effort and lot of technical knowledge and experience of the service provider would have gone into it. But, that is not enough to fall within the description of services which make available the technical knowledge, etc. The technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in future without depending on the provider.”*

In the case of M/s Bharati Axa General Insurance Co. Ltd., the AAR has ruled as under :

*"9. The definition of FTS as contained in clause (b) of Article 12.4 is explicitly designed to restrict the scope and ambit of the technical and consultancy services. Even if we proceed on the basis that some of the services have the flavour of imparting technical knowledge and experience to the recipient of service, the further question is whether such provision of services enables the person acquiring the services to apply the technology contained therein. This test specifically laid down in clause (b), in our view, is not satisfied and the legal position clarified by this Authority while interpreting more or less similar Treaty provisions applies with greater force to the present case in view of the narrow language employed in the India-Singapore DTAA.*

*Providing comments and suggestions after reviewing the strategies and plans developed by the Applicant, giving suggestions to the Applicant to improve the product developed by it so as to bring it in line with the common practices followed by other AXA entities across the globe, providing HR support assistance, assisting the Applicant in choosing cost effective re-insurance partners, reviewing the actuarial methodologies developed by the Applicant and providing suggestions and inputs to achieve standard actuarial practices and processing guidelines in connection with the settlement of claims, marketing and risk analysis, fall short of the requirements laid down in the definition of fees for technical services in DTAA between India and Singapore. It will be too much to say that by providing such services (assuming they are technical or consultancy services), the Applicant receiving the services is enabled to apply the technology contained therein i.e. the technology, knowledge,*

*skills, etc. possessed by the service provider or technical plan developed by the service provider. We do not find anything in the IT support services that answer the description of technical services as defined in the Treaty.”*

*9.2 Then we turn to the case laws relied on by the Ld. DR. in US Technology Resources Pvt. Ltd. (supra), in terms of management service agreement between the assessee and the USA company, the latter provides highly technical services which are used by the assessee for making managerial decision, financial decision, risk management decision etc. The service of technical input, advice, expertise etc. rendered by the USA company are technical in nature as provided in clause 4(b) of the Article 12 of the DTAA. It is found that this case is reversed by the Hon'ble Kerala High Court in 97 taxmann.com 642 dated 09.08.2018, wherein it is held that fees for management services received by US company would not be taxable in India as there is no transfer of technical knowledge by US company to Indian company.*

*In Shell India Markets (P.) Ltd. (supra), the applicant is an Indian company, it has a network of retail fuel stations in India. SIPCL is a group company of assessee incorporated in UK. It is in the business of providing consultancy services to various group companies. The applicant has entered into Cost Contribution Agreement (CCA) with SIPCL for provisions of General Business Support Services (BSS). While providing General BSS, SIPCL works closely with the employees of the applicant and supports/advises them. Thus, General BSS is made available to the applicant. However, we find that subsequently, after considering the decision in the case of Shell India (supra), the Mumbai ITAT in the case of Linklaters LLP (ITA No. 1690/Mum/2015) dated 31.01.2017 held that from none of legal advisory services it can be said that technical knowledge, skill, experience, knowhow or process remained with the clients to whom services were rendered by the assessee, even after the rendition of services was completed and agreement came to an end. These services were of purely legal advisory nature; it cannot be said that recipient of the services was in a position to duplicate similar skill or technology or techniques in future without the aid or assistance of the assessee for carrying out similar assignments.*

*In the case of Perfetti Van Melle Holdings BV (supra), the applicant is a company based in Netherlands and it is in the business of manufacture and sale of sugar confectionary and gun. It also provides operational and other support services for the benefit of companies of Perfetti group situated in various countries. It has entered into a service agreement with the group company (Perfetti India). The AAR held that when the expertise in running the industry run by the group is provided to the Indian entity in the group to be applied in running the business, the employees of the Indian entity get equipped to carry on that business model on their own without reference to service provider, when the service agreement comes to an end. It is not as if for making available, the recipient must also be conveyed specially the right to continue the practice put into effect and adopted under the service agreement on its expiry. It is found that this case is reversed and set aside for fresh adjudication by the Hon'ble Delhi High Court in 52 taxmann.com 161 dated 30.09.2014 and hence cannot be made applicable.*

*9.3 We find that in view of the factual matrix delineated at para 9 above, the case laws narrated at para 9.1 hereinbefore i.e. De Beers Mineral (P.) Ltd; Intertek Services; M/s Bharati Axa General Insurance Co. Ltd. are applicable to the instant case. Therefore, we delete the addition of Rs.73,61,951/- made by the AO towards management services fees and allow the 3rd ground of appeal.”*

*13. From the above discussions and case law, the services provided by the group entities or holding company to its subsidiaries as support services to run their business effectively will not be considered as FTS or FIS under the treaty and these services does not amount to make available technical or skill or expertise while providing these services. Therefore, in our considered view, the services provided by the assessee to its subsidiaries are only to support to function the administration and day to day management of JIPL considering the fact that JIPL does not have any infrastructure to carry out any administration and day to day management. These facts are confirmed by the lower authorities and also facts on record. Therefore, these services are outside the ambit of FIS and FTS. Hence we are incline to allow the grounds raised by the assessee.”*

12. There being no difference in the factual position, in the impugned assessment years, respectfully following the decision of the co-ordinate bench, as referred above, we decide the issue in favour of the assessee, while upholding the decision of learned first appellate authority. Hence, grounds are dismissed.

13. In ground nos. 4 & 5, the dispute is with regard to taxability of reimbursement of expenses as FTS under Article 13(4) of India-UK treaty.

14. Briefly, the facts are, in course of the assessment proceeding, the A.O., while perusing the notes to the computation of income, noticed that the assessee had incurred certain expenses on behalf of its Indian subsidiary, JIPL, which were reimbursed by the subsidiary to the assessee. Noticing this fact, the A.O. called upon the assessee to explain why such reimbursement of expenses should not be treated as FTS. Objecting to the proposed action of the A.O., the assessee submitted that the reimbursement of expenses being purely on cost-to-cost basis, without any mark-up/profit element, it cannot be made taxable as FTS. However, rejecting the contention of the assessee, the A.O. proceeded to treat the reimbursement of expenses as FTS and brought it to tax while framing the assessment.

15. Before us, the parties have agreed that the issue is squarely covered by the decision of the co-ordinate bench in assessee's own case for A.Y. 2012-13 (supra).

16. Having taken note of the relevant facts and perused the decision of the co-ordinate bench in assessee's own case in A.Y. 2012-13, we find, while considering identical issue, the co-ordinate bench has held as under:

*"14. Coming to the next issue of reimbursement of expenses, the assessee has raised ground numbers 6 to 9. Ld AR has brought to our notice various third party invoices which are for the services rendered to JIPL and the assessee has reimbursed the same without their being any mark up. It was submitted that the expenses were incurred by the assessee on behalf of the JIPL, which are towards Bloomberg Finance LLC, Dow Jones & Company Inc, Merger Market US Ltd, Royale Logistics Ltd, Business Wire, Verizon Network Integration Corp, Universal E Business Solutions LLC, Chris Fowler Integration Corp, J2 Global Communications Inc etc., These expenses are clearly certain services required by the JIPL and we have already indicated in the previous paragraph that the JIPL does have any administrative office, all the necessity day to day managements are controlled thru the Holding Company. Accordingly, the assessee arranged the various services and all these services are utilized by JIPL and these expenses were reimbursed by JIPL to the assessee and also it is brought to our notice that these are reimbursed by JIPL without any mark up, it is settled position that reimbursement of expenses at cost is not taxable as fees for technical services since there is no element of income attached to the transaction. The Hon'ble Supreme Court held in the case of DIT v. AP Moller Maersk (392 ITR 116) SC as under: -*

*"11. Aforesaid are the findings of facts. It is clearly held that no technical services are provided by the assessee to the agents. Once these are accepted, by no stretch of imagination, payments made by the agents can be treated as fee for technical service. It is in the nature of reimbursement of cost whereby the three agents paid their proportionate share of the expenses incurred on these said systems and for maintaining those systems. It is re-emphasised that neither the AO nor the CIT (A) has stated that there was any profit element embedded in the payments received by the assessee from its agents in India. Record shows that the assessee had given the calculations of the total costs and pro-rata division thereof among the agents for reimbursement. Not only that, the assessee have even submitted before the Transfer Pricing Officer that these payments were reimbursement in the hands of the assessee and the reimbursement was accepted as such at arm's length. Once the character of the payment is found to be in the nature of reimbursement of the expenses, it cannot be income chargeable to tax."*

*15. Further the services provided by the third party through the holding company do not allow the make available any technical knowledge, skill, know how or processes to the JIPL or to the assessee within the meaning of Article 12 of Treaty between India – US. Therefore, even in this count, the reimbursement of expenses outside the tax net in the source country. Accordingly, the grounds raised by the assessee are allowed."*

17. There being no material difference in factual position in the impugned assessment years, respectfully following the decision of the co-ordinate bench in assessee's own case,

we hold that reimbursement of expenses cannot be treated as FTS. Accordingly, we uphold the decision of learned first appellate authority by dismissing the grounds raised.

18. Ground nos. (vi) being general in nature, does not require adjudication.

19. In view of our decision in Revenue's appeals, the corresponding cross objections filed by the assessee, have become infructuous, hence, dismissed.

20. To sum up, all the appeals and cross objections are dismissed.

*Order pronounced in the open court on 31.12.2024*

Sd/-

Sd/-

(Padmavathy S)  
Accountant Member

(Saktijit Dey)  
Vice President

Mumbai; Dated : 31.12.2024

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai