

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“I” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 6734/Mum/2024**  
(Assessment Year: 2018-19)

<b>DCIT(IT)-4(2)(2), Room No. 627, Kautilya Bhawan, Bandra Kurla Complex, Mumbai-400051.</b>	Vs.	<b>Stantec UK Limited, 240, Cygent Court Lakeside Drive Centre Park, Warrington, United Kingdom, GB WA11RN, United Kingdom-999999 PAN: AAHCM3429K</b>
<b>Appellant)</b>	:	<b>Respondent)</b>

**C.O. No. 26/Mum/2025**  
(Assessment Year: 2018-19)

<b>Stantec UK Limited, 240, Cygent Court Lakeside Drive Centre Park, Warrington, United Kingdom, GB WA11RN, United Kingdom-999999 PAN: AAHCM3429K</b>	Vs.	<b>DCIT(IT)-4(2)(2), Room No. 627, Kautilya Bhawan, Bandra Kurla Complex, Mumbai-400051.</b>
<b>Appellant)</b>	:	<b>Respondent)</b>

**I.T.A. No. 6735/Mum/2024**  
(Assessment Year: 2019-20)

<b>DCIT(IT)-4(2)(2), Room No. 627, Kautilya Bhawan, Bandra Kurla Complex,</b>	Vs.	<b>Stantec UK Limited, 240, Cygent Court Lakeside Drive Centre Park, Warrington, United</b>
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Mumbai-400051.		Kingdom, GB WA11RN, United Kingdom-999999 <b>PAN: AAHCM3429K</b>
<b>Appellant)</b> : <b>Respondent)</b>		

**C.O. No. 27/Mum/2025**  
(Assessment Year: 2019-20)

<b>Stantec UK Limited,</b> 240, Cygent Court Lakeside Drive Centre Park, Warrington, United Kingdom, GB WA11RN, United Kingdom-999999 <b>PAN: AAHCM3429K</b>	Vs.	<b>DCIT(IT)-4(2)(2),</b> Room No. 627, Kautilya Bhawan, Bandra Kurla Complex, Mumbai-400051.
<b>Appellant)</b> : <b>Respondent)</b>		

**Appellant /Assessee by** : Shri Ajit Jain(Virtually Present) /  
Shri Siddesh Chaugule, AR

**Revenue / Respondent by** : Shri Krishna Kumar, Sr. DR

**Date of Hearing** : 11.02.2025  
**Date of Pronouncement** : 27.02.2025

**ORDER**

**Per Bench:**

These appeals by the Revenue and the Cross Objections by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals) Pune-13 [for short 'the CIT(A)] dated 09.01.2024 for the AY 2018-19 and dated 12.01.2024 for AY 2019-20. The common grounds contended by the Revenue in both the appeals are as under: -

*i. "Whether on the facts and in the circumstances of the case and in law, the Led CIT(A) has erred in concluding that the services provided by the assessee do not qualify as Fees for Technical Service under Article 13 of Double*

*Taxation Avoidance Agreement between India and UK by referring to the Article 13(4) of the India UK DTAA when the fact is that assessee had made available their technical knowledge/experience/skill to the recipient and the same is of enduring nature capable of being utilized independently by the recipient without recourse to the service provider"?*

*ii. "Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in referring to the ITAT order of AY 2012-13 in ITA No. 961/MUM/2016 dated 29.12.2011 where the fact of the issue was different since the agreement which was in force w.e.f 01.01.2017 was different from the agreement and the claim of services for AY 2012-13"?*

*iii. "Whether on the facts and in the circumstances of the cases and in law, the CIT(A) has erred in referring to the old and new agreement when the old agreement was not produced and brought to the knowledge of the AO during assessment stage"?*

*iv. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in holding that reimbursements cannot be brought to tax in terms of the Act ignoring the judgment of Hon'ble Delhi High Court in the case of M/s. Centrica India Offshore Pvt. Ltd. W.P.(C) No. 6807/2012 wherein the Hon'ble High Court ruled that of mark up by itself is not determinative to characterize the payment as reimbursement and cannot negate the nature of transaction?"*

*v. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in holding that the reimbursement of expenses claimed was not FT'S without appreciating the facts that the assessee has not proved that the same was not at cost-o-cost basis?"*

2. The assessee is a company registered in the United Kingdom (UK) and the tax resident of UK. The assessee is engaged in the business of consulting, engineering, construction and management of wet infrastructure projects in the world. Stantec Resource Net India Pvt. Ltd. is an Associated Enterprise (AE) of the assessee to whom the assessee has rendered certain technical and other services. The assessee filed the return of income for AY 2018-19 on 30.11.2018 declaring a total income of Nil and for AY 2019-20 declared total income of Rs. 6,12,85,790/-. For the purpose of adjudication we have considered AY 2018-19 as

a lead case. The details of the sum received by the assessee towards rendering of technical and other services are tabulated below:

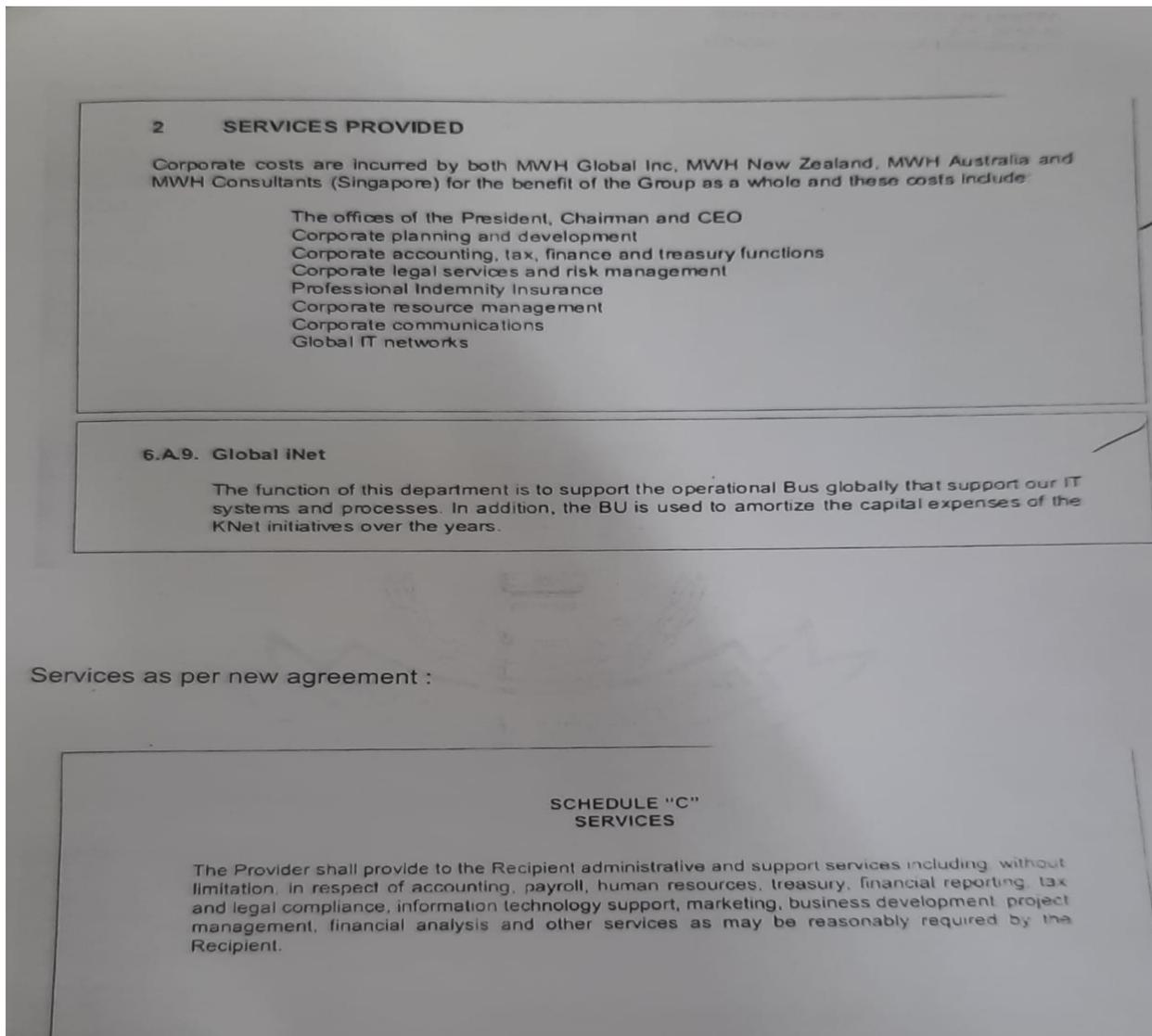
<b>Sr. No.</b>	<b>Description</b>	<b>Amount (in INR)</b>
1	INet Charges	57,748,226
2	Professional fees	1,197,665
3	Information System Maintenance charges	754,319
	<b>Total</b>	<b>59,700,210</b>

3. The Assessing Officer (AO) issued a show-cause notice to the assessee as to why these services cannot be treated as Fees for Technical Services (FTS) and brought to tax in India. The assessee made a detailed submission explaining the nature of services rendered by the assessee to its AE. The assessee submitted that no technical knowledge, experience, skills etc. is "made available" to the recipient of the services to enable them to use the same independently in future without the recourse to the assessee. Accordingly, the assessee submitted that the technical services are not taxable in India as per the DTAA between India and UK. With regard to receipt towards other services, the assessee submitted that it does not contain any profit element and is the reimbursement on a cost to cost basis. Accordingly, the assessee submitted that the same cannot be brought to tax in India. The AO however, did not accept the submissions of the assessee and held that the receipt of the assessee should be treated as FTS and accordingly made addition of the entire amount of Rs. 5,97,00,210/-. The AO did not give any specific finding with regard to the amount received towards rendering other services as reimbursement by the assessee.

4. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) allowed the appeal in favour of the assessee by holding that

“4.4 I have carefully considered the submission of the appellant in light of the facts of the case. The issue is regarding the taxability of certain services rendered by the appellant to its Indian associate enterprise. The AR at the outset stated that the issue is covered by the favourable ruling pronounced by the Hon'ble ITAT, Mumbai in Appellant's own case for AY 2012-13, AY 2013-14 and A Y 2016-17. To verify the nature of services rendered in past years and the relevant financial year, the AR was required to furnish the old and new service agreements. The appellant furnished the same and the relevant extract of the services are reproduced here as follows:

*Services as per old agreement:*



*It is seen from the above two narration that mostly similar services are rendered with the term "corporate services" used in the old agreement and "administrative and support services used in the new agreement.*

*4.4.1 During the relevant financial year, the actual services rendered are as follows:*

<b>Sr.No.</b>	<b>Description</b>	<b>Nature of Service</b>	<b>Amount (in INR)</b>
1	INet Charges	Technical Services	57,748,226
2	Information System Maintenance charges	Reimbursement of Expenses	662,393
3	Professional fees		1,197,665
4	Staff welfare expenses		91,926
	<b>Total</b>		<b>59,700,210</b>

*Out of the above, the major part is for INET charges which is somewhat similar to "Global Inet" in the old agreement. The details of services are as follows:*

- *IT Asset Management*
- *Desktop Services Management*
- *Access to network, including remote access via the internet*
- *Administration of users' Windows accounts, passwords and access control lists*
- *A Remote Access Service for an individual PC or a small MWH Office or Project Location*
- *Management of both wireless and wired Local Area Networks in MWH offices and project sites*
- *Management and operation of primary Data Centre's housing business critical systems and applications*
- *It provides the environment which allows applications to operate, including access control, server hardware, operating systems, application programs, backup systems, storage networks and support tools.*

*4.4.2 In the instant case, though the appellant admits that the services rendered by the Appellant are in the nature of technical/ consultancy services, it does not involve any development or transfer of technical plan or design, the said services can be considered as "FTS" under Article 13 of the India-UK DTAA only if they make available technical knowledge, experience, skill, know-how, or processes. The Appellant provides ongoing IT support to its AE, Stantec RNet to resolve its technical issues / queries and to ensure smooth functioning of day-to-day IT operations. The very fact that*

*these services are obtained on a recurring basis demonstrate that the Appellant does not impart / share technical knowledge with Stantec RNet and Stantec RNet recourses to the Appellant wherever such services are required. The technical services do not impart any specialized knowledge to Stantec RNet. Further, the Appellant through the provision of said services, cannot be said to equip Stantec RNet in the manner that Stantec RNet can independently perform these functions itself in future, without recourse to the Appellant. In other words, Stantec RNet is not able to use the knowledge or experience of the Appellant without recourse to it. Also, though the services are technical in nature and are rendered by the people having technical expertise, it does not make available or transfer technical knowledge to Stantec RNet. The expertise required in performing such services is not made available by the Appellant to Stantec RNet and therefore, Stantec RNet is not able to apply any expertise on their own.*

*4.4.3 It will be relevant to quote the relevant para of the decision wherein the make available issue was discussed by Hon'ble ITAT, Mumbai in its decision in ITA no.961/MUM/2016 dtd. 29.12.2021 for AY 2012-13 as follows:*

*QUOTE*

*“...19. Heard both the sides and perused the material on record. During the course of assessment, the Assessing Officer has treated the amount of Rs. 5,33,30,236/-received by the assessee being corporate charges from its associate concerns as fees for technical services under Article 13 of the DTAA entered into and subsisting between India and the UK (India-UK DTAA) for the year under consideration....*

*The DRP has also stated that none of the services rendered by the assessee-company "make available" any technical knowledge, skill etc. and same were not chargeable to tax in India. Further, by applying the provisions of section 90(2) of the Income Tax Act, 1961 and the Article 13 of the India-UK DTAA the fees received by the assessee-company was not liable to tax in India. On perusal of the material on record, it is observed that during the year under consideration the assessee has provided various corporate services to its Indian entity MIPL and MRPL for which both the entities have paid corporate charges to the assessee. During the course of assessment, the assessee has made submissions slating that the corporate services provided by the assessee were for the intemal management of the MWH Group as a whole and not for providing any services the third parties.....*

*With the assistance of the Ld. Representative, we have also gone through the Article 13 of the India-UK DTAA. The relevant extract of the said is reproduce as under*

*“4. For the purposes of paragraph 2 of this Article, and subject to paragraph 5. of this Article, the term "fees for technical services means payments of any kind of any person in consideration for the rendering of any technical or consultancy services (including the provision of services of a technical or other personnel) which*

*a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which payment described in paragraph 3(a) of this article is received:*

*or*

*b) are ancillary and subsidiary to the enjoyment of the property for which a payment described in paragraph 3(b) of this Article is received, or*

*c) make available technical knowledge, experience, skill know-how or processes, or consist of the development and transfer of a technical plan or technical design*

*It is clear from the terms of the Article 13 referred above that for a payment to fall within the definition of the term fees for technical services under Article 13 of the India-UK DTAA the following conditions are required to be fulfilled concurrently:*

*\* .....*

*\*Secondly such services should 'make available' technical knowledge, skill, experience, etc. to recipient of the services.*

*The term "make available" is used in the India-UK DTAA which means that the Indian entity is enabled to use the technical knowledge, experience, skill etc. independently in future without any recourse to the assessee-company. The Assessing Officer has not demonstrated in his finding that how the services in question make available any technical knowledge, skill etc. to the associate concerns and how the same were made available to the third parties.....*

*.....In the light of the above facts and findings, we do not find any infirmity in the direction of the DRP, therefore, this ground of appeal filed by the Revenue stand dismissed.....*

**UNQUOTE**

*4.4.4 Apart from the decision in its own case, the appellant has quoted various decisions in its favour as per its submission in above paragraphs. Thus, the term 'make available is interpreted to mean making available technical knowledge, experience, skills, etc, in such a manner that the recipient is enabled to use the same independently in future without recourse to the original provider. This is not proved by the AO in the assessment order and the facts of the case. Accordingly, I agree with the appellant that the services under consideration as provided by the Appellant to its AE are not taxable in India as "FTS" under Article 13(4) of the India-UK DTAA. Similarly I agree with the appellant that reimbursement of expenses has been received by the Appellant on cost-to-cost basis and hence the same cannot be brought to tax in terms of the Act. **Appeal is allowed on this ground.***

5. The ld. AR reiterated the submissions made before the lower authorities. The ld. AR further submitted that the assessee is rendering the impugned services continuously to its AE which substantiates the fact that no knowledge or skill is made available by the assessee. Accordingly, the ld. AR submitted that the receipts in the hands of the assessee towards rendering technical service cannot be held as FTS as per the DTAA between India and UK. The ld. AR further submitted that the issue is now settled by the decision on the impugned issue by the Co-ordinate Bench in assessee's own case which has been rightly relied on by the CIT(A).

6. The ld. DR on the other hand vehemently argued that the decisions of the Tribunal in assessee's own case in earlier years were with regard to the receipts in the hands of the assessee as per the old agreement entered into by the assessee with its AE. For the year under consideration the assessee has entered into new agreement and therefore, the decision of the Co-ordinate Bench cannot be applied directly.

7. We heard the parties and perused the material on record. The assessee has entered into agreement with its AE for rendering services as tabulated in the earlier

part of this order. The contention of the AO is that the IT Support Services rendered by the assessee to its AE makes available the technical knowledge, experience and skill and therefore the same is to be treated as FTS under Article-13 of DTAA between India and UK. The CIT(A) has deleted the addition made by the AO by placing reliance on the earlier year decisions of the Co-ordinate Bench on the same issue. On perusal of the relevant findings of the CIT(A) as extracted hereinabove, we notice that the CIT(A) has compared the services rendered under the old as well as the new agreement to come to the conclusion that the decision of the Co-ordinate Bench in assessee's own case in earlier years is applicable for the year under consideration also. Further, we notice that in para-4.4.2, the CIT(A) has given independent finding with regard to whether the services rendered by the assessee are falling within this court of FTS. Therefore, we are unable to agree with the contention of the Id. DR that there is infirmity in the findings of the CIT(A) in relying on the decision of the Co-ordinate Bench. From the perusal of the list of services rendered by the assessee to its AE as per the agreement, we notice that they are in the nature of support services and are rendered on a continuous basis. Therefore, there is merit in the submission that the assessee is not making available any technical knowledge or skill with the recipient of the services. In view of this discussion, we see no reason that interfere with the decision of the CIT(A) in holding that the services rendered by the assessee are not nature of FTS and accordingly not taxable in India under the DTAA between India and UK.

8. Ground No. 4 to 5 raised by the revenue is with regard to the reimbursement of cost incurred towards rendering other services by the assessee to its AE. The AO while making addition has considered the entire receipt including the reimbursement as FTS and has not given any specific findings with regard to

reimbursements. The CIT(A) has accepted the contention that the reimbursement is on a cost to cost basis and gave relief to the assessee. Before us the ld. AR submitted that the receipts are purely reimbursements without any profit element and therefore there is no income to be brought to tax in India.

9. From the perusal of the nature of services for which the assessee has received the reimbursement, we notice that the receipts are towards the cost incurred by the assessee and claimed as reimbursement from its AE. It is the claim of the ld. AR that the said reimbursement is on a cost to cost basis and the revenue did not controvert the same during the course of hearing. The assessee also made an alternate submission that the impugned reimbursements cannot be treated as FTS or business income. When there is no income element in the amount received by the assessee, we hold that the same cannot be taxed as income in the hands of the assessee in India following the settled legal position in this regard. Accordingly we see no infirmity in the findings of the CIT(A) deleting the addition made by the AO.

10. In result, the appeal of the Revenue for AY 2018-19 is dismissed.

11. For AY 2019-20, the assessee has received the following amounts which the AO has held as FTS.

<b>Sr. No.</b>	<b>Description</b>	<b>Nature of Service</b>	<b>Reasoning for non-taxability</b>	<b>Amount (in INR)</b>
1	INet Charges	Technical Service	The services provided do not "make available" technical knowledge, experience, skill, know-how or process and hence, not taxable by virtue of provisions of India-UK tax treaty	54,037,025
2	Annual System		These are pure	4,215,027

	<i>Maintenance charges</i>		<i>reimbursement of expenses incurred by the Company and charged back to the Indian entity. In absence of any income element, reimbursement of expenses are not taxable in terms of provisions of the Act.</i>	
3	<i>Professional System Maintenance charges</i>			901,430
4	<i>Staff Welfare expenses</i>			31,135
5	<i>Recruitment cost</i>			2,101,171
<i>Total</i>				61,285,788

12. From the perusal of the above table it is clear that the charges received towards iNet charges are identical to the similar charges received for AY 2018-19. Accordingly, in our considered view our decision for AY 2018-19 towards technical services rendered by the assessee to its AE not to be treated as FTS is applicable for AY 2019-20 also. Therefore, we hold that the amount received by the assessee towards technical services do not make available any technical knowledge or skill with recipient and therefore cannot be treated as FTS within the meaning of Article-13 of DTAA between India and UK.

13. From the perusal of the amounts received towards reimbursement of expenses, we notice that the same are pure reimbursement of expenses incurred by the assessee which is charged back to the AE. For AY 2019-20 also we notice that the AO has not given any independent finding with regard to the reimbursement of expenses but has considered the same along with the technical services rendered by the assessee to make addition treating the entire amount as FTS. We have while deciding the similar issue for AY 2018-19 have held that there is no infirmity in the decision of CIT(A) in deleting the addition made by the AO. Since the facts for the impugned issue for AY 2019-20 are identical in our considered view our decision in AY 2018-19 is mutatis mutandis applicable to AY 2019-20 also.

Accordingly, we see no reason to interfere with the decision of CIT(A). The grounds raised by the revenue in this regard are dismissed.

14. In result, the appeal of the Revenue for AY 2019-20 is dismissed.

15. In the C.O. for AY 2018-19 & AY 2019-20, the assessee is contending the same issue of treatment of technical and other services as FTS for the reason that the same do not amount to make available under Article-13 of DTAA between India and UK. The assessee also raised a without prejudice ground that the beneficial rate under section 115A of the Act shall be applied, if the impugned receipts is held as taxable in India. In view of our decision with regard to the appeal filed by the Revenue, the grounds raised by the assessee in C.O. for AY 2018-19 & AY 2019-20 have become infructuous and dismissed accordingly.

16. In result, the appeal of the revenue and the C.O. of the assessee for AY 2018-19 & AY 2019-20 are dismissed.

*Order pronounced in the open court on 27-02-2025.*

**Sd/-**  
**(AMIT SHUKLA)**  
**Judicial Member**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**